

LOAN AGREEMENT

among

G&I IX MJW LAKE POINTE III & IV LLC,
as Borrower

THE LENDERS PARTY HERETO

and

CANADIAN IMPERIAL BANK OF COMMERCE,
acting through its New York Branch,
as Administrative Agent for the Lenders

DATED: as of November 5, 2018

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LOAN AGREEMENT

THIS LOAN AGREEMENT, dated as of November 5, 2018 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this “**Agreement**”), among **G&I IX MJW Lake Pointe III & IV LLC**, a Delaware limited liability company, as Borrower, having its principal place of business at c/o DRA Advisors LLC, 220 East 42nd Street, 27th Floor, New York, New York 10017 (“**Borrower**”), the lenders party hereto (each a “**Lender**”, and collectively, the “**Lenders**”), and **CANADIAN IMPERIAL BANK OF COMMERCE, acting through its New York Branch**, having an address at One South Wacker Drive, Suite 3500, Chicago, Illinois 60606, and any successors appointed pursuant to this Agreement, as administrative agent (“**Administrative Agent**”).

WITNESSETH:

WHEREAS, Borrower desires to obtain a loan in the principal amount of up to THIRTEEN MILLION EIGHT HUNDRED FIFTEEN THOUSAND AND NO/100 DOLLARS (\$13,815,000.00) (the “**Loan**”) from the Lenders, on the terms and conditions set forth in this Agreement; and

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

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

ARTICLE I

DEFINITIONS; PRINCIPLES OF CONSTRUCTION

1.1 **Definitions.**

For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

“**Accounts Receivable Instruction**” shall have the meaning set forth in **Section 3.1** hereof.

“**Accounts Receivable Payor**” shall have the meaning set forth in **Section 3.1** hereof.

“**ACMs**” shall mean asbestos-containing materials.

“**Additional Advance**” shall have the meaning set forth in **Exhibit C** hereof.

“**Additional Interest**” means any and all amounts which may become due and payable by Borrower in accordance with the terms and provisions of any Interest Rate Protection Agreement governing a swap transaction entered into by Borrower with a counterparty that is a

Lender or an Affiliate of a Lender (but only for so long as such counterparty remains a Lender or an Affiliate of a Lender), which amounts shall be secured by the Mortgage and evidenced by and payable pursuant to the Note.

“Additional Taxes” shall have the meaning set forth in **Section 2.3** hereof.

“Adjusted LIBOR Rate” shall mean, with respect to each Interest Accrual Period, the rate per annum equal to the quotient of (a) the LIBOR Rate divided by (b) a number equal to 1.00 minus the aggregate (without duplication) of the rates (expressed as a decimal) of reserve requirements applicable to Administrative Agent on the date two (2) Working Days prior to the beginning of such Interest Accrual Period (including, without limitation, basic, supplemental, marginal and emergency reserves) under any regulations of any Governmental Authority as now and from time to time hereafter in effect, dealing with reserve requirements prescribed for eurocurrency funding (currently referred to as **“Eurocurrency Liabilities”** in Regulation D of the Board of Governors of the Federal Reserve System) maintained by a member bank of such system. Adjusted LIBOR Rate may or may not be the lowest rate based upon the market for U.S. Dollar deposits in the London Interbank Eurodollar Market at which Administrative Agent prices loans on the date which LIBOR Rate is determined by Administrative Agent as set forth above.

“Administrative Agent” shall have the meaning set forth in the introductory paragraph hereof.

“Advance” shall have the meaning set forth in **Section 7.4** hereof.

“Affiliate” shall mean any Person which directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with a specified Person. For purposes of the definition of “Affiliate”, the terms “control”, “controlled”, or “controlling” with respect to a specified Person shall include, without limitation, (A) the ownership, control or power to vote more than fifteen percent (15%) of (1) the outstanding shares of any class of voting securities or (2) beneficial interests, of any such Person, as the case may be, directly or indirectly, or acting through one or more Persons, (B) the control in any manner over the general partner(s) or manager or managing member or the election of more than one director or trustee (or Persons exercising similar functions) of such Person, or (C) the power to exercise, directly or indirectly, control over the management or policies of such Person.

“Agent Interest Rate Protection Agreement” shall have the meaning set forth in **Section 2.2** hereof.

“Annual Budget” shall have the meaning set forth in **Section 3.8** hereof.

“Applicable Laws” shall have the meaning set forth in **Section 4.1(h)** hereof.

“Approved Annual Budget” shall mean each Annual Budget approved by Administrative Agent in accordance with the terms of **Section 3.8** of this Agreement.

“As-Is DY” shall mean, as of any date of determination, the ratio of (i) Net Operating Income to (ii) an amount equal to the outstanding principal amount of the Loan as of the date of determination.

“As-Is DSCR” shall mean the ratio of Net Operating Income at time of determination to the greatest of (a) annual principal and interest payable on the outstanding Loan Amount at the Interest Rate, (b) the then outstanding principal balance of the Loan multiplied by a mortgage constant of 6.53%, or (c) the then outstanding principal balance of the Loan multiplied by the mortgage constant derived by using the then prevailing 10-year U.S. treasury yield plus 205 basis points and a 30-year amortization schedule.

“Assignment and Assumption” shall have the meaning set forth in **Section 9.1** hereof.

“Assignment of Cap Agreement” shall have the meaning set forth in **Section 2.2(i)** hereof.

“Assignment of Leases” shall mean that certain Assignment of Leases and Rents, dated as of the date hereof, from Borrower to Administrative Agent (for the benefit of the Lenders), as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

“Bail-In Legislation” means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“Bankruptcy Action” shall mean that a Person shall have undertaken, or been the subject of, any of the following: (i) the institution of proceedings to be adjudicated bankrupt or insolvent; (ii) consent to the institution of bankruptcy or insolvency proceedings against it; (iii) the filing of a petition seeking, or consenting to, reorganization or relief under any applicable federal or state law relating to bankruptcy; (iv) consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of such Person or a substantial part of its property; (v) the making of any assignment for the benefit of creditors; (vi) the admission in writing of its inability to pay its debts generally as they become due or declare or effect a moratorium on its debts; or (vii) take any action in furtherance of any such action.

“Bankruptcy Code” shall mean Title 11 of the United States Code, as amended from time to time and any successor statute thereto.

“Base Rate” shall mean, for any day, a rate equal to the sum of (i) one percent (1.00%) plus (ii) the greater of (a) the Prime Rate minus one percent (1.00%) for such day and (b) the Federal Funds Rate for such day plus two percent (2%).

“Board” shall mean the Board of Governors of the Federal Reserve System, and any successor thereof.

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

“Breakage Costs” shall mean, collectively, such amounts as shall, in the commercially reasonable judgment of Administrative Agent, compensate the Lenders for any actual cost of reemploying funds incurred by the Lenders in connection with (i) any pre-payment (whether voluntary or involuntary) of any portion of the Loan on the date other than the last day of an Interest Accrual Period; (ii) any acceleration of the Scheduled Maturity Date, (iii) any failure by Borrower to have drawn down all or any portion of the Loan, and (iv) the conversion (for any reason whatsoever, whether voluntary or involuntary) of a LIBOR Rate to any other applicable interest rate on the date other than the last day of an Interest Accrual Period. A certificate by a Lender as to the amount of any such Breakage Costs incurred by such Lender furnished to Borrower by such Lender shall be conclusive and binding upon Borrower as to the substance therein in the absence of a demonstrable error.

“Business Day” or **“business day”** shall mean any day other than (a) a Saturday or Sunday, or (b) a day on which banking and savings and loan institutions in the State of New York are authorized or obligated by law or executive order to be closed, and when used in the context of a loan bearing interest at the LIBOR Rate, is also a LIBOR Business Day.

“Capital Adequacy Rule” shall mean any law, rule or regulation regarding capital adequacy, or any interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or any request or directive regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency.

“Capital Expenditures” shall mean for any period, the amount expended for items capitalized under generally accepted accounting principles, including expenditures for building improvements or major repairs, as set forth in an Approved Annual Budget.

“Cash Collateral Account” shall have the meaning set forth in **Section 3.3(a)(xii)** hereof.

“Cash Expenses” shall mean, for any period, the operating expenses for the operation and maintenance of the Property as set forth in an Approved Annual Budget to the extent that such expenses are actually incurred by Borrower, including any payments in connection with any rate swap agreements or similar interest rate hedge agreements, but excluding payments into the Impound Account and expenses for which Borrower shall be reimbursed from, or which shall be paid for out of any such account or reserve.

“Cash Management Account” shall mean a deposit account in the name of Canadian Imperial Bank of Commerce, whether acting in its own name or through one of its agencies, branches, affiliates or otherwise, at an Eligible Bank, as contemplated in **Section 3.2**.

“Cash Management Bank” shall have the meaning set forth in **Section 3.2** hereof.

“Cash Management Commencement Date” shall mean any date on which a Cash Management Period commences.

“Cash Management Period” shall mean any of the following periods:

(a) the period of time commencing upon the occurrence of HighPoint Global, LLC providing notice of its intent to exercise the termination option set forth in Section 21 of that certain Third Amendment to Office Lease dated as of August 8, 2017 between Lake Pointe Tenant, LLC, as landlord, and HighPoint Global, LLC, as tenant; or

(b) any period commencing on the date when Administrative Agent notifies Borrower that Administrative Agent has determined that the As-Is DY was less than eight and fifty hundredths percent (8.50%) for two (2) consecutive calendar quarters and ending at such time as either the As-Is DY has, for two (2) consecutive calendar quarters, been greater than or equal to nine percent (9.00%) as a result of revenues and operations of the Property; or the As-Is DY is greater than nine percent (9.00%) on any given date as a result of Borrower having prepaid a portion of the principal amount of the Loan, strictly in accordance with and subject to the terms and conditions of this Agreement and the other Loan Documents with respect thereto; or

(c) the period of time commencing on the occurrence of an Event of Default, including, without limitation, the occurrence of the Maturity Date without payment of the Debt in full, and ending on the occurrence of a Mortgage Satisfaction Event.

“Certificates” means the securities issued in connection with a securitization of the Loan.

“Change in Law” shall have the meaning set forth in **Section 7.21(c)(iv)** hereof.

“Clearing Account” shall have the meaning set forth in **Section 3.1** hereof.

“Clearing Bank” means CIBC Bank USA, or any successor Eligible Bank approved or appointed by Administrative Agent.

“Clearing Bank Agreement” means that certain Deposit Account Control Agreement by and among Borrower, Administrative Agent and Clearing Bank, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, relating to the operation and maintenance of the Clearing Account.

“Closing Date” shall mean the date of this Agreement.

“Closing Statement” shall mean the loan closing statement prepared by Administrative Agent and executed by Borrower and delivered to Administrative Agent in connection with the closing of the Loan.

“Commitment” shall mean, as to any Lender, other than a Participant, the maximum dollar amount which such Lender has agreed to loan to Borrower, upon the terms and subject to the conditions of this Agreement, initially as set forth on Schedule 1 attached hereto, as such Lender’s Commitment may be modified pursuant hereto including without limitation pursuant to

any Assignment and Assumption in which such Lender is the Permitted Assignee (but as reduced as to portions subsequently assigned by it to another Permitted Assignee).

“Constituent Entity” shall mean, with respect to any Person, (A) with respect to any limited partnership, (1) any general partner of such limited partnership and (2) any limited partner of such partnership which owns (or is owned by any Person owning, holding or controlling, directly or indirectly) the right to receive 50% or more of the income, distributable funds or losses of such partnership; (B) with respect to any general partnership or joint venture, any partner or venturer in such general partnership or joint venturer; (C) with respect to any corporation, (1) any officer or director of such corporation, and (2) any Person which owns or Controls 50% or more of any class of stock of such corporation; (D) with respect to any limited liability company, (1) any manager of such limited liability company, (2) any managing member of such limited liability company, or the sole member of any limited liability company having only one (1) member, and (3) any non-managing member of such limited liability company which owns (or is owned by any Person owning, holding or controlling, directly or indirectly) the right to receive 50% or more of the income, distributable funds or losses of such limited liability company; (E) any Person which controls any Person described in any of foregoing clauses (A) through (D) of this definition; and (F) any Person which is a “Constituent Entity” with respect to a Person which is a “Constituent Entity” of the subject Person. For the purposes of clause (F) of this definition, if “B” is a Constituent Entity of “A”, then any Constituent Entity of “B” shall be deemed to be a Constituent Entity of any Person of which “A” is a Constituent Entity.

“Contracts” shall mean, collectively, all contracts and agreements now or hereafter entered into relating to the ownership or operation or management of the Real Estate or the Improvements or any portion of them.

“Control” (and **“Controlled by”** or **“under common Control with”**) shall (unless otherwise indicated) have the meanings assigned to such terms in Rule 405 under the Securities Act of 1933, as amended.

“Controlling Entity” shall have the meaning set forth in **Section 4.27** hereof.

“Debt” shall mean the outstanding principal amount set forth in, and evidenced by, the Notes and this Agreement together with all interest accrued and unpaid thereon and all other sums (including, without limitation, all Additional Interest, any prepayment fees, if applicable) due to the Lenders in respect of the Loan under the Notes, this Agreement, the Mortgage and the other Loan Documents.

“Debt Service Constant” shall mean the greater of (1) the constant derived using an interest rate equal to the sum of (a) the yield on the 10-year U.S. Treasury security (as of the date of determination of Debt Service Coverage Ratio), and (b) 205 basis points, and a 30 year amortization schedule, (2) the constant derived using an interest rate equal to the actual interest rate in effect under the Notes (as of the date of determination of Debt Service Coverage Ratio) and a 30 year amortization schedule, and (3) 6.53%.

“Debt Service Coverage Ratio” shall mean, for any period, the ratio of (A) Net Operating Income to (B) an amount equal to the maximum principal amount of the Loan multiplied (unless otherwise specified) by the Debt Service Constant.

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

“Default Rate” shall mean a rate per annum equal to the lesser of (a) the Maximum Legal Rate, or (b) the greater of (i) five percent (5%) above the Interest Rate in effect at the time of the occurrence of the related Event of Default or (ii) five percent (5%) above the Prime Rate in effect at the time of the occurrence of the related Event of Default.

“Defaulting Lender” shall mean any Lender that (a) has failed to (i) fund all or any portion of any Advance within two (2) Business Days of the date such Advance was required to be funded, or (ii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it under this Agreement or any other Loan Document within two (2) Business Days of the date when due, (b) has notified Borrower, the Administrative Agent or any other Lender in writing that it does not intend to comply with its funding obligations under this Agreement or under any other Loan Document, or has made a public statement to that effect, (c) has failed, within three (3) Business Days after written request by the Administrative Agent or Borrower, to confirm in writing to the Administrative Agent and Borrower that it will comply with its prospective funding obligations under this Agreement and the other Loan Documents (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a Bankruptcy Action, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity, or (iii) become the subject of a Bail-in Action.

“Defaulting Lender’s Loan Interest” shall have the meaning set forth in **Section 7.5(b)** hereof.

“Disqualified Person” shall mean a person or entity that fails to meet the requirements of applicable know-your-customer or anti-money laundering laws, rules or regulations, including, without limitation, any person or entity that would not be able to satisfy the representations and warranties set forth in **Section 4.1(nn)** hereof, or that would otherwise fail to qualify for financing from Administrative Agent or any Lender due to evidence of prior or pending bankruptcy filings, foreclosures, material credit defaults or litigation, criminal activity, or other similar matters.

“DRA” shall mean (i) DRA G&I Fund IX Real Estate Investment Trust, a Maryland Business Trust, DRA Growth and Income Fund IX LLC, a Delaware limited liability company, or DRA Growth and Income Master Fund IX, LLC, a Delaware limited liability company (individually or collectively referred to as, the **“Fund”**), or (ii) any successor to the Fund by merger, reorganization or acquisition of all or substantially all of the business or assets of the

Fund, provided that such successor has a Net Worth after such merger, reorganization or acquisition of not less than \$150,000,000 (provided, however, that any such successor shall be deemed to have satisfied the minimum Net Worth requirement if the Net Worth of such successor, plus the aggregate amount of any Uncalled Capital Commitments from its shareholders, partners or members, is equal to or greater than \$250,000,000) and Liquid Assets of not less than \$5,000,000, provided, that in the case of either (i) or (ii), DRA Advisors or a DRA Successor shall continue to Control DRA at all times, and further provided, that any Persons holding ten percent (10%) or more of the ownership interests in such successor that did not prior to closing of the subject transaction own at least such percentage interest, and are not publicly traded entities, shall have demonstrated to Administrative Agent's satisfaction that they are not Disqualified Persons.

"DRA Advisors" shall mean DRA Advisors LLC, a Delaware limited liability company.

"DRA Successor" shall mean a successor to DRA Advisors by merger, consolidation, reconstitution or acquisition of all or substantially all of the business or assets of, or membership interests in, DRA Advisors, provided, that at least two (2) of the following seven (7) people at all times: (i) continues to control the day-to-day and long-term management policies and major decisions of such successor entity; and (ii) own (either individually or through one or more trusts that such individual Controls and of which such individual is the sole trustee) at least fifty-one percent (51%) of the direct or indirect ownership interests in such successor entity: David Gray, Adam Breen, David Luski, Valla Brown, Jason Borreo, Andrew Peltz and Jean Marie Apruzzese.

"Draw Request" shall have the meaning set forth in Exhibit C hereof.

"Early Termination Payment" shall have the meaning set forth in Section 4.28(e) hereof.

"Early Termination Reserve" shall have the meaning set forth in Section 4.28(e) hereof.

"EEA Financial Institution" means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"EEA Member Country" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"EEA Resolution Authority" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegatee) having responsibility for the resolution of any EEA Financial Institution.

"Eligibility Requirements" shall mean (a) with respect to any Permitted Assignee that is a commercial bank organized under the laws of the United States, or any state thereof, a combined capital and surplus of at least \$500,000,000.00 and total assets of at least

\$1,000,000,000.00; (b) with respect to any Permitted Assignee that is a savings and loan association or savings bank organized under the laws of the United States, or any state thereof, a combined capital and surplus of at least \$500,000,000.00 and total assets of at least \$1,000,000,000.00; (c) with respect to any Permitted Assignee that is a commercial bank organized under the laws of any other country that is a member of the Organization for Economic Cooperation and Development or has concluded special lending arrangements with the International Monetary Fund associated with its General Arrangements to Borrow or a political subdivision of any such country, in either case that is acting through a branch or agency located in the United States, a combined capital and surplus of at least \$500,000,000.00 and total assets of at least \$1,000,000,000.00; or (d) with respect to any other Permitted Assignee, including any finance company, insurance company or other financial institution or fund (whether a corporation, partnership, trust or other entity) that is engaged in making, purchasing or otherwise investing in commercial loans in the ordinary course of its business, a combined capital and surplus of at least \$500,000,000.00 and total assets of at least \$1,000,000,000.00.

“Eligible Account” shall mean either (i) an account or accounts maintained with an Eligible Bank or (ii) a Trust Account. Eligible Accounts shall bear interest.

“Eligible Bank” shall mean (x) a bank that satisfies the Rating Criteria or (y) such other institution as is approved by Administrative Agent from time to time in its sole discretion.

“Environmental Indemnity Triggers” shall have the meaning set forth in **Section 4.25** hereof.

“Environmental Laws” shall mean any federal, state or local law, rule or regulation pertaining to environmental regulation, contamination, remediation or clean-up, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601 et seq. and 40 CFR §302.1 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq. and 40 CFR § 116.1 et seq.), those relating to lead based paint, and the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq.), and the regulations promulgated pursuant to said laws, all as amended.

“Environmental Report” shall mean the environmental site assessment (and any supplements thereto) prepared for Administrative Agent in connection with the Loan, in the final form thereof accepted by Administrative Agent.

“Environmental Remediation” shall have the meaning set forth in **Section 4.28** hereof.

“Equity Holder” shall mean any holder of any Equity Interest.

“Equity Interest” shall mean any direct or indirect equity interest in Borrower.

“ERISA” shall have the meaning set forth in **Section 4.1(n)** hereof.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“Event of Default” shall have the meaning set forth in **Section 5.1** hereof.

“Excluded Taxes” shall mean any of the following Special Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Special Taxes imposed on or measured by net income (however denominated), franchise Special Taxes, and branch profits Special Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Special Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Special Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in the Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by Borrower under **Section 7.22(b)**) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to **Section 7.21**, amounts with respect to such Special Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Special Taxes attributable to such Recipient’s failure to comply with **Section 7.21(f)** and (d) any U.S. federal withholding Special Taxes imposed under FATCA.

“Extension Fee” shall mean an amount equal to \$20,722.50.

“Extraordinary Expense” shall mean an extraordinary Operating Expense or capital expense not set forth in the Approved Annual Budget or any Additional Advance made pursuant to the future funding provisions set forth in **Exhibit C** hereof.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreement entered into pursuant to Section 1471(b)(1) of the Code, and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such sections of the Code.

“Federal Funds Rate” shall mean, for any period, a fluctuating interest rate per annum (based on a 360 day year) equal, for each day of such period, to the average of the rates of interest charged on overnight federal funds transactions with member banks of the Federal Reserve System only, as published for any day which is a Business Day by the Federal Reserve Bank of New York (or, in the absence of such publication, as reasonably determined by Administrative Agent).

“Fee Letter” shall mean that certain Fee Agreement dated as of the date hereof, by and among Administrative Agent, Borrower and Guarantor.

“Fiduciary Representative” shall mean a director or manager or member of Borrower (or, if approved by Administrative Agent in accordance with **Section 4.32** of this Agreement, of

such Constituent Entity(ies) of Borrower as Administrative Agent shall have approved) that is Independent (as defined below), as required by **Section 4.32** hereof.

“First Extension Notice” shall have the meaning set forth in **Section 2.6** hereof.

“First Extension Term” shall have the meaning set forth in **Section 2.6** hereof.

“First Interest Accrual Period” shall mean the period commencing on the Closing Date and ending on, but excluding, the Payment Date first occurring after the Closing Date.

“Fitch” shall mean Fitch, Inc.

“Funding Date” shall have the meaning set forth in **Section 7.4** hereof.

“Future Funding” shall have the meaning set forth in **Exhibit C** hereof.

“General Intangibles” shall mean, collectively, all present and future funds, accounts, instruments, accounts receivable, documents, causes of action, claims, general intangibles (including without limitation, trademarks, trade names, servicemarks and symbols now or hereafter used in connection with any part of the Real Estate or the Improvements, all names by which the Real Estate or the Improvements may be operated or known, all rights to carry on business under such names, and all rights, interest and privileges which Borrower has or may have as developer or declarant under any covenants, restrictions or declarations now or hereafter relating to the Real Estate or the Improvements) and all notes or chattel paper now or hereafter arising from or by virtue of any transactions related to the Real Estate or the Improvements.

“Governmental Authority” shall mean, with respect to any Person, any federal or state government or other political subdivision thereof and any Person, including any regulatory or administrative authority or court, exercising executive, legislative, judicial, regulatory or administrative or quasi-administrative functions of or pertaining to government, and any arbitration board or tribunal in each case, having jurisdiction over such applicable Person or such Person’s property and any stock exchange on which shares of capital stock of such Person are listed or admitted for trading.

“Gross Revenues” shall be based on the in-place rent roll at time of determination, subject to the following adjustments: (i) contractual rent bumps within six (6) months of determination shall be included, (ii) a vacancy factor equal to the greatest of actual, market or 10% of the in-place rent roll grossed up to 100% shall be deducted, (iii) newly signed irrevocable leases where tenant(s) will be in occupancy within six months of determination shall be included, (iv) leases subject to free rent shall be treated as though generating full unabated rent, provided such free rent has been reserved and such free rent does not exceed one month per lease year as of the time of determination, (v) any lease that expires within six months or any tenant that has indicated its intention to vacate the Property shall be excluded, (vi) any tenant that is currently dark shall be excluded, (vii) any tenant in bankruptcy (unless the applicable tenant has affirmed its lease and provided adequate assurances for payment of rent thereunder) or otherwise in monetary or material non-monetary default shall be excluded, (viii) parking and other ancillary income shall be calculated on a trailing twelve (12) month basis (ix) subleases with tenants of

equal or greater credit shall be included at the lesser of primary or sublease rent and (x) recoveries on a forward-looking twelve (12) month basis shall be included.

“Guarantor” shall mean DRA Growth and Income Master Fund IX, LLC, a Delaware limited liability company.

“Hazardous Substances” shall mean any hazardous, toxic or harmful substances, wastes, materials, pollutants or contaminants (including, without limitation, asbestos, lead based paint, polychlorinated biphenyls, petroleum products, flammable explosives, radioactive materials, infectious substances or raw materials which include hazardous constituents) or any other substances or materials which are included under or regulated by Environmental Laws, or any molds, spores or fungus or other harmful microbial matter.

“Hazardous Substances Indemnity Agreement” shall mean that certain Hazardous Substances Indemnity Agreement, dated as of the date hereof, from Borrower and Guarantor to Administrative Agent (for the benefit of the Lenders), as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Impound Account” shall have the meaning set forth in **Section 4.6** hereof.

“Improvements” shall have the meaning set forth in the granting clause of the Mortgage.

“Indemnified Taxes” shall mean (a) Special Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of Borrower under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

“Indemnity and Guaranty” shall mean that certain Indemnity and Guaranty Agreement, dated as of the date hereof, from Guarantor to Administrative Agent (for the benefit of Lenders), as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Independent” shall mean an individual who (a) has prior experience as an independent director, independent manager or independent member, with at least three years of employment experience; and (b) is provided by a Recognized Independent Manager Provider; and (c) is not, and has never been, and while serving as Fiduciary Representative will not be, any of the following:

(i) a member, partner, equityholder, manager, director, officer or employee of Borrower (or, if applicable, the Controlling Entity) or any of their respective equityholders or Affiliates (other than as a Fiduciary Representative that does not own any Equity Interest in Borrower or any Affiliate and that is required by a creditor to be a single purpose bankruptcy remote entity);

(ii) a creditor, supplier or service provider (including provider of professional services) to Borrower, or any of its equityholders or Affiliates (other than in connection with such person’s employment by the related Recognized Independent Manager Provider) to Borrower (or, if applicable, to the Controlling Entity) or Affiliates, in each case in the ordinary course of its business), provided that the fees that such individual

earns in any given year from serving as Fiduciary Representative of Borrower and any Affiliates (or, if applicable, the portion of the salary paid to such person by the related Recognized Independent Manager Provider from such service) constitutes (in the aggregate) less than five percent (5%) of such individual's annual income for that year;

(iii) a family member of any such member, partner, equityholder, manager, director, officer, employee, creditor, supplier or service provider; or

(iv) a Person that controls (whether directly, indirectly or otherwise) or is controlled by any of (i), (ii) or (iii) above.

The same persons may not serve as Fiduciary Representative with respect to Borrower and Borrower's Controlling Entity or of any Equity Holder of Borrower.

"Independent Accountant" shall mean a firm of nationally recognized, certified public accountants selected by Borrower and reasonably acceptable to Administrative Agent (for the benefit of the Lenders) that (as to itself and all relevant professional staff of such accounting firm): (i) does not have any direct financial interest or any material indirect financial interest in Borrower or in any Affiliate of Borrower, (ii) is not connected with Borrower or any Affiliate of Borrower as an officer, employee, promoter, underwriter, trustee, partner, member, manager, creditor, director, supplier, customer or person performing similar functions and (iii) is not a member of the immediate family of a Person defined in (i) or (ii) above.

"Initial Advance" shall have the meaning set forth in **Exhibit C** hereof.

"Initial Interest-Only Period" shall mean the First Interest Accrual Period and the thirty-six (36) Interest Accrual Periods immediately following the First Interest Accrual Period.

"Insurance Premiums" shall mean the premiums on the insurance required to be maintained with respect to Borrower and the Property pursuant to this Agreement.

"Interest Accrual Period" shall mean the First Interest Accrual Period and, thereafter, the period from the tenth (10th) day of each calendar month through and including the ninth (9th) day of the following calendar month; provided, however that, notwithstanding the foregoing, Administrative Agent shall have the one (1) time right to change the Interest Accrual Period by giving notice of such change to Borrower. If the last day of an Interest Accrual Period would otherwise end on a day that is not a Business Day, such Interest Accrual Period shall end on the next succeeding Business Day, unless the result would be that such Interest Accrual Period would be extended to the next succeeding calendar month, in which case such Interest Rate Accrual Period shall end on the next preceding Business Day.

"Interest-Bearing Reserve" shall mean each of the Early Termination Reserve, the Replacement Reserve and the Leasing Costs Reserve.

"Interest Determination Date" shall mean (i) with respect to any Interest Accrual Period prior to the Interest Accrual Period that commences in the month during which a Securitization Closing Date occurs, two (2) LIBOR Business Days prior to the beginning of such Interest Accrual Period; (ii) with respect to the Interest Accrual Period that commences in the

month in which the Securitization Closing Date occurs, the date that is two (2) LIBOR Business Days prior to the Securitization Closing Date and (iii) with respect to each Interest Accrual Period thereafter, the date that is required pursuant to the applicable Securitization Documents; provided, however that, notwithstanding the foregoing, Administrative Agent shall have the one (1) time right to change the Interest Determination Date by giving notice of such change to Borrower.

“Interest Rate” shall mean the rate per annum (expressed as a percentage) equal to the Adjusted LIBOR Rate plus the LIBOR Margin; or if Administrative Agent shall exercise its rights under **Section 2.2(f)**, **Section 2.2(g)** or **Section 2.2(k)** hereof, the Base Rate. The Interest Rate for the First Interest Accrual Period only shall, notwithstanding the definition of LIBOR Rate below, be based on Administrative Agent’s quoted same-day LIBOR rate for the period through the first Payment Date plus the LIBOR Margin.

“Interest Rate Protection Agreement” shall have the meaning set forth in **Section 2.2(j)** hereof.

“Investor” shall have the meaning set forth in **Section 8.23(c)** hereof.

“Late Payment Charge” shall have the meaning set forth in **Section 2.3(c)** hereof.

“Lease” shall mean any lease (including, without limitation, any oil, gas and mineral lease), sublease or subsublease, letting, license, concession, occupancy or other agreement (whether written or oral and whether now or hereafter in effect) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of any space in the Property, and (a) every modification, amendment or other agreement relating to such lease, sublease, subsublease, or other agreement entered into in connection with such lease, sublease, subsublease, or other agreement and (b) every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto.

“Lease Modification” shall have the meaning set forth in **Section 4.10** hereof.

“Leasing Commissions” shall mean commissions to brokers in connection with a Lease that is set forth on the Rent Roll attached hereto as **Exhibit H** or that is approved (or deemed approved) by Administrative Agent pursuant to **Exhibit C** hereof.

“Leasing Costs” shall mean, collectively, Leasing Commissions, the costs of Tenant Improvements and the amount of any allowances payable to the Tenant under any Lease that is set forth on the Rent Roll delivered as of the date hereof or that is approved (or deemed approved) by Administrative Agent pursuant to **Exhibit C** hereof.

“Leasing Costs Reserve” shall have the meaning set forth in **Section 4.28(g)** hereof.

“Lender” and **“Lenders”** shall have the meaning set forth in the introductory paragraph hereof and each party having an interest in the Loan (including each Lender originally a signatory to this Agreement) as evidenced by the Note(s) made by Borrower in favor of such parties and their respective successors and Permitted Assignees, but excluding Participants.

“Lender Default Amount” shall have the meaning set forth in **Section 7.5(b)** hereof.

“Lender Default Event” shall have the meaning set forth in **Section 7.5(b)** hereof.

“Lender Default Period” shall have the meaning set forth in **Section 7.5(b)** hereof.

“Lender Reply Period” shall have the meaning set forth in **Section 7.6(d)** hereof.

“LIBO Successor Rate” shall have the meaning set forth in **Section 2.2(k)** hereof.

“LIBOR Business Day” shall mean any day on which banks are open for dealing in foreign currency and exchange in London, England and on which dealings in deposits in U.S. dollars are transacted in the London interbank market.

“LIBOR Lending Office” shall mean the office of a Lender located in New York City or such other branch (or affiliate) of such Lender as such Lender may designate as its LIBOR Lending Office.

“LIBOR Margin” shall mean two percent (2.0%) per annum.

“LIBOR Rate” shall mean, with respect to each Interest Accrual Period, the rate for deposits in U.S. Dollars, for a period equal to 1 month, which appears on the Reuters Screen LIBOR01 Page as of 11:00 a.m., London time, on the related Interest Determination Date (rounded upwards, if necessary, to the nearest 1/16 of 1%). If such rate does not appear on Reuters Screen LIBOR01 Page, the rate for that Interest Accrual Period shall be determined by Administrative Agent for that Interest Accrual Period and the determination of the LIBOR Rate by Administrative Agent shall be binding upon Borrower, absent manifest error. Notwithstanding the foregoing, if the LIBOR Rate is ever determined to be a negative number, then the LIBOR Rate shall be deemed to be zero percent (0%).

“Liquid Asset” shall mean any of the following, but only to the extent owned individually, free of all security interests, liens, pledges, charges or any other encumbrance: (a) cash, (b) certificates of deposit (with a maturity of two years or less) issued by, or savings account with, any bank or other financial institution reasonably acceptable to Administrative Agent or (c) marketable securities listed on a national or international exchange reasonably acceptable to Administrative Agent, marked to market.

“Loan” shall have the meaning set forth in the recitals to this Agreement.

“Loan Documents” shall mean, collectively, this Agreement, the Notes, the Mortgage, the Assignment of Leases, the Indemnity and Guaranty, the Hazardous Substances Indemnity Agreement and all other documents executed and/or delivered in connection with the Loan, together with any and all renewals, amendments, extensions and modifications thereof.

“Loan to Value Ratio” shall mean the percentage derived by dividing (x) the maximum principal balance of the Loan as of any date of determination, by (y) the appraised value of the Property at the time in question as set forth in the most recent new or updated appraisal of the Property prepared pursuant to **Section 8.27** of this Agreement.

“Lockbox Address” shall have the meaning set forth in **Section 3.1** hereof.

“Lockout Release Date” shall mean the Payment Date occurring eighteen months prior to the Scheduled Maturity Date.

“Major Lease” shall mean any Lease demising the lesser of (a) 12,500 or more rentable square feet or (b) at least ten percent (10%) of the net rentable area of the Property.

“Maturity Date” shall mean the Scheduled Maturity Date (as the same may be extended pursuant to **Section 2.6** hereof), or such earlier date on which the final payment of principal of the Notes becomes due and payable as provided in this Agreement or the Notes, whether at the Scheduled Maturity Date, by declaration of acceleration, or otherwise.

“Maximum Legal Rate” shall mean the maximum rate of interest which Borrower is permitted by Applicable Law to contract or agree to pay.

“Minimum Counterparty Credit Rating” shall have the meaning set forth in **Section 2.2(j)(i)(B)** hereof.

“Minor Transfer Violation” the transfer of any direct or indirect ownership interest in Borrower that (i) is not permitted pursuant to the terms of the Loan Documents without the consent of Lender, (ii) has not been consented to by Lender and (iii) does not result in a change in Control of Borrower.

“Monthly Amortization Payment” shall mean a monthly amortization payment based upon the principal balance of the Loan calculated as of the first day after the expiration of the Initial Interest-Only Period, an assumed interest rate of six percent (6%) per annum, and a thirty (30) year amortization schedule.

“Monthly Payment Amount” shall mean, for any Payment Date: (a) if such Payment Date immediately follows an Interest Accrual Period within the Initial Interest-Only Period, interest on the outstanding principal balance of the Loan at the Interest Rate for the number of days during such Interest Accrual Period ending on such Payment Date, and (b) if such Payment Date immediately follows an Interest Accrual Period that commences after the expiration of the Initial Interest-Only Period, (i) if it is determined by the Administrative Agent that the Loan to Value Ratio is less than sixty-two and one-half percent (62.5%) on the last day of the Initial Interest-Only Period, interest on the outstanding principal balance of the Loan at the Interest Rate for the number of days during such Interest Accrual Period (the **“Interest Only Extension Period Test”**), or (ii) if it is determined by the Administrative Agent that the Loan to Value Ratio is greater than or equal to sixty-two and one-half percent (62.5%) on the last day of the Initial Interest-Only Period, then (A) the Monthly Amortization Payment, plus (B) interest on the outstanding principal balance of the Loan at the Interest Rate for the number of days during such Interest Accrual Period.

“Mortgage” 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 Debt and encumbering the Property, as the same may be amended, restated, replaced, supplemented, severed or otherwise modified from time to time.

“Mortgage Satisfaction Event” shall mean the repayment in full of the Debt in accordance with the terms of the Loan Documents.

“Moody’s” means Moody’s Investor Service, Inc.

“Net Capital Expenditures” shall mean for any period the amount by which Capital Expenditures during such period exceeds reimbursements for such items during such period from any fund (including, but not limited to any Additional Advance made pursuant to the future funding provisions set forth in Exhibit C hereof) established pursuant to the Loan Documents.

“Net Operating Income” shall mean Gross Revenues minus Operating Expenses.

“Net Worth” shall mean at any date of determination, an amount equal to the aggregate of (a) the total assets of such Person determined in accordance with generally accepted accounting principles (or such other method of accounting acceptable to Administrative Agent), minus (b) the total liabilities of such Person determined in accordance with generally accepted accounting principles (or such other method of accounting acceptable to Administrative Agent), and minus (c) the value of such Person’s collective interest in Borrower and the Property.

“Non-Defaulting Lenders” shall have the meaning set forth in Section 7.5(b) hereof.

“Non-Standard Free Rent Period” shall have the meaning set forth in Section 4.10(f) hereof.

“Non-US Lender” shall have the meaning set forth in Section 7.21(c) hereof.

“Notes” shall mean the promissory notes, given to each of the Lenders, each note in the principal amount equal to such Lender’s Percentage of the Loan, made by Borrower in favor of the Lenders, as the same may be amended, restated, replaced, supplemented, severed or otherwise modified from time to time.

“OFAC List” shall mean the list of specially designated nationals and blocked Persons subject to financial sanctions that is maintained by the U.S. Treasury Department, Office of Foreign Assets Control and accessible through the internet website www.treas.gov/ofac/t11sdn.pdf, as amended or supplemented from time to time.

“Operating Account” shall have the meaning set forth in Section 3.1 hereof.

“Operating Expenses” shall mean, as of any date of determination, the trailing 12-month normalized property-level operating expenses at time of determination subject to the following adjustments: (i) property management fee based on the greater of the actual contractual management fee or 3.00% of Gross Revenues, (ii) such other adjustments to normalize expenses in conformance with Administrative Agent’s then current underwriting standards, (iii) \$0.20/sf deduction for replacement reserves (subject to verification by a structural engineer and reasonably acceptable to Administrative Agent), and (iv) \$1.00/sf deduction for tenant improvements and leasing commissions (subject to verification by the appraisal and reasonably acceptable to Lender). In addition, until the earlier of (a) 80% depletion of the respective Future

Funding or (b) beginning in the First Extension Term, no deduction for (iii) and (iv) above shall be taken for the calculation of As-Is DY or As-Is DSCR.

“Organizational Documents” shall mean, with respect to any entity, the documents customarily used to form an entity and provide for its governance, as the same may be amended from time to time, including, without limitation, (A) with respect to a corporation, the articles of incorporation or certificate of incorporation or charter, and the by-laws; (B) with respect to a limited liability company, the articles of organization and the operating agreement; (C) with respect to a limited partnership, the certificate of limited partnership and the limited partnership agreement; and (D) with respect to a general partnership, the agreement of partnership.

“Other Charges” shall have the meaning set forth in **Section 4.5** hereof.

“Other Connection Taxes” shall mean, with respect to any Recipient, Special Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Special Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document).

“Other Taxes” shall mean all present or future stamp, court or documentary, intangible, recording, filing or similar Special Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Special Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to **Section 7.22**).

“Parent” shall mean, with respect to a Lender, any Person controlling such Lender.

“Participant” shall have the meaning set forth in **Section 9.1(f)** hereof.

“Payment” shall have the meaning set forth in **Section 2.3(e)** hereof.

“Payment Date” shall mean the tenth (10th) day of each month, or if such day is not a Business Day, the immediately succeeding Business Day. Notwithstanding the foregoing, Administrative Agent shall have the one (1) time right to change the Payment Date by giving notice of such change to Borrower.

“Percentage” shall mean, as to any Lender, the ratio, expressed as a percentage, of (a) such Lender’s portion in dollars of the Loan (both funded and unfunded) as reflected in each Assignment and Assumption in which such Lender is the Permitted Assignee (but as reduced as to portions subsequently assigned by it to another Permitted Assignee) to (b) the Loan. Each Lender’s Percentage as of the date hereof is indicated on **Schedule 1** attached hereto.

“Permitted Assignee” shall mean a proposed assignee of a Lender’s right, title, interest and obligations of the Loan, who is either (a) an Affiliate of such Lender, (b) an entity which exists under the laws of the United States, any state thereof, the District of Columbia or any foreign jurisdiction as: (i) a bank, savings institution, trust company, national banking

association, savings and loan association, investment bank, commercial credit corporation, or real estate investment trust, (ii) a finance company regularly engaged in the origination of commercial mortgage loans, (iii) an insurance company, (iv) a public employees' pension or retirement system, or any other governmental agency supervising the investment of public funds, or (v) a pension, pension plan, retirement, or profit-sharing, or commingled trust or fund for which any bank, trust company, national banking association or investment adviser or pension fund advisory firm registered under the Investment Advisers Act of 1940, as amended, is acting as trustee or agent, or (c) a "real estate mortgage investment conduit" within the meaning of Section 860D of the Code; (d) a nationally recognized investment fund, investment company, money management firm corporation, limited liability company, limited partnership or general partnership; (e) a Qualified Trustee; or (f) an entity substantially similar to any of the foregoing that is regularly engaged in the business of making or owning commercial real estate loans or holding interests therein; provided, however, that under no circumstance may Borrower, Guarantor or any Affiliate of Borrower or Guarantor be a Permitted Assignee.

"Permitted Equipment Leases" shall mean equipment leases or other similar instruments entered into with respect to 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 Exceptions" shall have the meaning set forth in **Section 4.1(k)** hereof.

"Permitted Transfers" shall have the meaning set forth in **Section 4.11** hereof.

"Person" shall mean any individual, corporation, partnership, limited liability company, joint venture, estate, trust, unincorporated association, any other entity, 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.

"Post-Default Plan" shall have the meaning set forth in **Section 7.7(d)** hereof.

"Prepayment Date" shall have the meaning set forth in **Section 2.4(a)** hereof.

"Prime Rate" shall mean a fluctuating interest rate per annum equal to the rate of interest reported in the Money Rates section of The Wall Street Journal. In the event The Wall Street Journal should cease or temporarily interrupt publication, the "Prime Rate" shall mean a fluctuating interest rate per annum equal to the rate of interest announced publicly in New York, New York, from time to time, as Administrative Agent's prime rate. The Prime Rate does not necessarily represent the lowest or best rate actually charged to any customer. Administrative Agent may make commercial loans or other loans at rates of interest, at, above or below the Prime Rate.

"Prohibited Person" shall mean any Person identified on the OFAC List or any other Person with whom a U.S. Person may not conduct business or transactions by prohibition of Federal law or Executive Order of the President of the United States or America.

“Prohibited Use” shall mean (A) operation of a dry-cleaning business, except for a dry-cleaning business at which no on-site cleaning operations of any sort are undertaken (i.e., a so-called drop-off station); (B) operation of a gasoline station or automobile service or maintenance facility; (C) operation of a car wash; (D) operation of any other business that, in the ordinary course of operation, would be likely to result in the release of Hazardous Substances; (E) the sale or display of obscene or pornographic material, the conduct of obscene, nude or semi-nude live performances, or similar purposes; and (F) the operation of a cabaret, dance hall or similar venue.

“Property” shall mean each parcel of real property (including, without limitation, the Real Estate), the Improvements thereon and all personal property owned by Borrower and encumbered by the Mortgage, together with all rights pertaining to such real property, personal property and Improvements, as more particularly described in granting clause of the Mortgage.

“Property Management Agreement” means the agreement(s) between Borrower and Property Manager that are referenced in that certain Manager’s Subordination Agreement delivered to Administrative Agent in connection with the Loan, together with any future agreement with any future Property Manager entered into by Borrower from time to time in accordance with the provisions of **Section 4.24** hereof.

“Property Manager” means M&J Wilkow Properties, LLC, a Delaware limited liability company, or any successor manager of the Property approved by Administrative Agent in accordance with the provisions of **Section 4.24** hereof.

“Qualified Replacement Lease” shall have the meaning set forth in **Section 4.28** hereof.

“Qualified Trustee” means (i) a corporation, national bank, national banking association or a trust company, organized and doing business under the laws of any state or the United States of America, authorized under such laws to exercise corporate trust powers and to accept the trust conferred, having a combined capital and surplus of at least \$100,000,000 and subject to supervision or examination by federal or state authority, (ii) an institution insured by the Federal Deposit Insurance Corporation, or (iii) an institution whose long-term senior unsecured debt is rated either of the then in effect top two rating categories of each of the Rating Agencies.

“Rating Agency” shall mean S&P, Moody’s, Fitch and any other nationally-recognized statistical rating organization that may be designated by Administrative Agent to provide, or that provides, a rating on Borrower, the Loan or any securities evidencing an interest in, inter alia, a trust or other Person which is the holder of the Notes.

“Rating Confirmation” shall mean, with respect to any proposed action, written confirmation from each applicable Rating Agency that the proposed action will not result in a downgrade, qualification or withdrawal of any rating issued on securities evidencing an ownership interest in the Loan that was in effect immediately prior to such proposed action.

“Rating Criteria” with respect to any Person shall mean that (i) the short-term unsecured debt obligations or commercial paper of which are rated at least A-1 by S&P, P-1 by Moody’s and F-1+ by Fitch, if deposits are held in the account for a period of less than 30 days or (ii) the

long-term unsecured debt obligations of which are rated at least “AA” by S&P and Fitch and Aa by Moody’s, if deposits are held in the account for a period of 30 days or more.

“**Real Estate**” shall mean that certain real property more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference.

“**Recipient**” means (a) the Administrative Agent or (b) any Lender.

“**Recognized Independent Manager Provider**” shall mean one or more of CT Corporation, Corporation Service Company, National Registered Agents, Inc., Wilmington Trust Company, Stewart Management Company, Lord Securities Corporation or another nationally-recognized company approved by Administrative Agent (which approval shall not unreasonably be withheld if such company is then generally acceptable both to the Rating Agencies and in the market for Secondary Market Transactions involving loans comparable to the Loan), in each case that is not an Affiliate of Borrower or the related Controlling Entity and that provides professional independent directors, independent managers and other corporate services in the ordinary course of its business.

“**Renewal Lease**” shall have the meaning set forth in **Section 4.10** hereof.

“**Rent Roll**” shall mean a schedule of all Leases affecting the Property, which accurately and completely sets forth in all material respects for each Lease, the following: the name of the Tenant, the Lease expiration date, extension and renewal provisions, cancellation and termination provisions, the base rent payable, the security deposit held thereunder and any other material provisions of such Lease.

“**Rents and Profits**” shall mean all rents (including, without limitation, minimum rents, additional rents and percentage rents), rent equivalents, termination payments, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, all other amounts payable as rent under any Lease or other agreement relating to the Property, 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, and proceeds, if any, from business interruption or other loss of income insurance.

“**Repairs**” shall have the meaning set forth in **Section 4.28** hereof.

“**Replacement Lender**” shall have the meaning set forth in **Section 7.5(b)** hereof.

“**Replacement Reserve**” shall have the meaning set forth in **Section 4.28(g)** hereof.

“**Required Lenders**” shall mean the Lenders holding Percentages which aggregate at least sixty-six and two-thirds percent (66.67%), subject to **Section 7.5(b)(ii)** and **Section 7.6(e)** hereof; provided, however, that at any time there are only two (2) Lenders, “Required Lenders” shall mean both of such Lenders regardless of what Percentages each such Lender holds.

“Reserves” shall mean, collectively, all cash funds, deposit accounts and other rights and evidence of rights to cash, now or hereafter created or held by Administrative Agent (for the benefit of the Lenders) pursuant to this Agreement or any other of the Loan Documents, including, without limitation, all funds now or hereafter on deposit in the Cash Management Account, if any, the Impound Account, the Cash Collateral Account, and in the reserves required pursuant to **Section 4.28** hereof.

“Restricted Entity” shall have the meaning set forth in **Section 8.16** hereof.

“Restricted Party” and **“Restricted Parties”** shall have the meaning set forth in **Section 4.11** hereof.

“Restoration” shall have the meaning set forth in **Section 4.7** hereof.

“Reuters Screen LIBOR01 Page” shall mean the display designated as Reuters Screen LIBOR01 Page (or such other page as may replace Screen LIBOR01 on that service or such other service as may be nominated by ICE Benchmark Administration Limited as the information vendor for the purpose of displaying ICE Benchmark Administration Limited’s Interest Settlement Rates for U.S. Dollar deposits).

“S&P” shall mean Standard & Poor’s Ratings Group.

“Scheduled Maturity Date” shall mean the Payment Date occurring on November, 2021.

“Second Extension Notice” shall have the meaning set forth in **Section 2.6** hereof.

“Second Extension Term” shall have the meaning set forth in **Section 2.6** hereof.

“Secondary Market Transaction” shall have the meaning set forth in **Section 8.23** hereof.

“Securitization Closing Date” shall mean the date upon which a Secondary Market Transaction closes, if any.

“Securitization Documents” shall mean the documents creating and governing any Secondary Market Transaction in which the Loan (or any portion of or interest in the Loan) may be included.

“Servicer” shall mean the entity or entities appointed by Administrative Agent from time to time to serve as servicer and/or special servicer of the Loan. If at any time no entity shall be so appointed, the term “Servicer” shall be deemed to refer to Administrative Agent.

“SPE Component Entity” shall mean a corporation or an SPE-Qualifying LLC that satisfies all of the following at all times: (i) the sole asset of such entity is its ownership interest in Borrower, and such ownership interest represents not less than one-half of one percent (0.5%) direct ownership in Borrower; (ii) includes, in its Organizational Documents, covenants substantially similar to the provisions of **Section 4.27** of this Agreement; (iii) includes, in its

Organizational Documents, provisions substantially similar to **Section 4.32(c)** of this Agreement; (iv) such entity has no Debt (whether secured or unsecured, direct or contingent, including pursuant to any guaranty); and (vi) such entity agrees in writing with Administrative Agent to comply with the relevant provisions of this Agreement.

“SPE-Qualifying LLC” shall mean a limited liability company formed under the laws of the State of Delaware which (i) at all times has at least one springing member that, upon the dissolution of all of other members of (or the withdrawal or the disassociation of all other members from) such limited liability company, shall immediately become the sole member of such limited liability company, and (ii) otherwise meets the criteria then applicable to such entities as established by the Rating Agencies and/or generally applicable to Secondary Market Transactions, and (iii) generally meets the requirements of **Section 4.27** of this Agreement.

“Special Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Subaccounts” shall have the meaning set forth in **Section 3.2** hereof.

“Syndication” shall have the meaning set forth in **Section 8.26** hereof.

“Taxes” shall have the meaning set forth in **Section 4.5** hereof.

“Tenant” shall mean any Person leasing, subleasing or otherwise occupying any portion of the Property under a Lease.

“Tenant Direction Letter” shall have the meaning set forth in **Section 3.1** hereof.

“Tenant Financial Information” shall have the meaning set forth in **Section 4.10** hereof.

“Tenant Improvements” shall mean all build-out, construction, tenant improvement work and other work required to be performed by Borrower under a Lease that is set forth on the Rent Roll delivered as of the date hereof or that is approved (or deemed approved) by Administrative Agent pursuant to **Section 4.10** hereof.

“Terminating Tenant” shall have the meaning set forth in **Section 4.28(e)** hereof.

“Third-Party Interest Rate Protection Agreement” shall have the meaning set forth in **Section 2.2(j)** hereof.

“Title Insurance Company” shall have the meaning set forth in **Exhibit C** hereof.

“Title Insurance Policy” shall have the meaning set forth in **Section 4.1(k)** hereof.

“Transfer” shall have the meaning set forth in **Section 4.11** hereof.

“Trust Account” shall mean a segregated trust account maintained by a corporate trust department of a federal depository institution or a state chartered depository institution subject to regulations regarding fiduciary funds on deposit similar to Title 12 of the Code of Federal Regulations §9.10(B) which has corporate trust powers and is acting in its fiduciary capacity.

“UCC Collateral” shall have the meaning set forth in the Mortgage.

“Uncalled Capital Commitments” shall mean, with respect to any Person, any unfunded commitments from its shareholders, members, or partners, as applicable.

“Unfunded Defaulted Amount” shall have the meaning set forth in **Section 7.5(b)(vi)** hereof.

“U.S. Person” shall mean any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“U.S. Tax Compliance Certificate” shall have the meaning set forth in **Section 7.21(f)(ii)(B)(3)**.

“Vacated Space” shall have the meaning set forth in **Section 4.28(e)** hereof.

“Wilkow” shall mean M&J Wilkow, Ltd., an Illinois corporation.

“Withholding Agent” shall mean Borrower and the Administrative Agent.

“Working Day” shall mean any day on which dealings in foreign currencies and exchange are carried on in London, England and in New York, New York.

“Write-Down and Conversion Powers” means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

ARTICLE II

GENERAL TERMS

2.1 **Loan Commitment; Disbursement to Borrower.**

(a) **Agreement to Lend and Borrow.** Subject to and upon the terms and conditions set forth herein, Borrower agrees to borrow from the Lenders, the Loan, and each Lender severally, and not jointly, agrees to lend to Borrower such Lender’s Percentage of the Loan up to the amount of its Commitment for the purposes and subject to all of the terms, provisions and conditions contained in this Agreement.

(b) **Disbursement of Loan to Borrower.** Borrower has requested and received an initial advance in respect of the Loan on the date hereof in the amount of ELEVEN MILLION FOUR HUNDRED SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS \$11,475,000.00.

Borrower may request and receive future advances in respect of the Loan as provided for in Exhibit C attached hereto and made a part hereof, subject to compliance with all of the conditions set forth in Exhibit C for such future advances.

(c) Use of Proceeds. Borrower shall use those proceeds of the Loan advanced at the initial advance as set forth on the Closing Statement; all future advances shall be used only for the purposes set forth in this Agreement.

(d) No Reborrowing of Amounts Repaid. Any amount borrowed and repaid in respect of the Loan may not be reborrowed.

(e) The Notes, this Agreement, the Mortgage and Loan Documents. The Loan shall be evidenced by the Notes and this Agreement and secured by the Mortgage, the Assignment of Leases and the other Loan Documents.

2.2 Interest Rate.

(a) Interest Generally. Interest on the outstanding principal balance of the Loan shall accrue from the Closing Date to the Maturity Date at the Interest Rate. Borrower shall pay to Administrative Agent on each Payment Date the interest accrued on the Loan for the preceding Interest Accrual Period.

(b) Determination of Interest Rate. Administrative Agent shall determine the LIBOR Rate, Base Rate, Prime Rate and Federal Funds Rate as in effect from time to time, and each such determination of the LIBOR Rate, Base Rate, Prime Rate and Federal Funds Rate by Administrative Agent shall be conclusive and binding absent manifest error.

(c) Interest Calculation. Interest on the outstanding principal balance of the Loan shall be calculated by multiplying (a) the actual number of days elapsed in the period for which the calculation is being made by (b) a daily rate based on a three hundred sixty (360) day year by (c) the outstanding principal balance of the Loan.

(d) Indemnity. Borrower agrees to indemnify Administrative Agent and the Lenders and to hold Administrative Agent and the Lenders harmless from any reasonable cost, actual loss or reasonable expenses which Administrative Agent or any Lender may sustain or incur as a consequence of (a) Borrower making a payment or prepayment of principal on the Loan on a day which is not the last day of an Interest Accrual Period, (b) default by Borrower in making any prepayment after Borrower has given a notice of prepayment, and (c) any acceleration of the maturity of the Loan by Administrative Agent (with the consent of the Required Lenders) in accordance with the terms of this Agreement or the Notes, including, but not limited to, Breakage Costs and any other reasonable costs, actual losses or reasonable expenses arising in liquidating the Loan and from interest or fees payable by the Lenders to lenders of funds obtained by it in order to maintain the Loan hereunder.

(e) Increased Cost and Reduced Return.

(i) If, on or after the date hereof, the adoption of any applicable law, rule or regulation, or any change in any applicable law, rule or regulation, or any change

in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender (or its LIBOR Lending Office) with any request or directive (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency shall impose, modify or deem applicable any reserve (including, without limitation, any such requirement imposed by the Board (but excluding with respect to any such requirement reflected in the then effective LIBOR Rate)), special deposit, insurance assessment or similar requirement against assets of, deposits with or for the account of, or credit extended by, such Lender (or its LIBOR Lending Office) or shall impose on any Lender (or its LIBOR Lending Office) or on the London interbank market any other condition affecting any loan bearing interest at the LIBOR Rate, and the result of any of the foregoing is to increase the cost to such Lender (or its LIBOR Lending Office) of maintaining the Loan at the LIBOR Rate, or to reduce the amount of any sum received or receivable by such Lender (or its LIBOR Lending Office) under this Agreement with respect thereto, by an amount deemed by such Lender to be material, then, within fifteen (15) days after demand by such Lender, Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender for such increased cost or reduction.

(ii) If a Lender shall have determined that, after the date hereof, the adoption of any Capital Adequacy Rule has or would have the effect of reducing the rate of return on capital of such Lender (or its Parent) as a consequence of such Lender's obligations hereunder to a level below that which such Lender (or its Parent) would have achieved but for such adoption, change, request or directive (taking into consideration its policies with respect to capital adequacy) by an amount deemed by such Lender to be material, then from time to time, within fifteen (15) days after demand by such Lender, Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender (or its Parent) for such reduction.

(iii) The applicable Lender will promptly notify Borrower of any event of which it has knowledge, occurring after the date hereof, which will entitle such Lender to compensation pursuant to this Section 2.2(e) and will designate a different LIBOR Lending Office if such designation will avoid the need for, or reduce the amount of such compensation and will not, in the reasonable judgment of such Lender, be otherwise disadvantageous to such Lender. A certificate furnished to Borrower by such Lender (with a copy to Administrative Agent) claiming compensation under either Section 2.2(e)(i) or (ii) and setting forth the additional amount or amounts to be paid to it hereunder shall be conclusive in the absence of manifest error; provided that any certificate delivered by a Lender pursuant to this Section 2.2(e)(iii) shall (x) in the case of a certificate in respect of amounts payable pursuant to Section 2.2(e)(i), set forth in reasonable detail the basis for and the calculation of such amounts, and (y) in the case of a certificate in respect of amounts payable pursuant to Section 2.2(e)(ii), (A) set forth at least the same amount of detail in respect of the calculation of such amount as such Lender provides in similar circumstances to other similarly situated borrowers from such Lender, and (B) include a statement by such Lender that it has allocated to the its Percentage of the Loan a proportionately equal amount of any reduction of the rate of

return on such Lender's capital due to a Capital Adequacy Rule as it has allocated to each of its other outstanding loans that are effected similarly by such Capital Adequacy Rule.

(iv) Notwithstanding anything to the contrary in this **Section 2.2(e)**, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to have been enacted, adopted, and issued after the date of this Agreement, regardless of the date actually enacted, adopted or issued.

(f) **Deposit Unavailable.** In the event, and on each occasion, that (a) Administrative Agent shall have determined that dollar deposits in the principal amounts of the Loan are not generally available to the Lenders in the London interbank market, for such periods and amounts then outstanding hereunder or that reasonable means do not exist for ascertaining the LIBOR Rate, or (b) Administrative Agent determines that the rate at which such dollar deposits are being offered will not adequately and fairly reflect the cost to the Lenders of maintaining the Loan at the LIBOR Rate during such Interest Accrual Period, Administrative Agent shall, as soon as practicable thereafter, give written notice of such determination to Borrower. In the event of such determination, until the circumstances giving rise to such notice no longer exist, the Loan shall bear interest at the Base Rate. Borrower agrees to pay to Administrative Agent (for the benefit of the Lenders), upon demand by Administrative Agent, all Breakage Costs incurred by the Lenders as a result of such change. After an Event of Default, interest shall accrue on the outstanding principal balance of the Notes at a rate per annum equal to the Default Rate.

(g) **Illegality.** If on or after the date of this Agreement, the adoption of any applicable law, rule or regulation, or any change in any applicable law, rule or regulation, or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by a Lender (or its LIBOR Lending Office) with any request or directive (whether or not having the force of law) of any such authority, central bank or comparable agency shall make it unlawful or impossible for such Lender (or its LIBOR Lending Office) to maintain the Loan to Borrower pursuant to this **Section 2.2(g)**, such Lender shall designate a different LIBOR Lending Office if such designation will avoid the need for giving such notice and will not, in the reasonable judgment of such Lender, be otherwise disadvantageous to such Lender. If such Lender shall determine that it may not lawfully continue to maintain the Loan at the LIBOR Rate to maturity and shall so specify in such notice, the Loan shall bear interest at the Base Rate. Borrower agrees to pay to such Lender, upon demand by such Lender, all Breakage Costs incurred by such Lender as a result of such change.

(h) **Default Rate.** During the existence of an Event of Default, Borrower shall pay interest on the entire unpaid principal sum and any other amounts due under the Loan Documents at the Default Rate. The Default Rate shall be computed from the occurrence of the Event of Default until the cure of such Event of Default. Amounts of interest accrued at the Default Rate shall constitute a portion of the Debt, and shall be deemed secured by the Loan

Documents. This clause, however, shall not be construed as an agreement or privilege to extend the date of the payment of the Debt, nor as a waiver of any other right or remedy accruing to Administrative Agent or the Lenders by reason of the occurrence of any Event of Default.

(i) Usury Savings. This Agreement, the Notes and the other Loan Documents are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the principal balance of the Loan at a rate which could subject the Lenders to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If, by the terms of this Agreement or the other Loan Documents, Borrower is at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of the Maximum Legal Rate, the Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Administrative Agent or the Lenders for the use, forbearance, or detention of the sums due under the Loan, shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the Maximum Legal Rate of interest from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

(j) Interest Rate Protection Agreement.

(i) As of the date hereof, Borrower has either (A) purchased an interest rate cap with a maximum strike rate of 3.00% or (B) entered into an interest rate swap to ensure that the Debt Service Coverage Ratio is protected against increases in the LIBOR Rate. Such interest rate protection agreement shall be in the amount of the Initial Advance with Administrative Agent, an Affiliate thereof or an Acceptable Counterparty, in each case conforming to the terms of this **Section 2.2(j)** and otherwise in form and substance reasonably satisfactory to Administrative Agent (which agreements may provide for so-called “caps,” “swaps” or such other form of interest rate protection, or any combination of the foregoing, as may be reasonably approved by Administrative Agent) (each, together with all schedules and confirmations thereto and as the same may be supplemented, amended and/or restated from time to time, and together with any other interest rate protection agreement Borrower may elect to purchase, regardless of whether the same is required under this **Section 2.2(j)**, an “**Interest Rate Protection Agreement**”) which shall effectively hedge the LIBOR Rate of the Initial Advance until the Scheduled Maturity Date and, if the term of the Loan is extended pursuant to **Section 2.6**, for the entire Principal Balance (as adjusted to take into account scheduled amortization during the term of the relevant Interest Rate Protection Agreement) for the relevant extension term.

(ii) To the extent necessary to ensure that a notional amount equal to the principal balance remains subject to protection against fluctuations in interest rates, Borrower shall extend or replace any terminated Interest Rate Protection Agreement on or before five (5) Business Days after the termination thereof with a new Interest Rate Protection Agreement having a term of not less than the Maturity Date, such that an Interest Rate Protection Agreement for the principal balance shall be in effect at all times

during the term of the Loan. If any provider of an Interest Rate Protection Agreement shall no longer qualify as an Acceptable Counterparty, Borrower shall, within thirty (30) days after such Person's failure to qualify, cause a replacement Interest Rate Protection Agreement to be issued by an Acceptable Counterparty. If any provider of an Interest Rate Protection Agreement shall enter into any form of regulatory or governmental receivership, conservatorship or other similar regulatory or governmental proceeding, including any receivership or conservatorship instituted or commenced by the FDIC, or is otherwise declared insolvent or downgraded by the FDIC, or if a trustee, receiver, conservator or liquidator is appointed for such issuer, then Borrower shall, within fifteen (15) Business Days, deliver to Administrative Agent a replacement Interest Rate Protection Agreement from an Acceptable Counterparty.

(iii) The obligations of Borrower under any Interest Rate Protection Agreements entered into with an Acceptable Counterparty other than Administrative Agent (each, a "**Third-Party Interest Rate Protection Agreement**") shall not be secured by or encumber any of the collateral securing the obligations and Borrower shall collaterally assign to Administrative Agent for the benefit of the Banks, pursuant to an assignment of Interest Rate Protection Agreement, all of Borrower's right, title and interest to receive any and all payments under such Third-Party Interest Rate Protection Agreement (and any related guaranty, if any). Borrower shall promptly deliver to Administrative Agent (i) an original executed counterpart of such Third-Party Interest Rate Protection Agreement, (ii) an acknowledgment and agreement (either in such Third-Party Interest Rate Protection Agreement or by separate instrument, in each case in form and substance reasonably satisfactory to Administrative Agent) of such counterparty acknowledging such assignment and agreeing to make any payments payable under or pursuant to such Third-Party Interest Rate Protection Agreement directly to Administrative Agent (the "Counterparty Consent") and (iii) a legal opinion from counsel (in-house or outside, as such counterparty so chooses) for such counterparty regarding the due authorization and enforceability of such Third-Party Interest Rate Protection Agreement. At such time as the Loan is indefeasibly repaid in full, all of Administrative Agent's right, title and interest in any Third-Party Interest Rate Protection Agreement shall terminate and Administrative Agent shall execute and deliver, at Borrower's sole cost and expense, such documents as may be required to evidence Administrative Agent's release of such Third-Party Interest Rate Protection Agreement and to notify the relevant counterparty of such release. If Administrative Agent receives any payments under a Third-Party Interest Rate Protection Agreement (other than a payment by reason of a termination event (as defined in such Third-Party Interest Rate Protection Agreement) or any other payment during the existence of an Event of Default), Administrative Agent shall apply the same to interest payable on the next occurring Payment Date. If Administrative Agent receives any payments under a Third-Party Interest Rate Protection Agreement during the existence of an Event of Default or by reason of a termination event under such Third-Party Interest Rate Protection Agreement during the existence of an Event of Default, Administrative Agent shall have the right to apply same to any portion of the Obligations in any order it desires including, without limitation, if such Third-Party Interest Rate Protection Agreement has been partially or wholly terminated, to apply same to the cost of acquiring another Third-Party Interest Rate Protection Agreement in form and substance, and from any counterparty thereto, satisfactory to

Administrative Agent in all respects. Notwithstanding the foregoing, if Administrative Agent receives any payments under a Third-Party Interest Rate Protection Agreement by reason of a termination event under such Third-Party Interest Rate Protection Agreement that is terminated while no Event of Default exists, Administrative Agent shall (a) purchase a replacement Interest Rate Protection Agreement for Borrower at Borrower's sole cost and expense, or (b) make such amounts available (i) to Borrower to purchase or (ii) to reimburse Borrower for the cost of purchasing, a replacement Interest Rate Protection Agreement, and any funds in excess of the cost of such replacement Interest Rate Protection Agreement shall be remitted to Borrower.

(iv) The obligations of Borrower under any Interest Rate Protection Agreement to which Administrative Agent or an Affiliate thereof is the counterparty (each, an "**Agent Interest Rate Protection Agreement**") shall be considered obligations and shall be secured pari passu by the Mortgage and other collateral for the Loan, and all sums which may become due and payable by Borrower to the counterparty thereunder, in accordance with the terms and provisions of such Agent Interest Rate Protection Agreement, including in connection with any termination of all or any portion thereof, shall be payable pursuant to this Agreement as "Additional Interest" on the Loan. Borrower hereby assigns all of Borrower's right, title and interest in, to and under any such Agent Interest Rate Protection Agreement and Borrower hereby agrees that Administrative Agent, or an Affiliate thereof, as counterparty under Agent Interest Rate Protection Agreement, shall make any payments that become payable under or pursuant to Agent Interest Rate Protection Agreement directly to Administrative Agent for the benefit of the Banks. At such time as the Loan is indefeasibly repaid in full, all of Administrative Agent's right, title and interest in any Agent Interest Rate Protection Agreement shall terminate and Administrative Agent shall execute and deliver, at Borrower's sole cost and expense, such documents as may be required to evidence Administrative Agent's release of such Agent Interest Rate Protection Agreement. If Administrative Agent receives any payments under an Agent Interest Rate Protection Agreement (other than a payment by reason of a termination event (as defined in such Agent Interest Rate Protection Agreement) or any other payment during the existence of an Event of Default), Administrative Agent shall apply the same to interest payable on the next occurring Payment Date. If Administrative Agent receives any payments under an Agent Interest Rate Protection Agreement during the existence of an Event of Default or by reason of a termination event under such Agent Interest Rate Protection Agreement during the existence of an Event of Default, Administrative Agent shall have the right to apply same to any portion of the obligations in any order it desires, including, without limitation, if such Agent Interest Rate Protection Agreement has been partially or wholly terminated, to apply same to the cost of acquiring another Agent Interest Rate Protection Agreement in form and substance, and from any counterparty thereto, satisfactory to Administrative Agent in all respects. Notwithstanding the foregoing, if Administrative Agent receives any payments under an Agent Interest Rate Protection Agreement by reason of a termination event under such Agent Interest Rate Protection Agreement that is terminated while no Event of Default exists, Administrative Agent shall (a) purchase a replacement Interest Rate Protection Agreement for Borrower at Borrower's sole cost and expense, or (b) make such amounts available (i) to Borrower to purchase or (ii) to reimburse Borrower for the cost of purchasing, a replacement Interest Rate Protection

Agreement, and any funds in excess of the cost of such replacement Interest Rate Protection Agreement shall be remitted to Borrower. Borrower acknowledges that (1) intentionally deleted; (2) in connection with the transactions contemplated by the Loan Documents, the New York Branch of Administrative Agent will not be party to any “swap”, “cap”, “foreign exchange forward”, “foreign exchange swap” (each as defined in the U.S. Commodity Exchange Act, as amended, and the rules and regulations promulgated thereunder) or other derivative product or instrument (collectively, “derivatives”, and each a “derivative”); and (3) to the extent any such derivative is required or desired in connection with the transactions contemplated by the Loan Documents, Borrower may enter such transaction with a non-U.S. branch of Administrative Agent.

(v) In the event that Borrower fails to purchase and deliver to Administrative Agent an Interest Rate Protection Agreement as and when required hereunder, Administrative Agent may purchase such Interest Rate Protection Agreement and the cost incurred by Administrative Agent in purchasing such Interest Rate Protection Agreement shall be paid by Borrower to Administrative Agent with interest thereon at the Default Rate from the date such cost was incurred by Administrative Agent until such cost is paid to Administrative Agent. Borrower shall not, without Administrative Agent’s prior consent, cause or permit any amendment to any Interest Rate Protection Agreement.

(vi) The terms and conditions of this **Section 2.2(j)** shall apply to any Interest Rate Protection Agreement, whether such Interest Rate Protection Agreement is required by this **Section 2.2(j)** or Borrower obtains such Interest Rate Protection Agreement of its own volition.

(k) If Administrative Agent determines that the LIBOR Rate is no longer available, then reasonably promptly after such determination, Administrative Agent may amend this Agreement and the Loan Documents to (i) replace the LIBOR Rate with an alternate benchmark rate (including any mathematical or other adjustments to the benchmark (if any) incorporated therein), giving due consideration to any existing convention for similar credit facilities for such alternative benchmarks (any such proposed rate, a “**LIBO Successor Rate**”), (ii) adjust the fixed portion of the Interest Rate by a factor equal to the positive or negative difference between the LIBO Successor Rate and the LIBOR Rate as of the date of such conversion and (iii) make LIBO Successor Rate conforming changes to this Agreement and the Loan Documents as necessary. Administrative Agent shall give Borrower prompt notice thereof; provided, that if Administrative Agent has not so amended this Agreement or the Loan Documents, so long as such circumstances shall continue, the Loan shall bear interest at the Base Rate.

2.3 Loan Payment.

(a) **Payments Generally.** If any payment hereunder or under any of the Loan Documents becomes due and payable on a day other than a Business Day, such payment shall be payable on the immediately succeeding Business Day, unless the result would be that such Interest Accrual Period would be extended to the next succeeding calendar month, in which case such Interest Rate Accrual Period shall end on the next preceding Business Day.

(b) Principal and Interest Payments. Payments of principal and interest under the Loan, calculated in accordance with the terms hereof, shall be due and payable as follows:

(i) interest only at the Interest Rate in effect for the First Interest Accrual Period shall be due and payable on the first Payment Date after the date hereof;

(ii) commencing on the second Payment Date after the date hereof and on each subsequent Payment Date thereafter until the Maturity Date, the Monthly Payment Amount shall be due and payable on such Payment Date; and

(iii) the entire outstanding principal amount of the Loan, together with all accrued and unpaid interest and any other charges due thereon and all other sums due and payable pursuant to this Agreement and/or the other Loan Documents, shall be due and payable on the Maturity Date.

Payments made by Borrower under this Agreement shall be made free and clear of, and without reduction for or on account of, any present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority, excluding income and franchise taxes of the United States of America or any political subdivision or taxing authority thereof or therein (such non-excluded taxes being called “**Additional Taxes**”). If any Additional Taxes are required to be withheld from any amounts payable to any Lender hereunder or under any of the other Loan Documents, the amounts so payable to such Lender shall be increased to the extent necessary to yield to such Lender (after payment of all Additional Taxes) interest or any such other amounts payable hereunder at the rates or in the amounts specified in this Agreement.

(c) Late Payment Charge. If any principal, interest or any other sums due under the Loan Documents (excluding only the outstanding principal due on the Maturity Date) is not paid by Borrower by the date on which it is due (without regard to any applicable cure and/or notice period), Borrower shall pay to Administrative Agent upon demand an amount equal to the lesser of five percent (5%) of such unpaid sum or the maximum amount permitted by applicable law (the “**Late Payment Charge**”) in order to defray the expense incurred by Administrative Agent and the Lenders in handling and processing such delinquent payment and to compensate Administrative Agent and the Lenders for the loss of the use of such delinquent payment. Any such amount shall be secured by the Mortgage and the other Loan Documents to the extent permitted by applicable law.

(d) Method and Place of Payment. Payments shall be paid by Borrower, without set-off or counterclaim, by wire transfer to Administrative Agent at One South Wacker Drive, Suite 3500, Attention: US Loan Services, Chicago, Illinois 60606, or to such other location or account as Administrative Agent may specify to Borrower from time to time, in federal or other immediately available funds in lawful money of the United States of America, not later than 12:00 noon, New York City time, on each Payment Date. If the date for any payments of principal is extended on account of the foregoing or on account of operation of law or otherwise, interest thereon shall be payable at the then applicable Interest Rate during such extension.

(e) Application of Payments.

(i) Except while an Event of Default exists, all proceeds of any repayment, including prepayments, of the Loan (a “**Payment**”) shall be applied to pay: (1) first, any costs and expenses of Administrative Agent required to be reimbursed under the terms of the Loan Documents; (2) second, any costs and expenses of the Lenders required to be reimbursed under the terms of the Loan Documents; (3) third, to any Late Payment Charges and accrued and unpaid interest payable at the Default Rate; (4) fourth, accrued and unpaid interest payable at the Interest Rate; (5) fifth, any other amounts then due and owing under the Loan Documents (including, without limitation, any applicable Breakage Costs); and (6) sixth, to the outstanding principal amount of the Loan and any Additional Interest due under any Interest Rate Protection Agreement (on a pari passu basis with the principal amount of the Loan). After the occurrence and during the continuation of an Event of Default, all proceeds of repayment, including any payment or recovery on the collateral securing the Loan, shall be applied in such order and in such manner as the Administrative Agent shall elect in the Administrative Agent’s sole and absolute discretion.

(ii) To the extent that Borrower makes a Payment or Administrative Agent or any Lender receives any Payment or proceeds for Borrower’s benefit, which are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, debtor in possession, receiver, custodian or any other party under any bankruptcy law, common law or equitable cause, then, to such extent, the obligations of Borrower hereunder intended to be satisfied shall be revived and continue as if such Payment or proceeds had not been received by Administrative Agent or such Lender.

2.4 **Prepayments.**

(a) The principal balance of the Loan may be prepaid, in whole but not in part (except with respect to the application of casualty or condemnation proceeds), on any date upon not less than thirty (30) days nor more than ninety (90) days prior written notice to Administrative Agent specifying the date on which prepayment is to be made (the “**Prepayment Date**”), provided that such prepayment is accompanied by payment of (i) any costs and expenses of Administrative Agent and the Lenders required to be reimbursed under the terms of the Loan Documents, (ii) interest accrued and unpaid on the principal balance of the Loan to and including the Prepayment Date, (iii) if the Prepayment Date is prior to the Lockout Release Date, an amount equal to one percent (1%) of the principal amount repaid, and (iv) all other sums (including any applicable Breakage Costs) then due under this Agreement and the other Loan Documents. If any such notice of prepayment is given, the principal balance of the Loan that is the subject of such notice of prepayment and the other sums required under this paragraph shall be due and payable on the Prepayment Date. Any prepayment notice may be rescinded or adjourned to a later date upon written notice to Administrative Agent without penalty. If, rather than Borrower delivering a prepayment notice to Administrative Agent, a prepayment of the Loan, in whole or in part, results from Administrative Agent’s exercise of its rights and remedies during the continuance of an Event of Default and upon acceleration of the Maturity Date (irrespective of whether foreclosure proceedings have been commenced) prior to the Lockout Release Date, Borrower shall pay to Administrative Agent (for the benefit of the Lenders) a

prepayment fee equal to one percent (1%) of the principal amount repaid, and such prepayment fee shall be in addition to any other sums due hereunder or under any of the other Loan Documents.

(b) Partial prepayments of principal resulting from the application of casualty or condemnation proceeds to the Debt shall not change the amounts of subsequent monthly installments of principal (if any are required hereunder) nor change the dates on which such installments are due, unless Administrative Agent shall otherwise agree in writing.

(c) Borrower shall be required to pay to Administrative Agent (for the benefit of the Lenders) together with any prepayment of any portion of the Loan (whether voluntary or involuntary), any Breakage Costs incurred by the Lenders in connection with such prepayment.

2.5 **Payment of Closing Fees.** In addition to all other fees and expenses paid by Borrower in connection with the Loan, in consideration for Lender making the Loan to Borrower, contemporaneously herewith, Borrower shall pay to Administrative Agent all of the fees set forth in the Fee Letter in accordance with the terms and conditions of the Fee Letter. Borrower expressly acknowledges and agrees that such fees (a) shall constitute additional consideration for the Loan, (b) shall, upon payment, be the sole and exclusive property of Administrative Agent, (c) shall not be applied to any portion of the Debt, and (d) are nonrefundable and are and shall be deemed earned in full as of the date hereof.

2.6 **Extension of the Scheduled Maturity Date.**

(a) Borrower shall have the right to extend the Scheduled Maturity Date from November 10, 2021 to November 10, 2022 (the period commencing on the first (1st) day following the Scheduled Maturity Date and ending on November 10, 2022 being referred to herein as the “**First Extension Term**”), provided that:

(i) Borrower shall have given Lender its written notice of such extension (the “**First Extension Notice**”) not less than thirty (30) days nor more than ninety (90) days prior to the Scheduled Maturity Date;

(ii) concurrently with delivery of the First Extension Notice, Borrower shall have delivered to Lender payment, in immediately available federal funds, of the entire amount of the applicable Extension Fee, which shall be fully earned and non-refundable upon such payment;

(iii) no Default or Event of Default shall have occurred and be continuing prior to the time of the delivery of the First Extension Notice with respect to the First Extension Term, and no Default or Event of Default shall be continuing on the date of the commencement of the First Extension Term;

(iv) Borrower shall have delivered or caused to be delivered to Lender documentary evidence, satisfactory to Lender in its sole discretion, that the ratio, calculated as of the date of delivery of the First Extension Notice, of (i) the outstanding principal balance of the Loan, to (ii) the then current market value of the Property (as determined by a new or updated appraisal prepared by an M.A.I. appraiser satisfactory to

Lender and dated not more than 90 days prior to the then current Scheduled Maturity Date) shall not exceed 65%;

(v) There shall be no ongoing Cash Management Period;

(vi) The Property has an As-Is DY of equal to or greater than 9.50% as of thirty (30) days prior to such extension, provided that, Gross Revenues for such As-Is DY test shall not include Envigo RMS Inc., unless such tenant has extended its Lease pursuant to the terms thereof;

(vii) on or prior to the then current Scheduled Maturity Date, the Interest Rate Protection Agreement is in place pursuant to Section 2.2(j), and Borrower either (i) extends the term of such Interest Rate Protection Agreement until the last day of the Extension Term or (ii) enters into a new Interest Rate Protection Agreement which expires on the last day of the Extension Term, and which extension or new agreement is on the same terms and requirements as set forth in Section 2.2(j);

(viii) Payment by Borrower of all reasonable costs and expenses, including legal fees, actually incurred by Lender or otherwise involved in extending the term of the Note. Borrower shall pay a deposit of \$12,000 (the “Expense Deposit”) toward such costs and expenses at the time Borrower notifies Lender of its intention to extend the Note. If Lender determines that the conditions set forth herein have not been satisfied, the Expense Deposit shall be applied to the payment of the Debt. If the actual costs and expenses are greater than the Expense Deposit, Borrower shall pay the difference at as a condition to the effectiveness of the Extension Term not later than one (1) Business Day prior thereto;

(ix) Delivery to Lender of all items reasonably required by Lender in connection with Lender’s evaluation of Borrower’s request to extend the then current Maturity Date, all of which must be acceptable in form and substance to Lender, including, without limitation, current rent rolls, operating statements and financial statements (the timing of the delivery of such requested financial and operating statements shall be consistent with the requirements of Section 4.16);

(x) Intentionally Deleted; and

(xi) At Lender’s option, the extension of the term of the Loan shall be evidenced by an extension or renewal of or amendment to the Notes and/or this Agreement, or by the execution of a new note or such other documents as Lender may reasonably request in furtherance of such purpose. Borrower further agrees to execute and/or deliver to Lender any other documentation reasonably requested by Lender, including, without limitation, security agreements, financing statements, enforceability or authority opinions of counsel and title endorsements, all of which shall be reasonably satisfactory in form and substance to Lender.

(b) Borrower shall have the right to extend the Scheduled Maturity Date from November 10, 2022 to November 10, 2023 (the period commencing on the first (1st) day

following the Scheduled Maturity Date and ending on November 10, 2023 being referred to herein as the “**Second Extension Term**”), provided that:

(i) Borrower shall have given Lender its written notice of such extension (the “**Second Extension Notice**”) not less than thirty (30) days nor more than ninety (90) days prior to the Scheduled Maturity Date;

(ii) concurrently with delivery of the Second Extension Notice, Borrower shall have delivered to Lender payment, in immediately available federal funds, of the entire amount of the applicable Extension Fee, which shall be fully earned and non-refundable upon such payment;

(iii) no Default or Event of Default shall have occurred prior to the time of the delivery of the Second Extension Notice with respect to the Second Extension Term, and no Default or Event of Default shall be continuing on the date of the commencement of the Second Extension Term;

(iv) Intentionally Omitted;

(v) There shall be no ongoing Cash Management Period;

(vi) The Property has an As-Is DY of equal to or greater than 10.00% as of thirty (30) days prior to such extension, provided that, Gross Revenues for such As-Is DY test shall not include HighPoint Global, LLC, unless such tenant has extended its Lease pursuant to the terms thereof;

(vii) on or prior to the then current Scheduled Maturity Date, Borrower either (i) extends the term of the Interest Rate Protection Agreement until the last day of the Extension Term or (ii) enters into a new Interest Rate Protection Agreement which expires on the last day of the Extension Term, and which extension or new agreement is on the same terms and requirements as set forth in **Section 2.2.(j)**;

(viii) Payment by Borrower of all reasonable costs and expenses, including legal fees, actually incurred by Lender or otherwise involved in extending the term of the Note as a condition to the effectiveness of the Extension Term not later than one (1) Business Day prior thereto;

(ix) Delivery to Lender of all items reasonably required by Lender in connection with Lender’s evaluation of Borrower’s request to extend the then current Maturity Date, all of which must be acceptable in form and substance to Lender, including, without limitation, current rent rolls, operating statements and financial statements (the timing of the delivery of such requested financial and operating statements shall be consistent with the requirements of **Section 4.16**);

(x) Intentionally Deleted; and

(xi) At Lender’s option, the extension of the term of the Loan shall be evidenced by an extension or renewal of or amendment to the Notes and/or this

Agreement, or by the execution of a new note or such other documents as Lender may reasonably request in furtherance of such purpose. Borrower further agrees to execute and/or deliver to Lender any other documentation reasonably requested by Lender, including, without limitation, security agreements, financing statements, enforceability and authority opinions of counsel and title endorsements, all of which shall be reasonably satisfactory in form and substance to Lender.

(c) Notwithstanding anything in this **Section 2.6** to the contrary, Borrower shall have the option to reduce the outstanding principal balance of the Notes through prepayment, the posting of cash collateral or by providing a letter of credit, in form and substance satisfactory to Administrative Agent, in order to meet the requirements of Sub-Sections 2.6(a)(v), 2.6 (a)(vi), 2.6 (b)(v) and 2.6 (b)(vi) above, as applicable or the Interest Only Extension Period Test.

ARTICLE III

CASH MANAGEMENT

3.1 **Clearing Account; Deposit of Rents and Profits; Withdrawals from Clearing Account.**

(a) Borrower confirms that Borrower has established, and Borrower covenants that it shall maintain, pursuant to the Clearing Bank Agreement, an Eligible Account (the deposits in which are insured by the Federal Deposit Insurance Corporation, subject to applicable insurance limits) at the Clearing Bank (the “**Clearing Account**”). The Clearing Account shall be in the name of Borrower for the benefit of the Administrative Agent (for the benefit of the Lenders), provided that Borrower shall be the owner of all funds on deposit in such accounts for federal and applicable state and local tax purposes and the Clearing Account shall be assigned the tax identification number of Borrower. Borrower acknowledges and agrees that, so long as any portion of the Debt remains outstanding, neither Borrower, Property Manager nor any other Person acting on behalf of, or claiming through, Borrower or Property Manager, shall have any right or authority to change the identity, name, location, account number, bank location or other feature or attribute of the Clearing Account without the prior written consent of Administrative Agent, which consent may be withheld by Administrative Agent in its reasonable discretion. In the event that Clearing Bank requires a modification to the Clearing Bank Agreement, such modification shall only be made following Administrative Agent’s written consent (which may be granted or withheld in Administrative Agent’s reasonable discretion) and if Administrative Agent refuses to agree to the requested change, then Borrower shall establish a new Clearing Account at an Eligible Bank (and such Eligible Bank shall enter into a new Clearing Bank Agreement in form and substance reasonably satisfactory to Administrative Agent). In addition, at the election of Administrative Agent, exercised from time to time (i) after the occurrence and during the existence of an Event of Default, (ii) at any time Administrative Agent reasonably believes that the Clearing Bank is not adequately performing its duties under the Clearing Bank Agreement, (iii) at any time after the credit rating of the Clearing Bank falls below the requirements of an Eligible Bank (unless Administrative Agent has waived the Eligible Bank requirements) or (iv) at any time after Administrative Agent has waived the Eligible Bank requirements for the Clearing Bank, but Administrative Agent has elected, in its

sole and absolute discretion, to require that the Clearing Account be located at an Eligible Bank, Borrower will establish a new Clearing Account at an Eligible Bank (and such Eligible Bank shall enter into a new Clearing Bank Agreement in form and substance reasonably satisfactory to Administrative Agent). Borrower hereby irrevocably appoints Administrative Agent as its attorney-in-fact (coupled with an interest) to execute a modification of the Clearing Bank Agreement approved by Administrative Agent or establish a new Clearing Account at an Eligible Bank upon Administrative Agent's exercise of its rights under the preceding sentence, upon Borrower's failure to do so within fifteen (15) days following Administrative Agent's written demand. The initial Clearing Account is identified on Exhibit D attached hereto.

(b) The Clearing Account shall be under the sole and exclusive dominion and control of the Administrative Agent and neither Borrower, nor Property Manager, nor any other party claiming on behalf of, or through, Borrower or Property Manager, shall have any right to transfer, withdraw, access or otherwise direct the disposition of funds on deposit in or deposited into the Clearing Account or have any other right or power with respect to the Clearing Account; provided, however, that Borrower or Property Manager or their designee shall have the right, if available through the Clearing Bank, to access information regarding balances, deposits into and withdrawals from the Clearing Account, so long as such information access right does not permit Borrower or Property Manager or any party other than Administrative Agent or Servicer to transfer, withdraw, access or otherwise direct the disposition of funds on deposit in the Clearing Account.

(c) Borrower agrees to timely pay the customary fees and expenses of Clearing Bank in connection with the Clearing Account and any Lockbox Address, as such fees and expenses are established from time to time. In the event that Clearing Bank seeks reimbursement of any item deposited into the Clearing Account but returned or disallowed reimbursement or any other monetary sum pursuant to the Clearing Bank Agreement, Borrower shall promptly and timely pay such sum. In the event Clearing Bank seeks reimbursement of sums from Administrative Agent or any Lender pursuant to the Clearing Bank Agreement, Borrower shall, within fifteen (15) days of written demand by Administrative Agent, pay Clearing Bank such sums. Failure of Borrower to pay any sum due and payable (by Borrower or Administrative Agent) to the Clearing Bank in connection with the Clearing Account within fifteen (15) days after written demand by Administrative Agent shall constitute an Event of Default under this Agreement.

(d) The following provisions shall apply:

(i) Concurrently with the execution of this Agreement, Borrower has established with Clearing Bank a lock box address at the Clearing Bank (the "**Lockbox Address**").

(ii) Concurrently with the execution of this Agreement and until the Debt is repaid in full, Borrower shall, or shall cause Property Manager to, notify and advise each Tenant under each Lease (whether such Lease is presently effective or executed after the date hereof) pursuant to an instruction letter in the form of Exhibit E attached hereto (a "**Tenant Direction Letter**") to send directly to the Lockbox Address (or to the Clearing Account via ACH transfer or wire transfer) all sums due and payable

by such Tenant under its Lease as and when due and payable under its Lease. Borrower hereby grants to Administrative Agent a power of attorney (which power of attorney shall be coupled with an interest and irrevocable so long as any portion of the Debt remains outstanding) to sign and deliver to any Tenant, upon failure of Borrower to do so within ten (10) Business Days following written demand from Administrative Agent, a Tenant Direction Letter.

(iii) Concurrently with the execution of this Agreement and until the Debt is repaid in full, Borrower shall, or shall cause Property Manager to, instruct all Persons that maintain open accounts with Borrower or Property Manager with respect to the Property or with whom Borrower or Property Manager does business on an “accounts receivable” basis with respect to the Property (any such Person, an “**Accounts Receivable Payor**”), to deliver all payments due under such accounts directly to the Lockbox Address (or to the Clearing Account via ACH transfer or wire transfer) (such an instruction by Borrower, an “**Accounts Receivable Instruction**”). Neither Borrower nor Property Manager shall direct any such Person to make payments due under such accounts in any other manner.

(iv) Intentionally omitted.

(v) If notwithstanding the foregoing, Borrower or Property Manager should receive any Rents and Profits, the recipient of such Rents and Profits shall deposit same with the Clearing Bank within one (1) Business Day after receipt.

(vi) Without the prior written consent of Administrative Agent, so long as any portion of the Debt remains outstanding, neither Borrower nor Property Manager shall terminate, amend, revoke or modify any Tenant Direction Letter or any or Accounts Receivable Instruction in any manner whatsoever or direct or cause any Tenant or any Accounts Receivable Payor to pay any amount in any manner other than as provided in the related Tenant Direction Letter or Accounts Receivable Instruction.

(vii) So long as any portion of the Debt remains outstanding, neither Borrower, Property Manager nor any other Person shall open or maintain any accounts into which Rents and Profits are deposited other than the Clearing Account. The foregoing shall not prohibit Borrower or Property Manager from utilizing one or more separate accounts for the disbursement or retention of funds that have been transferred to Borrower or the Property Manager pursuant to the express terms of this Agreement.

(e) Absent the existence of a Cash Management Period, on each Business Day on which available funds are on deposit in the Clearing Account, Clearing Bank shall transfer all such available funds to an operating account established, maintained by and under the exclusive dominion and control of Borrower (the “**Operating Account**”). Commencing with a Cash Management Commencement Date and continuing during the existence of a Cash Management Period, without limiting the foregoing provisions, all transfers from the Clearing Account to the Operating Account shall immediately cease and Administrative Agent shall have the right, at its sole option, to instruct the Clearing Account, from time to time, to administer available sums on deposit in or deposited into the Clearing Account in the manner set forth in **Section 3.3** below or

to transfer available sums on deposit in the Clearing Account, from time to time, to the Cash Management Account. The initial Operating Account is described on Exhibit D attached hereto.

3.2 **Cash Management Account; Processing of Rents and Profits.**

(a) During any Cash Management Period, Administrative Agent shall maintain the Cash Management Account at an Eligible Bank selected by Administrative Agent in its sole discretion (such bank, in such capacity, being referred to as the “**Cash Management Bank**”). The Cash Management Account shall be in the name of Canadian Imperial Bank of Commerce, whether acting on its own behalf or through one of its agencies, branches, affiliates or otherwise, provided that Borrower shall be the owner of all funds on deposit in such accounts for federal and applicable state and local tax purposes and the Cash Management Account shall be assigned the tax identification number of Borrower. Administrative Agent hereby appoints Canadian Imperial Bank of Commerce and each of its agencies, branches and affiliates as its agent to maintain and control the Cash Management Account on behalf of Administrative Agent.

(b) The Cash Management Account shall be under the sole and exclusive dominion and control of the Administrative Agent. Neither Borrower, Property Manager nor any other party claiming on behalf of, or through, Borrower or Property Manager, shall have any right to transfer, withdraw, access or otherwise direct the disposition of funds on deposit in the Cash Management Account or have any other right or power with respect to the Cash Management Account.

(c) Borrower agrees to timely pay the customary fees and expenses of Cash Management Bank in connection with the Cash Management Account, as such fees and expenses are established from time to time. Failure of Borrower to pay any sum due and payable (by Borrower, Administrative Agent or any Lender) to the Cash Management Bank in connection with the Cash Management Account within fifteen (15) days after written demand by Administrative Agent, shall constitute an Event of Default under this Agreement.

(d) At Administrative Agent’s option, the Cash Management Bank shall transfer sums on deposit in the Cash Management Account to any number of subaccounts (collectively, the “**Subaccounts**”) which subaccounts shall be maintained on a ledger-entry basis and which Subaccounts may include, without limitation, one or more of the Impound Account and the Reserves.

3.3 **Application and Disbursement of Funds.**

(a) During any Cash Management Period, except as set forth in **Section 3.3(c)** hereof, on each Payment Date Administrative Agent shall (or shall direct the Cash Management Bank to) disburse and/or allocate to Subaccounts, as applicable, all amounts transferred from the Clearing Account to the Cash Management Account (or otherwise deposited into the Cash Management Account for the benefit of Borrower) since the prior Payment Date in the following order of priority:

(i) First, payments to the Impound Account in accordance with the terms and conditions of **Section 4.6** hereof;

(ii) Next, to the payment of all amounts due under the Notes on such Payment Date (including, without limitation, interest and, if applicable, principal) (which, following an Event of Default shall include, without limitation, interest at the Default Rate);

(iii) Next, payments of any other amounts due under the Loan Documents not otherwise addressed by this **Section 3.3(a)** (including, without limitation, payments to any Reserves not otherwise addressed by this **Section 3.3(a)**);

(iv) Next, payments for monthly Cash Expenses, less amounts payable to Affiliates of Borrower, incurred in accordance with the terms and conditions of the related Approved Annual Budget pursuant to a written request for payment submitted by Borrower to Administrative Agent specifying the individual Cash Expenses in a form reasonably acceptable to Administrative Agent;

(v) Next, payments for monthly Cash Expenses payable to affiliates of Borrower, incurred in accordance with the terms and conditions of the related Approved Annual Budget pursuant to a written request for payment submitted by Borrower to Administrative Agent specifying the individual Cash Expenses in a form reasonably acceptable to Administrative Agent;

(vi) Next, payment for monthly Net Capital Expenditures, incurred in accordance with the terms and conditions of the related Approved Annual Budget pursuant to a written request for payment submitted by Borrower to Administrative Agent specifying the individual Net Capital Expenditures in a form acceptable to Administrative Agent;

(vii) Next, payment for Extraordinary Expenses approved by Administrative Agent, if any; and

(viii) Lastly, all remaining funds shall be paid to Administrative Agent and transferred by Administrative Agent into a Reserve (the “**Cash Collateral Account**”) to be held by Administrative Agent as cash collateral and as additional security for the Debt. So long as no Event of Default exists, upon the termination of such Cash Management Period, any funds on deposit in the Cash Collateral Account not previously disbursed or applied shall be disbursed to Borrower.

(b) During any Cash Management Period, in the event that Borrower must incur an Extraordinary Expense, then Borrower shall promptly deliver to Administrative Agent a reasonably detailed explanation of such proposed Extraordinary Expense for the Administrative Agent’s prior written approval not to be unreasonably withheld, conditioned or delayed.

(c) Notwithstanding any other provision of this Agreement or of the other Loan Documents, at any time during the continuance of an Event of Default, Administrative Agent reserves the right, exercisable at its sole option, to (x) take such enforcement actions (including, but not limited to, acceleration and foreclosure of the Property) as it deems appropriate under the Loan Documents or otherwise under law or in equity and/or (y) apply Rents and Profits and other sums on deposit in or deposited into the Clearing Account, the Cash

Management Account, the Impound Account, the Reserves and any other sums deposited by Borrower with Administrative Agent to the payment of the Debt, in such order, manner, amounts and times as Administrative Agent in its sole discretion determines, and such reserved rights shall be in addition to all other rights and remedies provided to Administrative Agent and/or the Lenders under this Agreement and the other Loan Documents.

(d) Nothing in this **Section 3.3** shall limit, reduce or otherwise affect Borrower's obligations to make payments of the monthly interest payment and, if applicable, principal payment then due under the Notes and/or payments to the Impound Account, the Replacement Reserve, the Leasing Costs Reserve and/or any other Reserves due under the Notes, this Agreement and under the other Loan Documents, whether or not Rents and Profits are available to make such payments.

3.4 Security Interest. Borrower acknowledges and agrees that it has granted to Administrative Agent (for the benefit of the Lenders) a first-priority security interest in the Clearing Account and Cash Management Account and the sums on deposit therein, among other things, pursuant to the Mortgage. Borrower acknowledges and agrees that, without limitation of any other provisions of this Agreement, the Mortgage or the other Loan Documents, upon the occurrence and during the existence of an Event of Default, Administrative Agent may use the Clearing Account, the Cash Management Account and/or any sums on deposit in either of them for any or all of the following purposes: (i) repayment of the Debt, including, but not limited to, principal prepayments, and any other prepayment premium or fee applicable to such full or partial prepayment, (ii) reimbursement of Administrative Agent and the Lenders for all actual losses, third party fees, and reasonable costs and expenses (including, without limitation, reasonable legal fees and disbursements) suffered or incurred by Administrative Agent and the Lenders as a result of such Event of Default, (iii) payment of any amount expended in exercising any or all rights and remedies available to Administrative Agent and the Lenders at law or in equity or under this Agreement or any of the other Loan Documents, (iv) payment of any item as required or permitted by this Agreement or any of the other Loan Documents or (v) any other purpose permitted by applicable law, provided, however, that any such application of funds shall not cure or be deemed to cure any Event of Default. Without limiting any other provisions hereof, each of the remedial actions described in the immediately preceding sentence shall be deemed to be a commercially reasonable exercise of Administrative Agent's and/or the Lenders' rights and remedies as a secured party with respect to the Clearing Account, the Cash Management Account and any sums on deposit in either of them and shall not in any event be deemed to constitute a setoff or a foreclosure of a statutory banker's lien. Nothing in this Agreement shall obligate Administrative Agent or any Lender to apply all or any portion of the Clearing Account or Cash Management Account to effect a cure of any Event of Default, or to pay the Debt, or, during an Event of Default, in any specific order of priority. The exercise of any or all of Administrative Agent's and/or the Lenders' rights and remedies under this Agreement with respect to the Clearing Account, Cash Management Account and/or the sums on deposit therein shall not in any way prejudice or affect Administrative Agent's right to initiate and complete a foreclosure under the Mortgage.

3.5 Indemnification by Borrower. Administrative Agent shall be responsible for the performance only of such duties with respect to the Clearing Account and Cash Management Account as are specifically set forth herein, and no duty shall be implied from any provision

hereof. Administrative Agent shall not be under any obligation or duty to perform any act which would involve it in expense or liability or to institute or defend any suit in respect hereof, or to advance any of its own monies. Administrative Agent shall not be liable for any acts, omissions, errors in judgment or mistakes of fact or law, including, without limitation, with respect to proceeds on deposit in the Clearing Account or Cash Management Account, except solely if and to the extent same results from the gross negligence or willful misconduct of Administrative Agent or its successors, assigns, shareholders, directors, officers, employees and/or agents and not from any actions by Borrower, Guarantor, Property Manager, their respective Affiliates, successors, assigns, shareholders, directors, officers, employees and/or agents, or any Person acting at the direction of any of them. Borrower shall indemnify and hold the Administrative Agent, its successors, assigns, shareholders, directors, officers, employees, and agents (including, without limitation, any Servicers) harmless from and against any loss, cost (including, without limitation, reasonable attorneys' fees and disbursements) or damage (excluding any punitive or special damage, except to the extent any such punitive or special damage is asserted against Administrative Agent by Borrower, Guarantor, Property Manager, their respective Affiliates, successors, assigns, shareholders, directors, officers, employees and/or agents, or any Person acting at the direction of any of them, or any third-party) incurred by such parties in connection with the Clearing Account, Lockbox Address, Cash Management Account or the investment by Administrative Agent of amounts in the Cash Management Account or the Subaccounts, except solely if and to the extent same results from the gross negligence or willful misconduct of Administrative Agent or its successors, assigns, shareholders, directors, officers, employees and/or agents, or intentional nonperformance by Administrative Agent or its successors, assigns, shareholders, directors, officers, employees and/or agents, of Administrative Agent's obligations under this Agreement, and not from any actions by Borrower, Guarantor, Property Manager, their respective Affiliates, successors, assigns, shareholders, directors, officers, employees and/or agents, or any Person acting at the direction of any of them.

3.6 **Acknowledgment and Agreement by Property Manager.** Borrower hereby covenants and agrees that it shall cause the Property Manager and any successor Property Manager to acknowledge, agree to and assume in writing, the duties and obligations of the Property Manager under this ARTICLE III.

3.7 **Miscellaneous.**

(a) Borrower agrees that the Cash Management Bank shall pay over to Administrative Agent all amounts deposited for the benefit of Borrower into the Cash Management Account on demand (to be applied by Administrative Agent in accordance with this ARTICLE III), without notice to Borrower.

(b) Borrower confirms and agrees that, notwithstanding the provisions of this Agreement, Borrower retains sole control over the operation and maintenance of the Property, subject to the obligations of Borrower under this Agreement and the other Loan Documents, and neither Administrative Agent nor any Lender is and shall not be deemed to be a mortgagee in possession unless and until Administrative Agent or any Lender (but excluding any receiver appointed by a court on Administrative Agent's and/or any Lender's behalf) takes actual possession of the Property.

(c) Administrative Agent shall from time to time direct the Cash Management Bank (which direction shall not be required to be given more often than one time per month), to invest amounts allocated to the Subaccounts in investments selected by Administrative Agent. All funds in the Subaccounts that are so invested are deemed to be held in the Subaccounts for all purposes of this Agreement, the Mortgage and the other Loan Documents. To the extent that any funds in any of the Subaccounts are so invested by Administrative Agent, Borrower shall bear the risk of loss of such investments. Except as otherwise provided in **Section 4.30** hereof, all earnings on investments from the Subaccounts shall be for the benefit of Borrower. Borrower hereby assumes all risk of loss with respect to funds on deposit in the Subaccounts.

3.8 **Annual Budgets**. For each calendar year during the term of the Loan, Borrower shall submit to Administrative Agent for Administrative Agent's written approval (same not to be unreasonably withheld) an annual budget (the "**Annual Budget**") not later than December 20th of each such calendar year, in form reasonably satisfactory to Administrative Agent setting forth in reasonable detail budgeted monthly operating income and monthly operating capital and other expenses for the Property. Each Annual Budget shall contain, among other things, limitations on management fees, third party service fees, and other expenses as Borrower may reasonably determine. In the event that Administrative Agent objects to the proposed Annual Budget submitted by Borrower, Administrative Agent shall advise Borrower of such objections within fifteen (15) days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and Borrower shall within fifteen (15) days after receipt of notice of any such objections revise such Annual Budget and resubmit the same to Administrative Agent. Administrative Agent shall advise Borrower of any objections to such revised Annual Budget within ten (10) days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and Borrower shall revise the same in accordance with the process described in this subparagraph until the Administrative Agent approves an Annual Budget. Until such time as Administrative Agent approves a proposed Annual Budget, the most recently Approved Annual Budget shall apply; provided that such Approved Annual Budget shall be adjusted to reflect actual increases in real estate taxes, insurance premiums and utilities expenses and other non-discretionary items. Failure of Borrower to submit, within ten (10) days of written notice of such failure, Annual Budgets in accordance with the provisions of this **Section 3.8**, shall constitute, at Administrative Agent's option, an Event of Default. In addition, and without limiting any of the foregoing, it shall be a condition precedent to any obligation hereunder of Administrative Agent to release any funds from the Cash Management Account for the payment of Cash Expenses, Net Capital Expenditures and/or Extraordinary Expenses, that (i) Administrative Agent has received and approved the Annual Budget as required pursuant to this **Section 3.8**, and (ii) if Administrative Agent has not approved the Annual Budget as required pursuant to this **Section 3.8**, Borrower and Administrative Agent are reasonably cooperating and complying in a timely manner with the approval process and requirements set forth in this **Section 3.8**. Borrower expressly acknowledges that it shall be responsible for the current and timely payment of Cash Expenses, Net Capital Expenditures and/or Extraordinary Expenses notwithstanding that Administrative Agent's shall not be required to release such funds unless the foregoing pre-conditions to such release have been satisfied.

ARTICLE IV

REPRESENTATIONS, WARRANTIES AND COVENANTS OF BORROWER

For the purpose of inducing the Lenders to make the Loan and for the protection of the security of the Loan Documents, for so long as the Debt or any part thereof remains unpaid, Borrower makes the representations and warranties as set forth in **Section 4.1** below and covenants and agrees as set forth elsewhere in this **ARTICLE IV** as follows:

4.1 **Representations and Warranties of Borrower.** Borrower, for itself and its successors and assigns, does hereby represent and warrant to Administrative Agent and each Lender that:

(a) **Organization and Existence.** Borrower is duly organized and validly existing as a limited partnership in good standing under the laws of the State of Delaware and is qualified to do business in all other jurisdictions in which Borrower is transacting business. Attached hereto as **Exhibit I** is a true, correct and complete (as of the date hereof) organization chart of Borrower. Borrower has delivered to Administrative Agent a true, correct and complete (as of the date hereof) copy of the Organization Documents for each Person (other than a natural person) shown thereon.

(b) **Authorization.** Borrower has the power and authority to execute, deliver and perform the obligations imposed on it under the Loan Documents and to consummate the transactions contemplated by the Loan Documents and has taken all necessary actions in furtherance thereof including, without limitation, that those partners or members of Borrower whose approval is required by the terms of Borrower's organizational documents have duly approved the transactions contemplated by the Loan Documents and have authorized execution and delivery thereof by the respective signatories. To the best of Borrower's knowledge, no other consent by any local, state or federal agency is required in connection with the execution and delivery of the Loan Documents.

(c) **Valid Execution and Delivery.** All of the Loan Documents requiring execution by Borrower have been duly and validly executed and delivered by Borrower.

(d) **Enforceability.** All of the Loan Documents constitute valid, legal and binding obligations of Borrower and are fully enforceable against Borrower in accordance with their terms, subject only to bankruptcy laws and general principles of equity.

(e) **No Defenses.** This Agreement, the Notes, the Mortgage and the other Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense, nor would the operation of any of the terms of this Agreement, the Notes, the Mortgage or any of the other Loan Documents, or the exercise of any right thereunder, render this Agreement, the Notes, the Mortgage or any of the other Loan Documents unenforceable, in whole or in part, or subject to any right of rescission, set-off, counterclaim or defense, including the defense of usury.

(f) **Defense of Usury.** Borrower knows of no facts that would support a claim of usury to defeat or avoid its obligation to repay the principal of, interest on, and other sums or amounts due and payable under, the Loan Documents.

(g) **No Conflict/Violation of Law.** The execution, delivery and performance of the Loan Documents by Borrower will not cause or constitute a default under or conflict with the organizational documents of Borrower, Guarantor or any Constituent Entity of either of

them. The execution, delivery and performance of the obligations imposed on Borrower under the Loan Documents will not cause Borrower or Guarantor or any Constituent Entity of either of them to be in default, including after due notice or lapse of time or both, under the provisions of any agreement, judgment or order to which Borrower or Guarantor or any Constituent Entity of either of them is a party or by which Borrower or Guarantor or any Constituent Entity of either of them is bound.

(h) Compliance with Applicable Laws and Regulations. All of the Improvements and the use of the Property by Borrower comply in all material respects with, and shall remain in compliance in all material respects with, all applicable statutes, rules, regulations and private covenants now or hereafter relating to the ownership, construction, use or operation of the Property, including all applicable health, fire and building codes, and all applicable statutes, rules and regulations pertaining to requirements for equal opportunity, anti-discrimination, fair housing, environmental protection, zoning and land use (collectively, “**Applicable Laws**”). To Borrower’s knowledge, there is no evidence of any illegal activities relating to controlled substances on the Property. To Borrower’s knowledge, all permits, licenses, franchises, approvals, certificates, consents and other approvals required for the legal use, occupancy and operation of the Property for the use currently being made thereof have been obtained and are in full force and effect. To Borrower’s knowledge, all of the Improvements comply in all material respects with all requirements of any applicable zoning and subdivision laws and ordinances except as otherwise disclosed in the zoning report delivered to Administrative Agent in connection with this Agreement.

(i) Consents Obtained. All consents, approvals, authorizations, orders or filings with any court or governmental agency or body, if any, required for the execution, delivery and performance of the Loan Documents by Borrower have been obtained or made.

(j) No Litigation. To Borrower’s knowledge, as of the date hereof, there are no pending actions, suits or proceedings, arbitrations or governmental investigations against the Property, Borrower, Guarantor or any Constituent Entity of Borrower or Guarantor, whether pursuant to the Loan Documents or otherwise, an adverse outcome of which would materially affect Borrower’s performance under this Agreement, the Notes, the Mortgage or any of the other Loan Documents.

(k) Title. Borrower has good and marketable fee simple title to the Property, subject only to those matters expressly listed as exceptions to title (the “**Permitted Exceptions**”) or subordinate matters in the title insurance policy accepted by Administrative Agent in connection with this Agreement (the “**Title Insurance Policy**”). The possession by Borrower of the Property has been peaceful and undisturbed and title thereto has not been disputed or questioned. Further, Borrower has full power and lawful authority to grant, bargain, sell, convey, assign, transfer and mortgage its interest in the Property in the manner and form done or intended under the Loan Documents. Borrower will preserve its interest in and title to the Property and will forever warrant and defend the same to Administrative Agent against any and all claims whatsoever and will forever warrant and defend the validity and priority of the lien and security interest created under the Loan Documents against the claims of all Persons whomsoever, subject to the Permitted Exceptions. The foregoing warranty of title shall survive the foreclosure of the Mortgage and shall inure to the benefit of and be enforceable by

Administrative Agent in the event Administrative Agent acquires title to the Property pursuant to any foreclosure.

(l) Permitted Exceptions. The Permitted Exceptions do not and will not materially and adversely affect (1) the ability of Borrower to pay in full the principal and interest on the Notes in a timely manner or (2) the use of the Property for the use currently being made thereof or the operation of the Property as currently being operated.

(m) First Lien. Upon the execution by Borrower and the recording of the Mortgage, and upon the filing of UCC-1 financing statements or amendments thereto, Administrative Agent will have a valid first lien on the Property and a valid security interest in all personal property encumbered thereby, subject to no liens, charges or encumbrances other than the Permitted Exceptions and purchase money liens on equipment, if any.

(n) ERISA. Borrower has made and shall continue to make all required contributions to all employee benefit plans and multi-employer plans, if any, and Borrower has no knowledge of any material liability which has been incurred by Borrower which remains unsatisfied for any taxes or penalties with respect to any employee benefit plan or any multi-employer plan, and each such plan has been administered in compliance with its terms and the applicable provisions of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) and any other federal or state law and shall continue to be qualified and tax-exempt to the greatest extent permitted thereunder. Other than with respect to any such plans, Borrower is not an entity subject to regulation or restriction under ERISA, and no assets of Borrower are “plan assets” (as defined in ERISA).

(o) Financial Statements; No Contingent Liabilities. The financial statements of Borrower (or any predecessor-in-interest to Borrower as owner of the Property, if applicable, that is an Affiliate of Borrower), of any Affiliate of Borrower, and of Guarantor that were furnished to Administrative Agent in writing (whether in connection with Administrative Agent’s consideration to make the Loan, pursuant to the Loan Documents, or otherwise) are (in each case) complete and correct in all material respects and fairly present the financial condition of the subject thereof (including, without limitation, assets, liabilities and liquidity) as at the date set forth thereon, and the results of operations of such Person for the periods covered by such statements (if applicable). No material adverse change in the financial condition of any such Person has occurred since the respective dates of the most recent financial statements that were furnished to Administrative Agent (whether in connection with Administrative Agent’s consideration to make the Loan, pursuant to the Loan Documents, or otherwise) relating to such Persons. Neither Borrower nor Guarantor has any known material contingent liabilities, except for contingent liabilities of Guarantor explicitly set forth on the financial statements of such Guarantor that were delivered to Administrative Agent in connection with the Loan.

(p) No Other Obligations. Borrower has no material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower is a party or by which Borrower or the Property is otherwise bound, other than (i) obligations incurred in the ordinary course of the operation of the Property that do not violate Section 4.27, and (ii) the Debt.

(q) Fraudulent Conveyance. Borrower (1) has not entered into the Loan or any Loan Document with the actual intent to hinder, delay, or defraud any creditor and (2) received reasonably equivalent value in exchange for its obligations under the Loan Documents. Giving effect to the Loan, the fair saleable value of Borrower's assets exceed and will, immediately following the execution and delivery of the Loan Documents, exceed Borrower's total liabilities, including, without limitation, subordinated, unliquidated, disputed or contingent liabilities. The fair saleable value of Borrower's assets is and will, immediately following the execution and delivery of the Loan Documents, be greater than Borrower's probable liabilities, including the maximum amount of its contingent liabilities or its debts as such debts become absolute and matured. Borrower's assets do not and, immediately following the execution and delivery of the Loan Documents will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur debts and liabilities (including, without limitation, contingent liabilities and other commitments) beyond its ability to pay such debts as they mature (taking into account the timing and amounts to be payable on or in respect of obligations of Borrower).

(r) Investment Company Act. Neither Borrower nor Guarantor is (1) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; or (2) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

(s) Access/Utilities. The Property has adequate rights of access to public ways and is served by adequate water, sewer, sanitary sewer and storm drain facilities. To Borrower's knowledge, except as set forth on the survey delivered to Administrative Agent in connection with this Agreement, all public utilities necessary to the continued use and enjoyment of the Property as presently used and enjoyed are located in the public right-of-way abutting the Property, or enter the Property via permanent easements not subject to termination except with the consent of Borrower, and all such utilities are connected so as to serve the Property without passing over other property. To Borrower's knowledge, except as set forth on the survey delivered to Administrative Agent in connection with this Agreement, all roads, and access to such roads, necessary for the full utilization of the Property for its current purpose have been completed and dedicated to public use and accepted by all governmental authorities or are the subject of access easements for the benefit of the Property without any further condition or cost to Borrower.

(t) Taxes Paid. Borrower has filed all federal, state, county and municipal tax returns required to have been filed by Borrower or has properly filed extensions thereof which remain pending, and has paid all taxes which have become due pursuant to such returns or to any notice of assessment received by Borrower, and Borrower has no knowledge of any basis for additional assessment with respect to such taxes. Further, the Property is free from delinquent Taxes and Other Charges.

(u) Single Tax Lot. The Real Estate consists of a single lot or multiple tax lots; other than any portion of Real Estate which is only an easement parcel, no portion of said tax lot(s) covers property other than the Real Estate or a portion of the Real Estate and no portion of the Real Estate lies in any other tax lot.

(v) Special Assessments. Except as disclosed in the Title Insurance Policy, there are no pending or, to the knowledge of Borrower, proposed special or other assessments for public improvements or otherwise affecting the Property, nor, to the knowledge of Borrower, are there any contemplated improvements to the Property that may result in such special or other assessments.

(w) Flood Zone. No building located on the Property is located in an area as identified by the Federal Emergency Management Agency as an area having special flood hazards or, if so located, the flood insurance required pursuant to **Section 4.4** is in full force and effect with respect to the Property.

(x) Seismic Exposure. The Real Estate is not located in Zone 3 or Zone 4 of the “Seismic Zone Map of the U.S.”

(y) Misstatements of Fact. No certification, representation or statement of fact made in the Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not materially misleading. There is no fact presently known to Borrower, Guarantor or any Constituent Entity of Borrower or Guarantor which has not been disclosed which adversely affects, or in the judgment of a reasonable person might adversely affect, the business, operations or condition (financial or otherwise) of the representing party. Further, and in clarification of the foregoing, all written reports, certificates, affidavits, representations, statements and other data furnished by or on behalf of Borrower, Guarantor and each Constituent Entity of each of them to Administrative Agent, or their respective agents, in connection with the Loan are true and correct in all material respects and do not omit to state any fact or circumstance necessary to make the statements contained therein not materially misleading.

(z) Condition of Improvements. As of the date hereof, the Property has not been damaged by fire, water, wind or other cause of loss since the earlier to occur of the initial visit to or inspection of the Property by Administrative Agent or its agents in connection with the Loan. To Borrower’s knowledge, the Improvements are structurally sound, in good repair and free of defects in materials and workmanship, subject to normal wear and tear, and have been constructed and installed in substantial compliance with the plans and specifications relating thereto. To Borrower’s knowledge, all major building systems located within the Improvements, including, without limitation, the heating and air conditioning systems and the electrical and plumbing systems, are in good working order and condition.

(aa) No Insolvency or Judgment. Neither Borrower, nor Guarantor, nor any Constituent Entity of Borrower or Guarantor, (i) has been or is currently the subject of or a party to any completed or pending bankruptcy, reorganization or insolvency proceeding; or (ii) is currently the subject of any judgment unsatisfied of record or docketed in any court of the state in which the Property is located or in any other court located in the United States. The proposed Loan will not render Borrower or any general partner or member of Borrower insolvent. As used in this Agreement, the term “insolvent” means that the sum total of all of a Person’s liabilities (whether secured or unsecured, contingent or fixed, or liquidated or unliquidated) is in excess of the value of all such Person’s non-exempt assets, i.e., all of the assets of the Person that are available to satisfy claims of creditors.

(bb) No Condemnation. As of the date hereof, no part of the Property has been taken in condemnation or other like proceeding to an extent which would impair the value of the Property, this Agreement, the Mortgage or the Loan or the usefulness of such property for the purposes contemplated by this Agreement, nor is any proceeding pending, or to Borrower's knowledge threatened or known to be contemplated for the partial or total condemnation or taking of the Property.

(cc) No Labor or Materialmen Claims. To Borrower's knowledge, all parties furnishing labor and materials to Borrower (or any predecessor-in-title) or the Property have been paid in full and, to Borrower's knowledge, except for such liens or claims expressly disclosed in, and insured against by the Title Insurance Policy, there are no mechanics', laborers' or materialmen's liens or claims outstanding for work, labor or materials affecting the Property, whether prior to, equal with or subordinate to the lien of the Mortgage.

(dd) No Purchase Options. No tenant, party, firm, corporation or other Person has an option, right of first offer, or right of first refusal, to purchase the Property, any portion thereof or any interest therein.

(ee) Leases. Attached hereto as Exhibit H is a true, correct and complete (in all material respects) Rent Roll as of the date set forth therein. The Property is not subject to any Leases or other agreements related to the leasing or renting of the Property or any portion thereof, except as set forth on the Rent Roll. No Person has any possessory interest in the Property or right to occupy the same, except pursuant to the Leases. Borrower hereby represents that, as of the date hereof: (i) Borrower is the owner and holder of the landlord's interest under the Leases, and there are no prior assignments of all or any portion of the Leases or any portion of the Rents and Profits which are presently outstanding and have priority over the assignment of leases and rents given by Borrower to Administrative Agent in the Mortgage or the Assignment of Leases; and (ii) each Lease constitutes the legal, valid and binding obligation of Borrower and, to Borrower's knowledge, is enforceable against the Tenant thereunder; and (iii) to Borrower's knowledge, except as expressly set forth on the Rent Roll, no default exists, or with the passing of time or the giving of notice or both would exist, under any Lease which would, in the aggregate, have a material adverse effect on Borrower or the Property; and (iv) to Borrower's knowledge, except as expressly set forth on the Rent Roll, or except as expressly disclosed in writing in an estoppel certificate by such Tenant that has been delivered to Administrative Agent in connection with the Loan, no Tenant has any offset or defense to the payment of rent under its Lease; and (v) to Borrower's knowledge, except as expressly set forth on the Rent Roll, or except as expressly disclosed in writing in an estoppel certificate by such Tenant that has been delivered to Administrative Agent in connection with the Loan, no Tenant has, as of the date hereof, paid rent under its Lease more than one (1) month in advance, and the rents under such Lease have not been waived, released, or otherwise discharged or compromised; and (vi) except as previously disclosed in writing to Administrative Agent, to Borrower's knowledge, all work to be performed by Borrower under each Lease has been substantially performed, all contributions to be made by Borrower to the Tenant thereunder have been made and all other conditions precedent to each Tenant's obligations thereunder have been satisfied; and (vii) to Borrower's knowledge, except as expressly set forth on the Rent Roll, or except as expressly disclosed in writing in an estoppel certificate by such Tenant that has been delivered to Administrative Agent in connection with the Loan, each Tenant under a Lease has entered into occupancy of the

premises demised thereunder; and (viii) Borrower has delivered to Administrative Agent true, correct and complete in all material respects copies of all Leases described in the Rent Roll; and (ix) to Borrower's knowledge, each Tenant is free from bankruptcy, reorganization or arrangement proceedings or a general assignment for the benefit of creditors; and (x) no Lease provides any party with the right to obtain a lien or encumbrance upon the Property superior to the lien of the Mortgage.

(ff) Appraisal. All written information provided by or on behalf of Borrower to the appraiser in connection with the appraisal of the property prepared in connection with the closing of the Loan was true, correct and complete in all material respects.

(gg) Boundary Lines. Except as disclosed on the survey delivered to Administrative Agent in connection with this Agreement, all of the Improvements which were included in determining the appraised value of the Property lie wholly within the boundaries and building restriction lines of the Property, and except as specifically described in the Title Insurance Policy or on the survey delivered to Administrative Agent in connection with this Agreement, no improvements on adjoining properties encroach upon the Property, and no easements or other encumbrances upon the Real Estate encroach upon any of the Improvements, in each case so as to materially adversely affect the value or marketability of the Property except those which are insured against by title insurance.

(hh) Survey. To Borrower's knowledge, the survey of the Property delivered to Administrative Agent in connection with this Agreement does not fail to reflect any material matter affecting the Property or the title thereto. To Borrower's knowledge, such survey has been prepared by a duly licensed surveyor in the State in which the Real Estate is located.

(ii) Forfeiture. As of the date hereof, there has not, to Borrower's knowledge, been, and there shall never hereafter be committed by Borrower or any other Person in occupancy of or involved with the operation or use of the Property any act or omission affording the federal government 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 any of the Loan Documents.

(jj) No Broker. No financial advisors, brokers, underwriters, placement agents, agents or finders have been dealt with by Borrower in connection with the Loan, except for any broker whose full commission was paid out of the proceeds of the Loan and is set forth on the Closing Statement.

(kk) Conviction of Criminal Acts. As of the date hereof, each of Borrower, Guarantor, and any Constituent Entity of Borrower or Guarantor, has never been convicted of a crime (which shall not include traffic violations or misdemeanors) and is not currently the subject of any pending or to Borrower's knowledge, threatened criminal investigation or proceeding. Borrower has disclosed to Administrative Agent in writing any civil action (whether or not such action resulted in a judgment) and regulatory or enforcement proceeding to which Borrower and Guarantor was a defendant or respondent within the 20-year period prior to the date hereof that (i) was a Bankruptcy Action or (ii) in which it was alleged that Borrower or such

Guarantor engaged in fraud, deception or misrepresentation, or with respect to which Borrower or Guarantor was ordered or agreed not to engage in the banking or securities industry.

(ll) Security Agreements. There are no security agreements or financing statements affecting or encumbering any of the Property other than the security agreements and financing statements created in favor of Administrative Agent, and other than security agreements or financing statements in favor of third-party lenders arising in connection with purchase money financings (if any) of personal property.

(mm) Homestead. The Property forms no part of any property owned, used or claimed by Borrower as a residence or business homestead and is not exempt from forced sale under the laws of the State in which the Real Estate is located. Borrower hereby disclaims and renounces each and every claim to all or any portion of the Property as a homestead.

(nn) Compliance with Anti-Terrorism, Embargo and Anti-Money Laundering Laws. Except for (a) individual investors in DRA who are not Affiliates of DRA, (b) any Person that is not Controlled by DRA or Wilkow, (c) individual investors in Wilkow that are not Affiliates of Wilkow, or (d) any asset that is not indirectly wholly owned by DRA and/or Wilkow, to Borrower's knowledge, none of Borrower, Guarantor, any Controlling Entity, or any Person who owns any direct equity interest in or controls any of the foregoing, is or has previously been (i) identified on the OFAC List or otherwise qualified as a Prohibited Person; (ii) in violation of any applicable laws relating to anti-money laundering or anti-terrorism, including, without limitation, any applicable laws related to transacting business with Prohibited Persons or the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, U.S. Public Law 107-56, and the related regulations issued thereunder, including temporary regulations, all as amended from time to time; or (iii) in violation of other requirements of Governmental Authority (including, without limitation, requirements applicable to Lender of which Borrower has notice) with respect to anti-money laundering, "know your customer" regulations, and similar matters. Borrower will implement (and maintain in effect until satisfaction of the Loan) procedures, approved by Borrower's Controlling Entity, to ensure that no Equity Holder (and no Person who, after the date hereof, becomes an Equity Holder) causes the foregoing representations not to be true, correct and complete.

(oo) Personal Property. Borrower is the owner, free and clear of all liens and encumbrances except purchase money financing for equipment and Permitted Equipment Leases, of all personal property that is used in, and is reasonably necessary to, the operation of the Property.

(pp) Use of Proceeds. No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulations T, U or X of the Board of Governors of the Federal Reserve System, or to reduce or retire any obligation originally incurred to purchase any margin stock, or for any other purpose which would be inconsistent with such Regulations T, U or X or any other Regulations of such Board of Governors, or for any purposes prohibited by any Applicable Laws or by the terms and conditions of this Agreement or any other Loan Document. Borrower does not own any margin stock (as so defined).

4.2 **Defense of Title.** If the title to the Property or the interest of Administrative Agent therein shall be the subject, directly or indirectly, of any action at law or in equity, or be attached directly or indirectly, or endangered, clouded or adversely affected in any manner, Borrower, at Borrower's expense, shall take all necessary and proper steps for the defense of said title or interest, including the employment of counsel reasonably approved by Administrative Agent (it being agreed that Administrative Agent shall not unreasonably withhold its consent to counsel appointed pursuant to the Title Insurance Policy for such purposes), the prosecution or defense of litigation, and the compromise or discharge of claims made against said title or interest. Notwithstanding the foregoing, in the event that Administrative Agent determines that Borrower is not adequately performing its obligations under this **Section 4.2**, Administrative Agent may, without limiting or waiving any other rights or remedies of Administrative Agent hereunder, take such steps with respect thereto as Administrative Agent shall deem necessary or proper; any and all reasonable costs and expenses incurred by Administrative Agent in connection therewith, together with interest thereon at the Default Rate, shall be immediately paid by Borrower on demand.

4.3 **Performance of Obligations.** Borrower shall pay when due the principal of and the interest on and other amounts evidenced by the Notes. Borrower shall also pay and perform all of the Debt as and when due. Further, Borrower shall promptly perform and comply in all material respects with all covenants, conditions, obligations and prohibitions required of Borrower in connection with any other document or instrument affecting title to the Property, or any part thereof, regardless of whether such document or instrument is superior or subordinate to the Mortgage, except as expressly prohibited by the Loan Documents.

4.4 **Insurance.** Borrower shall, at Borrower's expense, maintain in force and effect on the Property at all times the following insurance:

(a) Insurance against loss or damage to the Property by fire, windstorm, tornado and hail and against loss and damage by such other, further and additional risks as may be now or hereafter embraced by an "all-risk/special" form of insurance policy. The amount of such insurance shall be not less than one hundred percent (100%) of the full replacement (insurable) cost of the Improvements, furniture, furnishings, fixtures, equipment and other items (whether personalty or fixtures) included in the Property and owned by Borrower from time to time, without reduction for depreciation. The determination of the replacement cost amount shall be adjusted annually to comply with the requirements of the insurer issuing such coverage or, at Administrative Agent's election, by reference to such indices, appraisals or information as Administrative Agent determines in its reasonable discretion. Full replacement cost, as used herein, means, with respect to the Improvements, the cost of replacing the Improvements without regard to deduction for depreciation, exclusive of the cost of excavations, foundations and footings below the lowest basement floor, and means, with respect to such furniture, furnishings, fixtures, equipment and other items, the cost of replacing the same, in each case, with inflation guard coverage to reflect the effect of inflation, or annual valuation. Each policy or policies shall contain a replacement cost endorsement and either an agreed amount endorsement (to avoid the operation of any co-insurance provisions) or a waiver of any co-insurance provisions, all subject to Administrative Agent's approval in its reasonable discretion. The deductible with respect to such insurance shall not exceed \$25,000.00 per claim.

(b) Comprehensive Commercial General Liability Insurance for personal injury, bodily injury, death and property damage liability in amounts not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate, together with umbrella coverage in amounts not less than \$25,000,000.00. During any construction on the Property, Borrower's general contractor for such construction shall also provide the insurance required in this Subsection (b). Administrative Agent hereby retains the right to periodically review the amount of said liability insurance being maintained by Borrower and to require an increase in the amount of said liability insurance should Administrative Agent deem an increase to be reasonably prudent under then existing circumstances. There is no deductible or retention impacting claim payments. There is a \$1,000,000 deductible which is reimbursable and fully funded by the Insured. Claims payments are made on a first dollar basis by the insurer without application of any deductible. The insurer is required to pay first dollar when there is a reimbursable deductible on the policy regardless of the deductible or whether or not the insurer is reimbursed pursuant to a deductible.

(c) General boiler and machinery insurance coverage is required if steam boilers or other pressure-fired vessels are in operation at the Property. Minimum liability amount per accident must equal the replacement (insurable) value of the Improvements housing such boiler or pressure-fired machinery. The deductible with respect to such insurance shall not exceed \$25,000.00 per claim.

(d) If the Property or any part of the Improvements thereof is identified by the Secretary of Housing and Urban Development as being situated in an area now or subsequently designated as having special flood hazards (including, without limitation, those areas designated as Zone A or Zone V), flood insurance in an amount equal to the lesser of: (i) the minimum amount required, under the terms of coverage, to compensate for any damage or loss on a replacement basis (or the unpaid balance of the Debt if replacement cost coverage is not available for the type of building insured); or (ii) such lesser amount as may be required by Administrative Agent. The deductible with respect to such insurance shall not exceed \$25,000.00 per occurrence.

(e) During the period of any construction on the Property or renovation or alteration of the Improvements, a so-called "Builder's All-Risk Completed Value/Nonreporting form" insurance policy for any Improvements under construction, renovation or alteration in an amount approved by Administrative Agent and Worker's Compensation Insurance covering all persons engaged in such construction, renovation or alteration. The form, substance and deductible for such insurance, if any, shall be satisfactory to Administrative Agent and consistent with the insurance requirements in **Section 4.4(a)**.

(f) Loss of rents or loss of business income insurance which covers a period of not less than eighteen (18) months together with an extended coverage period of indemnity of not less than one hundred eighty (180) days, and covers the actual loss sustained during the restoration. The amount of such rental loss and/or business interruption insurance shall be increased from time to time while the Loan remains outstanding as and when new Leases and renewal Leases are entered into and the Rents and Profits increase or the estimate of (or the actual) operating expenses for the Property, as may be applicable, increases. The deductible for such insurance, if any, shall be satisfactory to Administrative Agent.

(g) Any other insurance coverage (or higher coverages) running to the benefit of, or required by, Administrative Agent in connection with the making of the Loan and as set forth on the insurance certificates or policies delivered to and accepted by Administrative Agent in connection with the closing of the Loan.

(h) The property insurance, public liability insurance and rental loss and/or business interruption insurance required under Sections 4.4(a), (b) and (f) above shall cover perils of terrorism and acts of terrorism and Borrower shall maintain property insurance, public liability insurance and rental loss and/or business interruption insurance for loss resulting from perils and acts of terrorism on terms (including amounts) consistent with those required under Sections 4.4(a), (b), (e) and (f) above at all times during the term of the Loan.

(i) Such other insurance on the Property or on any replacements or substitutions thereof or additions thereto as may from time to time be required by Administrative Agent against other insurable hazards or casualties which at the time are commonly insured against in the case of property similarly situated to the Property including, without limitation, Sinkhole, Mine Subsidence, Earthquake and Environmental insurance, due regard being given to the height and type of buildings, their construction, location, use and occupancy.

All such insurance shall (i) be with insurers authorized to do business in the state within which the Real Estate is located and who have and maintain a rating of at least "A X" from AM Best and "A" from S&P for 70% of their insurers. However, at no time shall any carrier have a rating lower than "A:VIII" with AM Best. (or, alternatively, if the insurers maintain re-insurance with re-insurers maintaining such ratings, Administrative Agent will not unreasonably withhold its consent to satisfying such required ratings by means of a "cut-through" endorsement allowing recourse directly against a reinsurer maintaining such ratings), (iii) be for terms of at least one year, and (iv) be subject to the reasonable approval of Administrative Agent as to insurance companies, amounts, content, forms of policies, and method by which premiums are paid and expiration dates.

Borrower shall as of the date hereof deliver to Administrative Agent evidence that said insurance policies have been paid current as of the date hereof and copies of such insurance policies and original certificates of insurance signed by an authorized agent of the applicable insurance companies evidencing such insurance, all of which shall be reasonably satisfactory to Administrative Agent. Without limiting the foregoing, all certificates of insurance for the liability insurance referenced in (b) above shall be on the ACORD 25 Form, and all certificates of insurance for other coverages shall be on either the ACORD 27 form or the ACORD 28 form (unless Administrative Agent expressly approves another form). Borrower shall renew all such insurance and, upon request, shall deliver to Administrative Agent information regarding the renewal process at any point within thirty (30) days prior to expiration. Borrower shall provide Administrative Agent with written confirmation that coverages have been bound in accordance with the insurance requirements of the loan at least one (1) day prior to expiration. Certificates of insurance shall be provided to Administrative Agent within five (5) days of renewal. Without limiting the required endorsements to the insurance policies, Borrower further agrees that all such policies shall include a standard, non-contributory, mortgagee clause naming:

Canadian Imperial Bank of Commerce,

acting through its New York Branch, as Administrative Agent,
its successors and/or assigns, as their interests may appear
Attn: Real Estate Group
One South Wacker Drive, Suite 3500
Chicago, Illinois 60606

(x) as an additional insured under all liability insurance policies, and (y) as the first mortgagee and lender's loss payable on all property insurance policies and on all loss of rents or loss of business income insurance policies. Borrower further agrees that all such insurance policies: (1) shall provide for at least thirty (30) days' prior written notice to Administrative Agent prior to any cancellation or termination thereof, at least ten (10) days' prior written notice for cancellation due to nonpayment of premium for Property policies and Liability policies, when available for Liability policies. However, when such notice is not available for Liability policies, Borrower shall provide required notice to Administrative Agent; (2) shall contain an endorsement or agreement by the insurer that any loss shall be payable to Administrative Agent in accordance with the terms of such policy notwithstanding any act or negligence of Borrower which might otherwise result in forfeiture of such insurance; (3) shall waive all rights of subrogation against Administrative Agent; (4) in the event that the Real Estate or the Improvements constitutes a legal non-conforming use under applicable building, zoning or land use laws or ordinances, shall include an ordinance or law coverage endorsement which will contain Coverage A: "Loss Due to Operation of Law" coverage for loss of the undamaged portion of the Improvements (with a minimum liability limit approved by Administrative Agent), Coverage B: "Demolition Cost" and Coverage C: "Increased Cost of Construction" coverages; and (5) may be in the form of a blanket policy provided that, in the event that any such coverage is provided in the form of a blanket policy, Borrower hereby acknowledges and agrees that failure to pay any portion of the premium therefor which is not allocable to the Property or by any other action not relating to the Property which would otherwise permit the issuer thereof to cancel the coverage thereof, will result in Administrative Agent requiring the Property to be insured by a separate, single-property policy. The blanket policy must properly identify and fully protect the Property as if a separate policy were issued for 100% of Replacement Cost at the time of loss and otherwise meet all of Administrative Agent's applicable insurance requirements set forth in this **Section 4.4**. Lender shall be provided with a Schedule of Locations and Values for such blanket policy, upon request. The delivery to Administrative Agent of the insurance policies or the certificates of insurance as provided above shall constitute an assignment of all proceeds payable under such insurance policies relating to the Property by Borrower to Administrative Agent as further security for the Debt. In the event of foreclosure of the Mortgage, or other transfer of title to the Property in extinguishment in whole or in part of the Debt, Borrower shall deliver to Administrative Agent any unearned insurance premiums and proceeds payable under such policies then in force concerning the Property or such purchaser at foreclosure or other transferee in the event of such other transfer of title whether or not the damage to the Property occurred prior to such transfer of title. Approval of any insurance by Administrative Agent shall not be a representation of the solvency of any insurer or the sufficiency of any amount of insurance. In the event Borrower fails to provide, maintain, keep in force or deliver and furnish to Administrative Agent the policies of insurance required by this Agreement or evidence of their renewal as required herein, Administrative Agent may, but shall not be obligated to, procure such insurance and Borrower shall pay all amounts advanced by Administrative Agent therefor, together with interest thereon at the Default Rate from and after

the date advanced by Administrative Agent until actually repaid by Borrower, promptly upon demand by Administrative Agent. Administrative Agent shall not be responsible for nor incur any liability for the insolvency of the insurer or other failure of the insurer to perform, even though Administrative Agent has caused the insurance to be placed with the insurer after failure of Borrower to furnish such insurance. Borrower shall not obtain insurance for the Property in addition to that required by Administrative Agent without the prior written consent of Administrative Agent, which consent will not be unreasonably withheld provided that (i) Administrative Agent is a named mortgagee, loss payee or additional insured (as applicable), (ii) Administrative Agent receives complete copies of all policies evidencing such insurance, and (iii) such insurance complies with all of the applicable requirements set forth herein. Notwithstanding any other provision of this **Section 4.4**, Administrative Agent may agree to accept insurance (i) from an insurer that is rated less than the requirements set forth above, (ii) providing for deductibles higher than those set forth above, (iii) providing for coverage and limits less than those set forth above and/or (iv) that otherwise deviates from the requirements set forth herein, and, in each case, Administrative Agent may terminate any such waiver and reassert the aforesaid requirements at any time.

4.5 **Payment of Taxes.** Except to the extent funds are held in the Impound Account therefor pursuant to **Section 4.6** of this Agreement, (a) when the same become due and payable, Borrower shall pay or cause to be paid all taxes, assessments, water rents, sewer rents, governmental impositions and other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Real Estate, now or hereafter levied or assessed or imposed against, or which are or may become a lien upon, the Property (“**Taxes**”), and all ground rents, maintenance charges and similar charges, now or hereafter levied or assessed or imposed against the Property or any part thereof (the “**Other Charges**”), and (b) Borrower shall furnish Administrative Agent with receipts (or if receipts are not immediately available, with copies of canceled checks evidencing payment with receipts to follow promptly after they become available) showing payment of such Taxes and Other Charges at least ten (10) days prior to the applicable delinquency date therefor. Notwithstanding the foregoing, Borrower may in good faith, by appropriate proceedings and upon notice to Administrative Agent, contest the validity, applicability or amount of any asserted Taxes or Other Charges so long as (x) such contest is diligently pursued, (y) Administrative Agent determines, in its reasonable opinion, that such contest and/or bonding suspends the obligation to pay the Taxes or Other Charges and that nonpayment of such Taxes or Other Charges will not result in the sale, loss, or forfeiture of the Property or any part thereof or any interest of Administrative Agent therein, and (z) prior to the earlier of the commencement of such contest or the delinquency date of the asserted Taxes or Other Charges, Borrower bonds over or deposits in the Impound Account an amount determined by Administrative Agent to be adequate to cover the payment of such Taxes or Other Charges and a reasonable additional sum to cover possible interest, costs and penalties; provided, however, that Borrower shall promptly cause to be paid any amount adjudged by a court of competent jurisdiction to be due, with all interest, costs and penalties thereon, promptly after such judgment becomes final; and provided, further, that in any event each such contest shall be concluded, the Taxes or Other Charges, as the case may be, together with any applicable interest, costs and penalties, shall be paid prior to the date any writ or order is issued under which the Property may be sold, lost or forfeited.

4.6 **Tax and Insurance Impound Account.** Borrower shall establish and maintain in effect with Administrative Agent at all times while the Loan is outstanding an impound account (the "**Impound Account**") for payment of Taxes and Other Charges and of Insurance Premiums, and as additional security for the Debt; provided that, if Insurance Premiums are paid through a blanket policy maintained in accordance with this Loan Agreement, ongoing reserves for Insurance Premiums shall not be required so long as no Event of Default has occurred and is continuing. In addition to the initial deposit to the Impound Account required simultaneously with the execution hereof, commencing on the first Payment Date and continuing thereafter on each Payment Date until the Notes and all other Debt are fully paid and performed, Borrower shall pay to Administrative Agent, for deposit to the Impound Account, an amount equal to one-twelfth (1/12th) of the amount of the annual Taxes and Other Charges that will next become due and payable on the Property, plus one-twelfth (1/12th) of the amount of the annual Insurance Premiums that will next become due and payable, each as reasonably estimated and determined by Administrative Agent. So long as no Event of Default has occurred and is continuing, all sums in the Impound Account shall be held by Administrative Agent in the Impound Account to pay said Taxes and Other Charges, in periodic installments, and Insurance Premiums in one annual installment, in each case, before the same become delinquent or to the extent directly paid by Borrower, to reimburse Borrower as provided below. Borrower shall be responsible for ensuring the receipt by Administrative Agent, at least fifteen (15) days prior to the respective due date for payment thereof, of all bills, invoices and statements for all Taxes and Other Charges and, so long as no Event of Default has occurred and is continuing, Administrative Agent shall pay the Governmental Authority or other party entitled thereto directly to the extent funds are available for such purpose in the Impound Account. Promptly after Borrower receives commercially reasonable written evidence of its payment of all of the Insurance Premiums, Borrower shall provide Administrative Agent with such written evidence and copies of all of the insurance certificates evidencing each of the insurance policies required to be maintained with respect to Borrower and the Property pursuant to this Agreement, and, so long as no Event of Default has occurred and is continuing, Administrative Agent shall reimburse Borrower for such payment to the extent funds are available for such purpose in the Impound Account. In making any payment from the Impound Account, Administrative Agent shall be entitled to rely on any bill, statement or estimate procured from the appropriate public office or insurance company or agent without any inquiry into the accuracy of such bill, statement or estimate and without any inquiry into the accuracy, validity, enforceability or contestability of any tax, assessment, valuation, sale, forfeiture, tax lien or title or claim thereof. If the total funds in the Impound Account are reasonably determined by Administrative Agent to be in excess of the amount of payments required by Administrative Agent for the purposes of the Impound Account, such excess may be credited by Administrative Agent on subsequent payments to be made hereunder or, if such excess is greater than the amounts due from Borrower to Administrative Agent in the month following such determination (and if no Event of Default is then continuing), refunded to Borrower. If at any time Administrative Agent determines that, with the making of all monthly deposits to the Impound Account when due, the Impound Account nonetheless would not contain sufficient funds to pay the next due periodic installments of all Taxes and Other Charges at least 30 days prior to the delinquency date thereof, or to pay the next due annual Insurance Premiums at least 30 days prior to the due date thereof, Borrower shall, within fifteen (15) days after receipt of written notice thereof, deposit with Administrative Agent the full amount of any such deficiency. If Borrower shall fail to deposit with Administrative Agent the full amount of such

deficiency as provided above, Administrative Agent shall have the option, but not the obligation, to make such deposit and all amounts so deposited by Administrative Agent, together with interest thereon at the Default Rate from the date incurred by Administrative Agent until actually paid by Borrower, shall be paid by Borrower on demand.

4.7 Condemnation and Casualty. Borrower shall give Administrative Agent prompt written notice of the occurrence of any casualty affecting, or the institution of any proceedings for eminent domain or for the condemnation of, the Property or any portion thereof. All insurance proceeds on the Property, and all causes of action, claims, compensation, awards and recoveries for any damage, condemnation or taking of all or any part of the Property or for any damage or injury to it for any loss or diminution in value of the Property, are hereby assigned to and shall be paid to Administrative Agent. Administrative Agent may participate in any suits or proceedings relating to any such proceeds, causes of action, claims, compensation, awards or recoveries and Administrative Agent is hereby authorized, in its own name or in Borrower's name, to adjust any loss covered by insurance or any condemnation claim or cause of action, and to settle or compromise any claim or cause of action in connection therewith, and Borrower shall from time to time deliver to Administrative Agent any instruments required to permit such participation; provided, however, that so long as no Default or Event of Default is continuing, Administrative Agent shall not participate in the adjustment of or settle any loss which is less than the lesser of (a) ten percent (10%) of the then outstanding principal balance of the Notes and (b) \$500,000.00. In the event such proceeds are in excess of \$250,000.00, Administrative Agent may, at Administrative Agent's option, (i) hold the balance of any of such proceeds to be used to reimburse Borrower for the cost of restoring and repairing the Property to the equivalent of its original condition or to such other condition as may be approved by Administrative Agent in its reasonable discretion (the "**Restoration**"), and require Borrower to restore the Property to the equivalent of its original condition or to such other condition as may be approved by Administrative Agent in its reasonable discretion, or (ii) apply the balance of such proceeds to the payment of the Debt, whether or not then due. To the extent Administrative Agent, in accordance with the terms hereof, determines to apply insurance or condemnation proceeds to Restoration, Administrative Agent shall do so in accordance with Administrative Agent's then-current policies relating to the, as applicable, restoration of casualty damage on similar properties or restoration or rebuilding of properties that have been the subject of a partial condemnation, provided, however, to the extent such policies conflict with the terms and conditions of this **Section 4.7**, this **Section 4.7** shall control. Administrative Agent shall not exercise its option to apply insurance proceeds or condemnation proceeds to the payment of the Debt if all of the following conditions are met: (A) no Event of Default has occurred and is continuing; (B) in the case of casualty, less than forty percent (40%) of the Improvements has been damaged, or in the case of a taking, less than twenty-five percent (25%) of the improvements has been taken; (C) Administrative Agent determines, in its discretion, that there will be sufficient funds to complete the Restoration (including, without limitation, by means of a deposit of any shortfall by Borrower with Administrative Agent prior to the commencement of the Restoration or promptly upon Administrative Agent's determination that such a shortfall exists); (D) Administrative Agent determines, in its discretion, that the rental income from the Property after completion of the Restoration (including any proceeds of loss of rents or loss of business income payable under the extended coverage period) will be sufficient to meet all operating costs and other expenses, deposits to the Impound Account, deposits to Reserves and loan repayment obligations relating to the Property and that the Debt Service Coverage Ratio

after Restoration will be the same as on the Closing Date and the ratio of the Loan to the value of the Property after Restoration will be the same as on the Closing Date; (E) Administrative Agent determines, in its discretion, that (1) the Restoration will be completed before the earlier of (a) one year before the Scheduled Maturity Date or (b) the expiration of rent loss or business interruption insurance and (2) the rent loss insurance or business interruption insurance referenced in **Section 4.4(f)** will cover all payments due under the Loan during the completion of the Restoration; (F) upon Administrative Agent's request, Borrower provides Administrative Agent evidence of the availability during and after the Restoration of the insurance required to be maintained by Borrower pursuant to **Section 4.4**; and (G) Borrower provides Administrative Agent with written notice within ten (10) days after settlement of the aforesaid insurance or condemnation claim of its request to undertake a Restoration.

Unless Administrative Agent otherwise agrees in writing, any application of any insurance or condemnation awards or proceeds to the Debt shall not extend or postpone the due date of any monthly installments referred to in the Notes or the Loan Documents or change the amount of such installments. Borrower agrees to execute such further evidence of assignment of any insurance or condemnation awards or proceeds as Administrative Agent may reasonably require. Any reduction in the Debt resulting from Administrative Agent's application of any sums received by it hereunder shall take effect only when Administrative Agent actually receives such sums and elects to apply such sums to the Debt and, in any event, the unpaid portion of the Debt shall remain in full force and effect and Borrower shall not be excused in the payment thereof. Partial payments received by Administrative Agent, as described in the preceding sentence, shall be applied first to the final principal payment due under the Notes and thereafter to other principal installments due under the Notes in the inverse order of their due date. If Borrower elects to effect or is otherwise required to effect a Restoration, Borrower shall promptly and diligently, at Borrower's sole cost and expense and regardless of whether the insurance proceeds or condemnation award, as appropriate, shall be sufficient for the purpose, restore, repair, replace and rebuild the Property as nearly as possible to its value, condition and character immediately prior to such casualty or partial taking in accordance with the foregoing provisions and Borrower shall pay to Administrative Agent all reasonable costs and expenses of Administrative Agent incurred in administering said rebuilding, restoration or repair, provided that Administrative Agent makes such proceeds or award available for such purpose. Borrower agrees to execute and deliver from time to time such further instruments as may be reasonably requested by Administrative Agent to confirm the foregoing assignment to Administrative Agent of any award, damage, insurance proceeds, payment or other compensation. Administrative Agent is hereby irrevocably constituted and appointed the attorney-in-fact of Borrower (which power of attorney shall be irrevocable so long as any Debt is outstanding, shall be deemed coupled with an interest, shall survive the voluntary or involuntary dissolution of Borrower and shall not be affected by any disability or incapacity suffered by Borrower subsequent to the date hereof), with full power of substitution, subject to the terms of this **Section 4.7**, to settle for, collect and receive any such awards, damages, insurance proceeds, payments or other compensation from the parties or authorities making the same, to appear in and prosecute any proceedings therefor and to give receipts and acquittances therefor.

4.8 Mechanics' Liens. Borrower shall pay when due all claims and demands of mechanics, materialmen, laborers and others for any work performed or materials delivered for the Real Estate or Improvements; provided, however, that, Borrower shall have the right to

contest in good faith any such claim or demand, so long as it does so diligently, by appropriate proceedings and without prejudice to Administrative Agent, and provided that neither the Property nor any interest therein would be in any danger of sale, loss or forfeiture as a result of such proceeding or contest. In the event Borrower shall contest any such claim or demand, Borrower shall promptly notify Administrative Agent of such contest and thereafter shall, within ten (10) Business Days of Administrative Agent's written request, promptly provide a bond, cash deposit or other security reasonably satisfactory to Administrative Agent to protect Administrative Agent's and the Lenders' interest and security should the contest be unsuccessful. If Borrower shall fail to discharge or provide security against any such claim or demand as aforesaid, Administrative Agent may do so and any and all expenses incurred by Administrative Agent, together with interest thereon at the Default Rate from the date incurred by Administrative Agent until actually paid by Borrower, shall be immediately paid by Borrower on demand.

4.9 **Assignment of Leases and Rents and Profits.** As additional and collateral security for the payment of the Debt and cumulative of any and all rights and remedies herein provided for, pursuant to the Mortgage and the Assignment of Leases Borrower has assigned to Administrative Agent (for the benefit of the Lenders) all existing and future Leases, and all existing and future Rents and Profits.

4.10 **Leases.**

(a) **Entering Into Leases.** Borrower may enter into a proposed Lease (which includes the renewal or extension of an existing Lease (a "**Renewal Lease**")) without the prior written consent of Administrative Agent (except if required pursuant to **Section 4.10(d)** hereof) if such proposed Lease (i) provides for rental rates and terms comparable to existing local market rates and terms (taking into account the type and quality of the tenant) at 90% of the Borrower's budget, as of the date such Lease is executed by Borrower (unless, in the case of a Renewal Lease, the rent payable during such renewal, or a formula or other method to compute such rent, is provided for in the original Lease), for the avoidance of doubt gross rental rates shall be \$22.00/square foot or more (ii) is an arms-length transaction with a bona fide, independent third party tenant for occupancy by the lessee under such Lease, (iii) does not have a materially adverse effect on the value of the Property taken as a whole, (iv) is subject and subordinate to the Mortgage, obligates the lessee thereunder to attorn to Administrative Agent, or any designee, upon transfer of title to the Property thereto, and provides that any cancellation, surrender or material amendment (as described in **Section 4.10(c)**) of such lease without the prior written consent of Administrative Agent shall be voidable by Administrative Agent, (v) does not contain any option or right of first refusal to purchase all or any portion of the Property, (vi) expressly provides that the portion of the Property demised thereby shall be limited to general office use, retail, parking and storage incidental thereto, (vii) is written on the standard form of lease which was either delivered to Administrative Agent simultaneously herewith or was subsequently approved by Administrative Agent, in either case with only immaterial variations from such standard form, which standard form may be revised by Borrower from time to time upon Administrative Agent's prior written approval, which shall not be unreasonably withheld, and (viii) is for space equal to one full floor or less. All proposed Leases which do not satisfy the requirements set forth in this **Section 4.10(a)** shall be subject to the prior approval of Administrative Agent and Borrower shall pay any reasonable costs and expenses incurred by

Administrative Agent in connection therewith (and, in conjunction therewith, Borrower shall provide Administrative Agent with such information as Administrative Agent shall reasonably request with respect to such proposed Lease and the Tenant thereunder). Promptly upon entering into any Lease without Administrative Agent's approval pursuant to this **Section 4.10(a)**, Borrower shall promptly deliver to Administrative Agent a copy of such Lease, together with Borrower's certification that such Lease satisfies all of the conditions of this **Section 4.10**. Upon Administrative Agent's request, Borrower shall deliver to Administrative Agent a true, correct and complete copy of each Lease then in effect. Administrative Agent shall, within thirty (30) days after Borrower's written request, execute and deliver a Subordination Non-Disturbance and Attornment Agreement on Administrative Agent's then current standard form to Tenants under future Leases approved or deemed approved by Lender with such commercially reasonable changes as may be requested by Tenants, from time to time, as are acceptable to Administrative Agent.

(b) **Covenants Regarding Leases.** Borrower (i) shall observe and perform all the obligations imposed upon the lessor under each Lease in all material respects in a commercially reasonable manner, and shall not do or permit to be done anything to impair the value of any Lease as security for the Debt (except as reasonably necessary to address non-performance by Tenants); (ii) upon written request (which request is hereby deemed given with respect to any Major Lease), shall promptly send copies to Administrative Agent of all notices of default which Borrower shall send or receive thereunder; (iii) shall enforce all of the material terms, covenants and conditions contained in each Lease upon the part of the Tenant thereunder to be observed or performed in a commercially reasonable manner; (iv) shall not collect any of the Rents and Profits more than one (1) month in advance (it being acknowledged that security deposits shall not be deemed Rents and Profits collected in advance); (v) shall not execute any other assignment of the lessor's interest in any of the Leases or the Rents and Profits (other than to Administrative Agent as security for the Debt); and (vi) shall not consent to any assignment of or subletting under any Lease not in accordance with the terms of such Lease, in each case without the prior written consent of Administrative Agent, which consent shall not be unreasonably withheld, conditioned or delayed. Within thirty (30) days after Administrative Agent's written request therefor (which request, other than a request for a Tenant estoppel certificate pursuant to **Section 4.29** hereof, shall not be made more than once in any calendar year absent an Event of Default), Borrower shall deliver to Administrative Agent an estoppel certificate from each Tenant.

(c) **Amendments to Leases.** Provided no Default exists hereunder, Borrower may, without the prior written consent of Administrative Agent (except if required pursuant to **Section 4.10(d)** hereof), amend, modify or waive the provisions of any Lease or terminate, reduce rents under, accept a surrender of space under, or shorten the term of, any Lease (including any guaranty, letter of credit or other credit support with respect thereto) (any of the foregoing, a "**Lease Modification**"), provided that (i) such Lease Modification (taking into account, in the case of a termination, reduction in rent, surrender of space or shortening of term, the planned alternative use of the affected space) does not have a materially adverse effect on the value of the Property taken as a whole, (ii) such Lease Modification is in the normal course of business and is consistent with sound and customary leasing and management practices for similar properties in the community in which the Property is located, and (iii) such Lease, as amended, modified or waived, is otherwise in compliance with the requirements of this

Agreement and any subordination agreement binding upon Administrative Agent and the Lenders with respect to such Lease. A termination of a Lease with a Tenant who is in default beyond applicable notice and grace periods shall not be considered an action which has a materially adverse effect on the value of the Property taken as a whole. Any Lease Modification which does not satisfy the requirements set forth in this **Section 4.10(c)** shall be subject to the prior approval of Administrative Agent and Borrower shall pay any reasonable costs and expenses incurred by Administrative Agent in connection therewith (and, in conjunction therewith, Borrower shall provide Administrative Agent with such information as Administrative Agent shall reasonably request with respect to such proposed Lease Modification and the Tenant under the Lease affected thereby). Promptly upon entering into any Lease Modification without Administrative Agent's approval pursuant to this **Section 4.10(c)**, Borrower shall deliver to Administrative Agent a copy of such instrument, together with Borrower's certification that such instrument satisfies all of the conditions of this **Section 4.10**.

(d) **Major Leases.** Notwithstanding anything contained herein to the contrary, Borrower shall not, without the prior written consent of Administrative Agent, which consent may or may not be provided by Administrative Agent in Administrative Agent's reasonable discretion, enter into, renew, extend, amend, modify, waive any provisions of, terminate, reduce rents under, accept a surrender of space under, or shorten the term of, any Major Lease.

(e) **Security Deposits.** All security deposits of Tenants, whether held in cash or in any other form, shall be held in compliance with Applicable Laws. All such security deposits may be commingled with any other funds of Borrower or any other Person to the extent permitted by Applicable Laws. Any bond or other instrument which Borrower is permitted to hold in lieu of cash security deposits under any applicable legal requirements (i) shall be maintained in full force and effect in the full amount of such deposits unless replaced by cash deposits as hereinabove described; (ii) shall be issued by an institution reasonably satisfactory to Administrative Agent; (iii) shall, if permitted pursuant to any Applicable Laws, name Administrative Agent as payee or mortgagee thereunder or, at Administrative Agent's option, be assigned or fully assignable to Administrative Agent; and (iv) shall, in all respects, comply with any Applicable Laws and otherwise be reasonably satisfactory to Administrative Agent. Borrower shall, upon written request, provide Administrative Agent with evidence reasonably satisfactory to Administrative Agent of Borrower's compliance with the foregoing. Upon an Event of Default, Borrower shall, immediately upon Administrative Agent's written request (if permitted by applicable law), deliver to Administrative Agent the security deposits (and any interest previously earned thereon and not disbursed to the Person(s) lawfully entitled to receive same) with respect to all or any portion of the Property, to be held by Administrative Agent subject to the terms of the Leases and Applicable Laws.

(f) **Free Rent for Major Leases.** Borrower covenants and agrees that if during the term of the Loan, Borrower enters into a new Major Lease that provides either:

(i) that the applicable Tenant is entitled to "free rent," only during the initial twelve-month period of the Lease, then Borrower shall deposit with Administrative Agent the funds to be reserved in an amount equal to the aggregate amount of such free rent due under such Major Lease. Administrative Agent shall release to Borrower an amount equal to the amount that otherwise would have been paid by such Tenant for such

months' rent to the Monthly Payment Amount due in such month to be applied by Borrower on each monthly payment date during such "free rent" period; or

(ii) that the applicable Tenant is entitled to "free rent" outside of the first twelve-month period of the lease term (a "**Non-Standard Free Rent Period**"), then Borrower shall deposit with Administrative Agent the funds to be reserved in an amount equal to the maximum "free rent" due in any consecutive twelve-month period under such Major Lease. Upon Borrower's written request, Administrative Agent shall release a portion of such "free rent" to Borrower (x) if during the lease term, the maximum amount of "free rent" provided to such Tenant is reduced to an amount less than the amount initially deposited, an amount equal to the difference between the initial amount deposited for such lease and the then current maximum amount due under such Major Lease in any twelve-month period, and (ii) upon the expiration of all free rent under such Major Lease, the balance of any amounts on deposit with Administrative Agent with respect to such Major Lease. For illustrative purposes only, if at the commencement of the term of a Major Lease, the maximum amount of free rent in any twelve month period is five months' rent, then Borrower would deposit with Administrative Agent an amount equal to five months' rent. If in the second year of the term, the maximum amount of "free rent" in any twelve-month period is three months' rent, then after receipt of written request by Borrower, Administrative Agent shall disburse to Borrower an amount equal to two months' free rent.

Notwithstanding the foregoing, (i) Borrower, at its option, shall not be required to deposit any funds with Administrative Agent for Non-Standard Free Rent Periods until such time as Borrower elects for the applicable Major Lease to be included in the calculation of Gross Revenue and (ii) if "free rent" is provided in the first twelve months of the lease term and then not provided until the last twelve months of the lease term, so long as the term of such Major Lease exceeds the Maturity Date (after giving effect to the options to extend the Maturity Date), Borrower shall not be required to escrow the amount of "free rent" with Administrative Agent other than the sums due in the first twelve months, which shall be disbursed in accordance with Subsection 2.2(f)(i) above and such Major Lease shall be included in the calculation of Gross Revenue.

(g) Consent of Administrative Agent. To the extent Administrative Agent's consent is required pursuant to this **Section 4.10**, the following shall apply:

(i) If Administrative Agent does not respond within seven (7) Business Days after its receipt of any written request for Administrative Agent's consent pursuant to this **Section 4.10**, then Borrower may send a second written request for Administrative Agent's consent to Administrative Agent in an envelope marked "PRIORITY" and shall conspicuously state, in large bold type, that "**THIS IS A REQUEST FOR ADMINISTRATIVE AGENT'S CONSENT IN CONNECTION WITH THAT CERTAIN LOAN TO G&I IX MJW LAKE POINTE III & IV LLC, IN THE PRINCIPAL AMOUNT OF UP TO THIRTEEN MILLION EIGHT HUNDRED FIFTEEN THOUSAND AND NO/100 DOLLARS (\$13,815,000.00) (THE "LOAN"). THE RESPONSE OF CANADIAN IMPERIAL BANK OF COMMERCE, ACTING THROUGH ITS NEW YORK BRANCH, AS**

ADMINISTRATIVE AGENT IN CONNECTION WITH THE LOAN (“ADMINISTRATIVE AGENT”), IS REQUESTED WITHIN FIVE (5) BUSINESS DAYS AFTER RECEIPT HEREOF. FAILURE BY ADMINISTRATIVE AGENT TO RESPOND HERETO WITHIN FIVE (5) BUSINESS DAYS AFTER RECEIPT OF THIS WRITTEN REQUEST TOGETHER WITH ANY ADDITIONAL INFORMATION REASONABLY REQUESTED BY ADMINISTRATIVE AGENT IN CONNECTION WITH THIS WRITTEN REQUEST SHALL BE DEEMED TO CONSTITUTE SUCH CONSENT. Borrower shall promptly provide to Administrative Agent all such additional information as Administrative Agent may reasonably request in connection with any such first and/or second written request to Administrative Agent for consent provided pursuant to this **Section 4.10(g)(i)**, including, without limitation, copies of any such additional information as may have been previously delivered by Borrower to Administrative Agent.

(ii) If Administrative Agent does not respond within five (5) Business Days after its receipt of such second written request for consent provided pursuant to **Section 4.10(g)(i)** of this Agreement together with any additional information reasonably requested by Administrative Agent in connection with such written request, then Administrative Agent’s failure to respond shall be deemed to constitute such consent.

4.11 Restrictions on Alienation and Further Encumbrances.

(a) Borrower acknowledges that Administrative Agent and the Lenders have relied upon the principals of Borrower and their experience in owning and operating properties similar to the Property in connection with the closing of the Loan. Accordingly, except for Permitted Transfers, notwithstanding anything to the contrary contained in **Section 8.6** hereof, neither the Property, nor any part thereof or interest therein, shall be sold, conveyed, disposed of, alienated, hypothecated, leased (except to Tenants under Leases which are not in violation of **Section 4.10**), assigned, pledged, mortgaged, further encumbered or otherwise transferred, nor Borrower shall be divested of its title to the Property or any interest therein, in any manner or way, whether voluntarily or involuntarily (any of the foregoing, a “**Transfer**”), in each case without the prior written consent of Administrative Agent being first obtained, which consent may be withheld in Administrative Agent’s sole discretion. For the purposes of this Agreement and the other Loan Documents, a Transfer shall also include (and each of the following shall also be prohibited without the prior written consent of Administrative Agent being first obtained in each case, which consent may be withheld in Administrative Agent’s sole discretion): (i) transfers of direct or indirect ownership interests in Borrower, and the creation of new or additional ownership interests in Borrower, or in any Constituent Entity of Borrower, (ii) an installment sales agreement with respect to the Property or any portion thereof, (iii) a Lease of all or substantially all of the Property other than for actual occupancy by a space tenant thereunder, (iv) any sale or assignment of any of Borrower’s right, title and interest in, to and under any Leases or Rents and Profits, other than to Administrative Agent, (v) if Borrower or any Constituent Entity of Borrower is a partnership or joint venture, the addition, change, removal or resignation of any general partner, or the transfer or pledge of any interest (whether as a general partner or limited partner) of any general partner in such partnership, (vi) if Borrower or any Constituent Entity of Borrower is a limited liability company, the addition, change, removal or resignation of any manager or managing member, or the transfer or pledge of any interest

(whether as a managing member or otherwise) of such manager or managing member in such limited liability company, or the transfer of control (as defined in **Section 4.27**) of such manager or managing member, and (vii) any merger, consolidation, reorganization, sale or liquidation of any of the following entities: G&I IX Investment Lake Pointe LLC; and G&I IX MJW Lake Pointe III & IV LLC (each a “**Restricted Party**” and collectively, “**Restricted Parties**”). For the sake of clarity, Administrative Agent acknowledges that none of (i) the sale or pledge of any direct or indirect interest in any entity that is not a Restricted Party (excluding, however, DRA, except to the limited extent permitted in **Section 4.11(b)**, below), (ii) a change in Control of any entity that is not a Restricted Party (excluding, however, DRA, except to the limited extent permitted pursuant to the definitions of “DRA” and “DRA Successor” and pursuant to **Section 4.11(b)**, below), or (iii) the pledges of uncalled capital contributions in DRA Growth and Income Master Fund IX, LLC (but not the pledges of the ownership) made in connection with a subscription line facility extended to DRA G&I Fund IX Real Estate Investment Trust and DRA Growth and Income Fund IX, LLC, shall be a violation of this **Section 4.11** and shall be deemed Permitted Transfers.

(b) Notwithstanding anything to the contrary in **Section 4.11(a)** of this Agreement, provided no Event of Default shall be continuing (except with respect to Permitted Transfers under **Sections 4.11(b)(i), (ii)** and **(v)**, below, which shall be permitted notwithstanding the occurrence and continuance of an Event of Default), the Loan Documents do not restrict and shall not restrict, and the following Transfers shall be permitted without Lender’s consent (each of the following, a “**Permitted Transfer**”):

(i) any transfers among or between Restricted Parties, Wilkow, DRA (or a DRA Successor) or any subsidiaries thereof; provided that after such transfers, either or both of Wilkow and DRA (or a DRA Successor), but not any third parties, continue to have indirect control over Borrower and the Property; and

(ii) the transfer (but not the pledge), merger, consolidation, reorganization, issuance, sale, conversion, redemption and repurchase of common or preferred equity, option or other right to acquire common or preferred equity, in one or a series of transactions, of the stock, partnership interests or membership interests (as the case may be) in (1) a Restricted Party, to the extent not already a Permitted Transfer pursuant to **Section 4.11(b)(i)** above, or (2) DRA (subject to the requirements set forth in the definitions of “DRA” and “DRA Successor”), after which in each case no change in Control of Borrower or the Property has occurred (it being agreed that if DRA (or a DRA Successor), DRA Fund IX Acquisition LLC and/or Guarantor, but not any third parties, continue to have indirect Control over Borrower and the Property then a change in Control of Borrower or the Property has not occurred);

(iii) the sale, transfer, conversion, redemption and repurchase of common or preferred equity, options or other rights to acquire common or preferred equity or issuance of shares of common stock in any entity that is a publicly traded entity, provided such shares of common stock are listed on the New York Stock Exchange or another nationally recognized stock exchange to the extent not already a Permitted Transfer pursuant to **Section 4.11(b)(i)** or **(ii)** above; and

(iv) provided, further, that, with respect to the transfers listed in clause (ii) above, (A) Administrative Agent shall receive not less than thirty (30) days prior written notice of any transfers which (together with any previous transfer(s) for which no prior written notice has been provided) results in any Person owning, directly or indirectly, ten percent (10%) or more of the interests in Borrower or any other Restricted Party that is not a publicly traded entity, which Person did not previously own ten percent (10%) or more of such interests, (B) after giving effect to such transfer(s) DRA (or a DRA Successor or DRA Financing) and/or Wilkow shall own at least 50% (directly or indirectly) of the equity ownership interests in each of Borrower and any general partner of Borrower, (C) after giving effect to such transfers, the Property shall continue to be managed by the existing Property Manager or a new property manager approved in accordance with the applicable terms and conditions hereof, (D) in the case of the transfer of any direct equity ownership interests in Borrower or in any general partner of Borrower, such transfers shall be conditioned upon continued compliance with the relevant provisions of **Sections 4.27 and 4.32** hereof, (E) in the event that a non-consolidation opinion was previously delivered in connection with the Loan or a Secondary Market Transaction, in the case of (1) the transfer of the management of the Property to a new affiliated property manager in accordance with the applicable terms and conditions hereof, or (2) the transfer of any direct or indirect equity ownership interests in any Restricted Party that results in any Person and its Affiliates owning in excess of forty-nine percent (49%) of the direct or indirect equity ownership interests in Borrower or in any general partner of Borrower that did not own the same on the date hereof or at the time of the delivery of any other non-consolidation opinion prior to such transfer, such transfers shall be conditioned upon delivery to Administrative Agent of a new non-consolidation opinion addressing such transfer, (F) Administrative Agent shall have determined that any Person that is not a publicly traded company who newly acquires ten percent (10%) or more of the equity interests of a Restricted Party as a result of any such transfers is not a Disqualified Person, and (G) Borrower shall reimburse all costs incurred by Administrative Agent in connection with the review of such transfer and confirmation of satisfaction of the requirement of this section, including, without limitation, reasonable attorney's fees.

4.12 Use of Rents and Profits. Except to the extent provided to the contrary in the Loan Documents, all Rents and Profits generated by or derived from the Property shall first be utilized solely for current expenses directly attributable to the ownership and operation of the Property, including, without limitation, current expenses relating to Borrower's liabilities and obligations with respect to this Agreement and the other Loan Documents, and none of the Rents and Profits generated by or derived from the Property shall be diverted by Borrower, distributed to the Equity Holders or utilized for any other purposes, in each case unless all expenses attributable to the ownership and operation of the Property then due and payable have been fully paid and satisfied. Without limiting the foregoing, Borrower shall pay prior to delinquency all utility charges (e.g., for gas, electricity, water and sewer services and similar charges) which are incurred by Borrower or its agents, and all other assessments or charges of a similar nature, or assessments payable pursuant to any restrictive covenants, whether public or private, affecting the Real Estate and/or the Improvements or any portion thereof, whether or not such assessments or charges are or may become liens thereon.

4.13 **Access Privileges and Inspections.** Administrative Agent and the agents, representatives and employees of Administrative Agent shall, subject to the rights of Tenants, have full and free access to the Real Estate and the Improvements and any other location where books and records concerning the Property are kept at all reasonable times and upon reasonable prior notice for the purposes of inspecting the Property and of examining, copying and making extracts from the books and records of Borrower relating to the Property. Borrower shall lend assistance to all such agents, representatives and employees of Administrative Agent as is reasonably required. Upon reasonable notice to Borrower, Borrower shall make principals and executives of Borrower available at reasonable times to meet with Lender to review and discuss the status of the Loan and the Property.

4.14 **Waste; Alteration of Improvements.** Borrower shall not intentionally commit, suffer or permit any waste on the Property nor take any actions that might invalidate any insurance carried on the Property. Borrower shall maintain the Property in good condition and repair, subject to normal wear and tear. No part of the structural Improvements may be removed, demolished or materially altered, in each case, without the prior written consent of Administrative Agent, except as required pursuant to Applicable Laws or to cause the Property not to be in violation of any Lease approved or deemed approved pursuant to **Section 4.10.** Without the prior written consent of Administrative Agent in each case, Borrower shall not commence construction of any improvements on the Real Estate other than improvements required for the maintenance or repair of the Property or required pursuant to Applicable Laws or to cause the Property not to be in violation of any Lease approved or deemed approved pursuant to **Section 4.10** of this Agreement.

4.15 **Zoning.** Without the prior written consent of Administrative Agent in each case, Borrower shall not (a) change the use of the Property or (b) seek, make, suffer, consent to or acquiesce in any change in the zoning or conditions of use of the Real Estate or the Improvements. If, under applicable zoning provisions, the use of all or any part of the Real Estate or the Improvements is or becomes a nonconforming use, Borrower shall not cause or permit such use to be discontinued or abandoned without the prior written consent of Administrative Agent. Without Administrative Agent's prior written consent, Borrower shall not file or subject any part of the Real Estate or the Improvements to any declaration of condominium or co-operative or convert any part of the Real Estate or the Improvements to a condominium, co-operative or other form of multiple ownership and governance.

4.16 **Financial Statements; Books and Records; Informational Reporting.** Borrower shall keep accurate books and records of account of the Property and its own financial affairs sufficient to permit the preparation of financial statements therefrom in accordance with generally accepted accounting principles or other principles acceptable to Administrative Agent. Administrative Agent and its duly authorized representatives shall have the right to examine, copy and audit Borrower's records and books of account at all reasonable times upon reasonable prior notice. So long as all or any portion of the Loan is outstanding, Borrower shall provide to Administrative Agent, in addition to any other financial statements required hereunder or under any of the other Loan Documents, the following financial statements and information, all of which must be certified to Administrative Agent as being true and correct by Borrower or the Person to which they pertain, as applicable, be prepared in accordance with generally accepted

accounting principles consistently applied (or other principles acceptable to Administrative Agent) and be in form and substance reasonably acceptable to Administrative Agent:

(a) within forty-five (45) days of Administrative Agent's request, copies of all tax returns filed by Borrower;

(b) monthly operating statements for the Property (including a current Rent Roll), within twenty-five (25) days after the end of each month during any Cash Management Period;

(c) quarterly operating statements for the Property (including a current Rent Roll, calculation of Net Operating Income and occupancy statistics), within sixty (60) days after the end of each calendar quarter;

(d) (i) annual financial statements for Borrower (setting forth Borrower's balance sheet and operating statements for the Property), certified by an officer of Borrower, within one hundred twenty (120) days after the end of each calendar year, and (ii) annual unaudited financial statements for Guarantor, certified by an officer of Guarantor, within one hundred twenty (120) days after the end of each calendar year;

(e) such other information with respect to the Property, Borrower, the principals in Borrower, and Guarantor which may reasonably be requested from time to time by Administrative Agent, within a reasonable time after the applicable request.

After ten (10) days' written notice from Administrative Agent, if any of the aforementioned materials are not furnished to Administrative Agent within the applicable time periods, in addition to any other rights and remedies of Administrative Agent and/or the Lenders contained herein, Administrative Agent shall have the right, but not the obligation, to obtain the same by means of an audit by an independent certified public accountant selected by Administrative Agent, in which event Borrower agrees to pay, or to reimburse Administrative Agent for, any reasonable expense of such audit and further agrees to provide all necessary information to said accountant and to otherwise cooperate in the making of such audit.

4.17 Further Documentation. Borrower shall, on the request of Administrative Agent and at the expense of Borrower, promptly: (a) correct any defect, error or omission which may be discovered in the contents of this Agreement or in the contents of any of the other Loan Documents; (b) execute, acknowledge, deliver and record or file such further instruments (including, without limitation, further mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements and assignments of rents or leases) and promptly do such further acts as may be necessary or desirable in the reasonable judgment of Administrative Agent to carry out more effectively the purposes of this Agreement and the other Loan Documents and to subject to the liens and security interests hereof and thereof any property intended by the terms hereof and thereof to be covered hereby and thereby, including specifically, but without limitation, any renewals, additions, substitutions, replacements or appurtenances to the Property; (c) execute, acknowledge, deliver, procure and record or file any document or instrument (including specifically any financing statement) deemed advisable by Administrative Agent to protect, continue or perfect the liens or the security interests hereunder

against the rights or interests of third Persons; and (d) furnish to Administrative Agent, upon Administrative Agent's written request, a duly acknowledged written statement and estoppel certificate addressed to such party or parties as directed by Administrative Agent and in form and substance supplied by Administrative Agent and reasonably acceptable to Borrower, setting forth all amounts due under the Notes, stating whether any Default or Event of Default exists, stating whether any offsets or defenses exist against the Debt, affirming that the Loan Documents are the legal, valid and binding obligations of Borrower, and containing such other matters as Administrative Agent may reasonably require.

4.18 Payment of Costs; Reimbursement to Administrative Agent. Borrower shall pay all reasonable costs and expenses of every character incurred in connection with the Loan or otherwise attributable or chargeable to Borrower as the owner of the Property. Borrower shall reimburse Administrative Agent upon receipt of notice for all reasonable costs and expenses (including attorneys' fees and disbursements) incurred by Administrative Agent in connection with the Loan, including, without limitation, (i) the preparation, negotiation, execution and delivery of the Loan Documents and the consummation of the transactions contemplated thereby and all the costs of furnishing all opinions by counsel for Borrower; (ii) Borrower's and Administrative Agent's ongoing performance under and compliance with the Loan Documents, including confirming compliance with environmental and insurance requirements; (iii) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications of or under any Loan Document and any other documents or matters requested by Administrative Agent or Borrower; (iv) filing and recording of any Loan Documents; (v) title insurance, surveys, inspections and appraisals; (vi) the creation, perfection or protection of Administrative Agent's liens on the Property and all accounts established or created pursuant to the Loan Documents (including fees and expenses for title and lien searches, intangibles taxes, personal property taxes, mortgage recording taxes, due diligence expenses, travel expenses, accounting firm fees, costs of appraisals, environmental reports, surveys and engineering reports and UCC search, filing, continuance and transfer fees); (vii) enforcing or preserving any rights in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation, in each case against, under or affecting Borrower, the Loan Documents, the Property, or any other security given for the Loan; (viii) fees charged by Rating Agencies in connection with the Loan or any modification thereof; (ix) enforcing any obligations of or collecting any payments due from Borrower under any Loan Document or with respect to the Property or in connection with any refinancing or restructuring of the Loan in the nature of a "work-out", or any insolvency or bankruptcy proceedings; (x) the fees and expenses of any special servicer retained in respect of the Loan; (xi) tax monitoring and services fees; (xii) annual replacement cost valuation fees to the extent not incurred directly by Borrower and (xiii) any customary fees associated with monitoring and managing reserve and/or escrow accounts. If Borrower defaults in any such payment, which default is not cured within any applicable grace or cure period, Administrative Agent may pay the same and Borrower shall reimburse Administrative Agent on demand for all reasonable costs and expenses incurred or paid by Administrative Agent, together with such interest thereon at the Default Rate from and after the date of Administrative Agent's making such payment until reimbursement thereof by Borrower. Further, Borrower shall promptly notify Administrative Agent in writing of any litigation or threatened litigation affecting the Property, or any other demand or claim which, if enforced, could impair or threaten to impair Administrative Agent's or the Lenders' security hereunder. Without limiting or waiving any other rights and remedies of Administrative Agent and/or the

Lenders hereunder, if any action or proceeding of any kind (including, but not limited to, any bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding) is commenced which might affect Administrative Agent's or the Lenders' interest in the Property or Administrative Agent's and/or the Lenders' right to enforce its security, or upon the occurrence of any other Event of Default, then Administrative Agent may, at its option, with or without notice to Borrower, make any appearances, disburse any sums and take any actions as may be necessary or desirable to protect or enforce the security of this Agreement, the Mortgage and the other Loan Documents or to remedy such Event of Default (without, however, waiving any Default). Borrower agrees to pay on demand all reasonable expenses of Administrative Agent incurred with respect to the foregoing (including, but not limited to, reasonable fees and disbursements of counsel), together with interest thereon at the Default Rate from and after the date on which Administrative Agent incurs such expenses until reimbursement thereof by Borrower. The necessity for any such actions and of the amounts to be paid shall be determined by Administrative Agent in its discretion. Upon the occurrence and during the continuance of an Event of Default, Administrative Agent is hereby empowered to enter and to authorize others to enter upon the Property or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to Borrower or any Person in possession holding under Borrower. Borrower hereby acknowledges and agrees that the remedies set forth in this **Section 4.18** shall be exercisable by Administrative Agent, and any and all payments made or reasonable costs or expenses incurred by Administrative Agent in connection therewith shall be included in the "Debt" and shall be, without demand, immediately repaid by Borrower with interest thereon at the Default Rate, notwithstanding the fact that such remedies were exercised and such payments made and costs incurred by Administrative Agent after the commencement of a Bankruptcy Action with respect to Borrower. Borrower hereby indemnifies and holds Administrative Agent and the Lenders harmless from and against all actual loss and reasonable costs and expenses with respect to any Event of Default hereof, any liens (i.e., judgments, mechanics' and materialmen's liens, or otherwise), charges and encumbrances filed against the Property in violation of this Agreement, and from any claims and demands for damages or injury, including claims for property damage, personal injury or wrongful death, arising out of or in connection with any accident or fire or other casualty on the Real Estate or the Improvements or any nuisance made or suffered thereon, including, in any case, reasonable attorneys' fees, costs and expenses as aforesaid, whether at pretrial, trial or appellate level. The obligations and liabilities of Borrower under this **Section 4.18** shall survive payment in full of the Debt. This **Section 4.18** shall not be construed to require Administrative Agent or any Lender to incur any expenses, make any appearances or take any actions.

4.19 **Security Interest and Security Agreement.** Borrower acknowledges and agrees that the Mortgage is also a security agreement under the Uniform Commercial Code for the UCC Collateral.

4.20 **Easements and Rights-of-Way.** Borrower shall not grant any easement or right-of-way with respect to all or any portion of the Real Estate or the Improvements without the prior written consent of Administrative Agent. The purchaser at any foreclosure sale under the Mortgage may, at its discretion, disaffirm any easement or right-of-way granted in violation of any of the provisions of this Agreement and may take immediate possession of the Property free from, and despite the terms of, such grant of easement or right-of-way. If Administrative Agent consents to the grant of an easement or right-of-way, Administrative Agent agrees to grant

such consent provided that Administrative Agent is reimbursed for all reasonable out-of-pocket expenses, including, without limitation, reasonable attorneys' fees, incurred by Administrative Agent in the review of Borrower's request and in the preparation of documents effecting the subordination. Borrower shall at all times comply in all material respects with all easement agreements, reciprocal easement agreements, declarations, restrictive covenants and any other similar types of agreements now or hereafter affecting the Property, and Borrower shall not amend, modify or terminate any such easement agreements, reciprocal easement agreements, declarations, restrictive covenants or any other similar types of agreements without Administrative Agent's prior written consent.

4.21 **Compliance with Laws.** Borrower shall at all times comply in all material respects with all Applicable Laws, even if such compliance shall require structural changes to the Property. Borrower may, upon providing Administrative Agent with security satisfactory to Administrative Agent, proceed diligently and in good faith to contest the validity or applicability of any Applicable Law so long as the Property shall not be subject to any lien, charge, fine or other liability, and shall not be in danger of being forfeited, lost or closed, during or as a result of such contest. Borrower shall not alter the Property in any manner that would materially increase Borrower's responsibilities for compliance with Applicable Laws without the prior approval of Administrative Agent. Borrower shall not use or occupy, or willfully allow the use or occupancy of, the Property in any manner which violates any Lease or any Applicable Law or which constitutes a public or private nuisance or which makes void, voidable or cancelable, or increases the premium of, any insurance then in force with respect thereto. Borrower shall, from time to time, upon Administrative Agent's written request, provide Administrative Agent with evidence reasonably satisfactory to Administrative Agent that the Property complies with all Applicable Laws. Borrower shall keep all material licenses, permits, franchises, certificates, consents and other approvals necessary for the operation of the Property in full force and effect.

4.22 **Additional Taxes.** In the event of the enactment after this date of any law of the State where the Real Estate is located or of any other governmental entity deducting from the value of the Property for the purpose of taxation any lien or security interest thereon, or imposing upon Administrative Agent the payment of the whole or any part of the taxes required to be paid by Borrower, or changing in any way the laws relating to the taxation of mortgages or security agreements or debts secured by mortgages or security agreements or the interest of lenders or secured parties in the property covered thereby, or the manner of collection of such taxes, so as to materially adversely affect this Agreement, the Mortgage or the Debt or Administrative Agent, then, and in any such event, Borrower, upon written demand by Administrative Agent, shall pay such Taxes or Other Charges prior to delinquency, or reimburse Administrative Agent therefor; provided, however, that if in the opinion of counsel for Administrative Agent (a) it might be unlawful to require Borrower to make such payment, or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in either such event, Administrative Agent may elect, by notice in writing given to Borrower, to declare all of the Debt to be and become due and payable in full ninety (90) days from the giving of such notice.

4.23 **Borrower's Waivers.**

(a) To the full extent permitted by applicable law, Borrower shall not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, moratorium or extension, or any law now or hereafter in force providing for the reinstatement of the Debt prior to any sale of the Property to be made pursuant to any provisions contained herein or prior to the entering of any decree, judgment or order of any court of competent jurisdiction, or any right under any statute to redeem all or any part of the Property so sold. Borrower, for Borrower and Borrower's successors and assigns, and for any and all Persons ever claiming any interest in the Property, to the full extent permitted by applicable law, hereby knowingly, intentionally and voluntarily with and upon the advice of competent counsel: (i) waives, releases, relinquishes and forever forgoes all rights of valuation, appraisal, stay of execution, reinstatement and notice of election or intention to mature or declare due the Debt (except such notices as are specifically provided for herein); (ii) waives, releases, relinquishes and forever forgoes all right to a marshalling of the assets of Borrower, including the Property, to a sale in the inverse order of alienation, or to direct the order in which any of the Property shall be sold in the event of foreclosure of the liens and security interests hereby created and agrees that any court having jurisdiction to foreclose such liens and security interests may order the Property sold as an entirety; and (iii) waives, releases, relinquishes and forever forgoes all rights and periods of redemption provided under applicable law. To the full extent permitted by law, Borrower shall not have or assert any right under any statute or rule of law pertaining to the exemption of homestead or other exemption under any federal, state or local law now or hereafter in effect, the administration of estates of decedents or other matters whatsoever to defeat, reduce or affect the right of Administrative Agent under the terms of this Agreement, the Mortgage or any of the other Loan Documents to a sale of the Property, for the collection of the Debt without any prior or different resort for collection, or the right of Administrative Agent under the terms of this Agreement, the Mortgage or any of the other Loan Documents to the payment of the Debt out of the proceeds of sale of the Property in preference to every other claimant whatsoever. Further, Borrower hereby knowingly, intentionally and voluntarily, with and upon the advice of competent counsel, waives, releases, relinquishes and forever forgoes all present and future statutes of limitations as a defense to any action to enforce the provisions of this Agreement, the Mortgage or any of the other Loan Documents or to collect any of the Debt the fullest extent permitted by law. In the event of a Bankruptcy Action by or against Borrower, Borrower shall not seek a supplemental stay or otherwise shall not seek pursuant to 11 U.S.C. §105 or any other provision of the Bankruptcy Code, or any other debtor relief law (whether statutory, common law, case law, or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, to stay, interdict, condition, reduce or inhibit the ability of Administrative Agent to enforce any rights of Administrative Agent and/or the Lenders against Guarantor or any other party liable with respect to the Debt by virtue of any indemnity, guaranty or otherwise.

(b) Except as may be specifically provided in the Loan Documents, Borrower waives presentment and demand for payment, notice of intent to accelerate maturity, notice of acceleration of maturity, protest and notice of protest and non-payment, all applicable exemption rights, valuation and appraisal, notice of demand, and all other notices in connection with the delivery, acceptance, performance, default or enforcement of the payment of the Notes and this Agreement and the bringing of suit and diligence in taking any action to collect any sums owing under the Notes or hereunder or in proceeding against any of the rights and collateral securing payment hereof. Borrower agrees (i) that the time for any payments under the Notes or

hereunder may be extended from time to time without notice and consent, (ii) to the acceptance by Administrative Agent of further collateral, (iii) the release by Administrative Agent of any existing collateral for the payment of the Notes or the payments due under this Agreement or any of the other Loan Documents, (iv) to any and all renewals, waivers or modifications that may be granted by Administrative Agent with respect to the payment or other provisions of the Notes, this Agreement or any of the other Loan Documents, and/or (v) that additional Persons may become parties hereto or the other Loan Documents all without notice to Borrower and without in any manner affecting Borrower's obligations or liabilities under or with respect to the Notes, this Agreement or any of the other Loan Documents. No extension of time for the payment of the Notes or the payments due under this Agreement or any of the other Loan Documents or any installment thereof or hereof shall affect the obligations or liabilities of Borrower under the Notes, this Agreement or any of the other Loan Documents even if Borrower is not a party to such agreement.

(c) Failure of Administrative Agent to exercise any of the options or remedies granted herein to Administrative Agent upon the happening of one or more of the events giving rise to such options or remedies shall not constitute a waiver of the right to exercise the same or any other option or remedy at any subsequent time in respect to the same or any other event. The acceptance by Administrative Agent of any payment hereunder or under any of the other Loan Documents that is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the options or remedies granted herein or under any of the other Loan Documents to Administrative Agent at that time or at any subsequent time or nullify any prior exercise of any such option or remedy without the express written acknowledgment of the Administrative Agent.

4.24 **Management.**

(a) The management of the Property shall be performed by either (i) Borrower or an Affiliate of Borrower approved by Administrative Agent in its reasonable discretion for so long as Borrower or said Affiliate is managing the Property in a first class manner; or (ii) a professional property management company approved by Administrative Agent in its reasonable discretion, and in either case pursuant to the Property Management Agreement approved by Administrative Agent in its reasonable discretion. In no event shall any Property Manager be removed, replaced or retained, or any Property Management Agreement entered into, modified or amended, in each case without the prior written consent of Administrative Agent, which shall not unreasonably be withheld. After a default under any Property Management Agreement then in effect, which default is not cured within any applicable grace or cure period, or during the continuance of any Event of Default if the Property Manager is an Affiliate of Borrower, Administrative Agent shall have the right to terminate, or to direct Borrower to terminate, such Property Management Agreement upon thirty (30) days' notice and to retain, or to direct Borrower to retain, a new Property Manager approved by Administrative Agent in its reasonable discretion. It shall be a condition of Administrative Agent's consent to any Property Management Agreement, whether with an Affiliate or an unrelated party, that such manager enter into an agreement with Administrative Agent whereby the manager acknowledges and agrees to the aforesaid rights of Administrative Agent, and as to such other matters as Administrative Agent may reasonably require.

(b) Borrower has delivered to Administrative Agent a true, correct and complete in all material respects copy of each Contract now in effect. Borrower shall comply in all material respects with all of its obligations under all Contracts which are material to the operation of the Property, in accordance with Borrower's current practice, and with all material obligations under all other Contracts. Without limiting the restrictions set forth in **Section 4.24(a)** pertaining to the Property Management Agreement, Borrower may not terminate any other Contract that is material to the operation of the Property, or enter into any amendment thereto that makes the terms thereof less favorable to Borrower, in each case without the prior written consent of Administrative Agent, which shall not unreasonably be withheld; provided, however, that if the other party to such Contract is in default thereunder, and Borrower can replace the goods or services provided on terms not materially disadvantageous to Borrower, then the prior written consent of Administrative Agent shall not be required to terminate such Contract. Borrower shall perform its obligations under each Contract and each of the General Intangibles, except where Borrower's failure to do so would not have a material adverse effect on Borrower or the Property. Borrower represents to its knowledge that its interest under each Contract, and each General Intangible, is not subject to any claim, setoff, lien, deduction or encumbrance of any nature, other than that created by the Loan Documents. At any time during the continuance of an Event of Default, Administrative Agent may (but shall not be obligated to) take such action as Administrative Agent may determine to be reasonably necessary to protect the rights of Borrower under any or all of the Contracts and/or the General Intangibles. Should Administrative Agent, or Administrative Agent's designee, acquire the Property (whether pursuant to exercise of Administrative Agent's remedies hereunder or by transfer in lieu thereof), Administrative Agent may elect to assume Borrower's interests under any or all of the Contracts or General Intangibles as Administrative Agent shall determine, and Borrower shall cause to be terminated, without obligation to Administrative Agent or the successor owner of the Property, such other Contracts and/or General Intangibles as Administrative Agent may direct.

4.25 **Hazardous Waste and Other Substances.**

(a) Borrower hereby represents and warrants to Administrative Agent and each Lender that, as of the date hereof, except as disclosed in the Environmental Report or other writing to Administrative Agent: (i) to Borrower's knowledge, the Property is not in direct or indirect violation of any Environmental Laws; (ii) to Borrower's knowledge, no Hazardous Substances are located on or have been handled, generated, stored, processed or disposed of on or released or discharged from the Property (including underground contamination) except for those substances used by Borrower or Tenants in the ordinary course of their respective business (including in connection with back-up generators) and in compliance with all Environmental Laws; (iii) the Property is not subject to any private or governmental lien or judicial or administrative notice or action relating to Hazardous Substances; (iv) to Borrower's knowledge, there are no existing or closed underground storage tanks or other underground storage receptacles for Hazardous Substances on the Property; (v) Borrower has received no notice of, and to Borrower's knowledge, there exists no investigation, action, proceeding or claim by any agency, authority or unit of government or by any third party which could result in any liability, penalty, sanction or judgment under any Environmental Laws with respect to any condition, use or operation of the Property nor does Borrower know of any basis for such a claim; and (vi) Borrower has received no notice of and, to Borrower's knowledge, there has been no claim by any party that any use, operation or condition of the Property has caused any nuisance or any

other liability or adverse condition on any other property nor does Borrower know of any basis for such a claim.

(b) Borrower shall keep or cause the Property to be kept free from Hazardous Substances (except those substances used by Borrower and Tenants in the ordinary course of their respective business and, in each case, in compliance with all Environmental Laws and in a manner that does not result in contamination of the Property) and in compliance with all Environmental Laws, shall not install or use any underground storage tanks, shall expressly prohibit the use, generation, handling, storage, production, processing and disposal of Hazardous Substances by all Tenants (except in the ordinary course of a business that is not a Prohibited Use and in each case in compliance with all Environmental Laws and in a manner that does not result in contamination of the Property) and, without limiting the generality of the foregoing, shall not install in the Improvements (or permit to be installed in the Improvements) any ACMs or any substance containing ACMs. Borrower shall, if required under applicable Environmental Laws, maintain all applicable Material Safety Data Sheets with respect to the Property, and make same available to Administrative Agent or Administrative Agent's consultants upon reasonable notice at reasonable times.

(c) Borrower shall promptly notify Administrative Agent if Borrower shall become aware of the possible existence of any Hazardous Substances on the Property (except to the extent used in the ordinary course of a business that is not a Prohibited Use and in each case in compliance with all Environmental Laws and in a manner that does not result in contamination of the Property) or if Borrower shall become aware that the Property is or may be in direct or indirect violation of any Environmental Laws. Further, promptly upon receipt of the same, Borrower shall deliver to Administrative Agent copies of any and all orders, notices, permits, applications, reports, and other communications, documents and instruments pertaining to the actual, alleged or potential presence or existence of any Hazardous Substances at, on, about, under, within, near or in connection with the Property. Borrower shall, promptly upon receipt of notice from Administrative Agent or any Governmental Authority or knowledge that the Property is in violation of Environmental Laws, at Borrower's sole cost and expense, take all actions as shall be necessary or advisable for the clean-up of any and all portions of the Property or other property affected as a result of the migration of Hazardous Substances from the Property, including, without limitation, all investigative, monitoring, removal, containment and remedial actions in accordance with all applicable Environmental Laws, and shall further pay or cause to be paid, at no expense to Administrative Agent and the Lenders, all clean-up, administrative and enforcement costs of applicable governmental agencies which may be asserted against the Property. In the event Borrower fails to take such actions, (i) Administrative Agent may, but shall not be obligated to, cause the Property or other property affected as a result of the migration of Hazardous Substances from the Property to be freed from any Hazardous Substances and brought into conformance with Environmental Laws and any and all reasonable costs and expenses incurred by Administrative Agent in connection therewith, together with interest thereon at the Default Rate from the date incurred by Administrative Agent until actually paid by Borrower, shall be paid by Borrower on demand, and (ii) Borrower hereby grants to Administrative Agent and its agents and employees access to the Property and a license to remove any items deemed by Administrative Agent to be Hazardous Substances and to do all things Administrative Agent shall deem necessary to bring the Property in conformance with Environmental Laws. Borrower covenants and agrees, at Borrower's sole cost and expense, to

indemnify, defend (at trial and appellate levels, and with attorneys, consultants and experts reasonably acceptable to Administrative Agent), and hold Administrative Agent harmless from and against any and all liens, damages (excluding any punitive or special damages, except to the extent any such punitive or special damages are asserted against Administrative Agent by Borrower, Guarantor, Property Manager, their respective Affiliates, successors, assigns, shareholders, directors, officers, employees and/or agents, or any Person acting at the direction of any of them, or any third-party), losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims (excluding any claims for actual diminution in value, except to the extent such diminution in value would result in Administrative Agent's failure to recover any amount of the entire outstanding Debt), litigation, demands, defenses, judgments, suits, proceedings, reasonable costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, reasonable attorneys', consultants' and experts' fees and disbursements actually incurred in investigating, defending, settling or prosecuting any claim, litigation or proceeding) which may at any time be imposed upon, incurred by or asserted or awarded against Administrative Agent or the Property, and arising directly or indirectly from or out of, except solely if and to the extent, in each case, same arises from the gross negligence or willful misconduct of Administrative Agent or any Lender or their respective successors, assigns, shareholders, directors, officers, employees and/or agents and not from any actions by Borrower, Guarantor, Property Manager, their respective Affiliates, successors, assigns, shareholders, directors, officers, employees and/or agents, or any Person acting at the direction of any of them (the matters addressed in the following subparagraphs (A) through (E) are hereinafter referred to collectively as the "**Environmental Indemnity Triggers**"): (A) the presence, release or threat of release of any Hazardous Substances on, in, under or affecting all or any portion of the Property or (to the extent such Hazardous Substances were released from, or migrated from, the Property) any surrounding areas, regardless of whether or not caused by or within the control of Borrower, in violation of Environmental Laws or in amounts or concentrations requiring investigation or clean up under Environmental Laws; (B) the violation of any Environmental Laws relating to or affecting the Property, whether or not caused by or within the control of Borrower; (C) the failure by Borrower to comply fully with the terms and conditions of this **Section 4.25**; (D) the failure of any representation or warranty contained in this **Section 4.25** to be true when made; or (E) the enforcement of this **Section 4.25** upon Borrower's failure to comply or commence to comply (and thereafter diligently pursue to completion) within ten (10) days after written notice by Administrative Agent of such failure, including, without limitation, the reasonable cost of assessment, containment and/or removal in compliance with and to the extent required by Environmental Laws of any and all Hazardous Substances from all or any portion of the Property or (to the extent such Hazardous Substances were released from, or migrated from, the Property) any surrounding areas, the reasonable cost of any actions taken in compliance with and to the extent required by Environmental Laws in response to the presence, release or threat of release of any Hazardous Substances on, in, under or affecting any portion of the Property or (to the extent such Hazardous Substances were released from, or migrated from, the Property) any surrounding areas to prevent or minimize such release or threat of release so that it does not migrate or otherwise cause or threaten danger to present or future public health, safety, welfare or the environment, and reasonable costs incurred to comply with the Environmental Laws in connection with all or any portion of the Property or any surrounding areas. Notwithstanding anything to the contrary contained herein or in the other Loan Documents, the indemnity set forth in this **Section 4.25(c)** shall not apply to any Environmental

Indemnity Triggers that are not directly or indirectly caused by Borrower, Guarantor, Property Manager, their respective Affiliates, successors, assigns, shareholders, directors, officers, employees and/or agents, or any Person acting at the direction of any of them, and that first occurred after (i) Administrative Agent or any Lender takes fee title to the entire Property following the occurrence of any Event of Default, or any court appointed receiver takes possession of the Property, and (ii) Borrower, Guarantor, Property Manager, or any of their Affiliates, no longer control, operate, possess and/or manage the Property in any way; provided however, notwithstanding the foregoing, Borrower, and not Administrative Agent or any Lender, shall bear the burden of proof regarding which party or parties directly and/or indirectly caused any such Environmental Indemnity Triggers and the time at which any such Environmental Indemnity Triggers first occurred in any dispute that may hereafter arise concerning the scope of liability under the indemnity set forth in this **Section 4.25(c)**. Administrative Agent's and the Lenders' rights under this **Section 4.25(c)** shall survive payment in full of the Debt and shall be in addition to all other rights of Administrative Agent and the Lenders under this Agreement, the Mortgage, the Notes and the other Loan Documents.

(d) Upon Administrative Agent's written request, at any time during the continuance of an Event of Default or at such other time as Administrative Agent has reasonable grounds to believe that Hazardous Substances are or have been released, stored or disposed of on or around the Property or that the Property may be in violation of the Environmental Laws, Borrower shall provide, at Borrower's sole cost and expense, an inspection or audit of the Property prepared by a hydrogeologist or environmental engineer or other appropriate consultant approved by Administrative Agent in its reasonable discretion indicating the presence or absence of Hazardous Substances on the Property or an inspection or audit of the Improvements prepared by an engineering or consulting firm reasonably approved by Administrative Agent indicating the presence or absence of friable asbestos or substances containing asbestos on the Property. If Borrower fails to provide such inspection or audit within forty-five (45) days after such request, Administrative Agent may order the same, and Borrower hereby grants to Administrative Agent and its employees and agents access to the Property and a license to undertake such inspection or audit. The reasonable cost of such inspection or audit, together with interest thereon at the Default Rate from the date incurred by Administrative Agent until actually paid by Borrower, shall be due and payable to Administrative Agent by Borrower on demand.

(e) The obligations of Borrower under this Agreement (including, without limitation, this **Section 4.25**) with respect to Hazardous Substances shall not in any way limit the obligations of any party under the Hazardous Substances Indemnity.

(f) Intentionally omitted

(g) Intentionally omitted

4.26 Indemnification; Subrogation.

(a) Borrower shall indemnify, defend and hold Administrative Agent and the Lenders harmless against: (i) any and all claims for brokerage, leasing, finders or similar fees which may be made relating to the Property or the Debt, and (ii) any and all liability, obligations, losses, damages (excluding any punitive or special damages, except to the extent any such

punitive or special damages are asserted against Administrative Agent or any Lender by Borrower, Guarantor, Property Manager, their respective Affiliates, successors, assigns, shareholders, directors, officers, employees and/or agents, or any Person acting at the direction of any of them, or any third-party), penalties, claims (excluding any claims for actual diminution in value, except to the extent such diminution in value would result in Administrative Agent's failure to recover any amount of the entire outstanding Debt), actions, suits, costs and expenses (including Administrative Agent's and the Lender's reasonable attorneys' fees, together with reasonable appellate counsel fees, if any) of whatever kind or nature which may be asserted against, imposed on or incurred by Administrative Agent and/or the Lenders in connection with the Debt, this Agreement, the other Loan Documents, the Property, or any part thereof, or the exercise by Administrative Agent and/or the Lenders of any rights or remedies granted to it under this Agreement; provided, however, that nothing herein shall be construed to obligate Borrower to indemnify, defend and hold harmless Administrative Agent or any Lender from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses enacted against, imposed on or incurred by Administrative Agent or any Lender solely if and to the extent same arises by reason of Administrative Agent's or such Lender's or their respective successors', assigns', shareholders', directors', officers', employees' and/or agents' willful misconduct or gross negligence and not from any actions by Borrower, Guarantor, Property Manager, their respective Affiliates, successors, assigns, shareholders, directors, officers, employees and/or agents, or any Person acting at the direction of any of them.

(b) If Administrative Agent or any Lender is made a party defendant to any litigation or any claim is threatened or brought against Administrative Agent or such Lender concerning the Debt, this Agreement, the other Loan Documents, the Property, or any part thereof, or any interest therein, or the construction, maintenance, operation or occupancy or use thereof, then Borrower shall indemnify, defend and hold Administrative Agent and/or such Lender harmless from and against all liability by reason of said litigation or claims, including reasonable attorneys' fees (together with reasonable appellate counsel fees, if any) and reasonable expenses incurred by Administrative Agent and/or such Lender in any such litigation or claim, whether or not any such litigation or claim is prosecuted to judgment. If Administrative Agent commences an action against Borrower to enforce any of the terms of the Loan Documents or to prosecute any Event of Default, or to recover any of the Debt, Borrower shall pay to Administrative Agent its reasonable attorneys' fees (together with reasonable appellate counsel fees, if any) and reasonable expenses. The right to such attorneys' fees (together with reasonable appellate counsel fees, if any) and expenses shall be deemed to have accrued on the commencement of such action, and shall be enforceable whether or not such action is prosecuted to judgment. If Borrower breaches any term of this Agreement, Administrative Agent may engage the services of an attorney or attorneys to protect its rights hereunder, and in the event of such engagement following any breach by Borrower, Borrower shall pay Administrative Agent reasonable attorneys' fees (together with reasonable appellate counsel fees, if any) and reasonable expenses incurred by Administrative Agent, whether or not an action is actually commenced against Borrower by reason of such breach. All references to "attorneys" in this **Section 4.26** and elsewhere in this Agreement shall include without limitation any attorney or law firm engaged by Administrative Agent and Administrative Agent's in-house counsel, and all references to "fees and expenses" in this **Section 4.26** and elsewhere in this Agreement shall include without limitation any reasonable fees of such attorney or law firm and any reasonable allocation charges and allocation costs of Administrative Agent's in-house

counsel. The rights of Administrative Agent and the Lenders and obligations of Borrower under this section shall survive the foreclosure of the Mortgage and/or the repayment of the Debt. The rights of Administrative Agent and the Lenders under this section shall inure to the benefit of all current and future holders of all or any portion of the Loan from time to time, and shall continue to inure to the benefit of any such holder even after any such holder transfers its interest in the Loan (it being acknowledged, for purposes of clarification, that in connection with any transfer of a holder's interest in the Loan, that such rights shall continue to inure to the benefit of both the transferor and transferee of such interest in the Loan).

(c) A waiver of subrogation shall be obtained by Borrower from its insurance carrier and, consequently, Borrower waives any and all right to claim or recover against Administrative Agent and the Lenders, their respective officers, employees, agents and representatives, for loss of or damage to Borrower, the Property, Borrower's property or the property of others under Borrower's control from any cause insured against or required to be insured against by the provisions of this Agreement.

4.27 **Single-Purpose Entity Covenants.** Borrower hereby represents, warrants and covenants, as of the date hereof and until such time as the Debt is paid in full, that without, in each case, the prior written consent of Administrative Agent (which may be withheld or conditioned by Administrative Agent in its sole and absolute discretion for any reason or for no reason):

(a) The sole purpose of Borrower has been, is and will be, to acquire, own, hold, maintain, and operate the Property, together with such other activities as may be necessary or advisable in connection with the ownership and operation of the Property. Borrower has not engaged, and does not and shall not engage, in any business, and it has and shall have no purpose, unrelated to the Property. Borrower has not owned, does not own and shall not acquire, any real property or own assets other than those related to the Property and/or otherwise in furtherance of the limited purposes of Borrower.

(b) The organizational documents of Borrower, any general partner, manager or managing member (a "**Controlling Entity**") of Borrower, as applicable, shall provide that neither Borrower nor any Controlling Entity, as applicable, shall perform any act in respect of Borrower in violation of any (a) applicable laws or regulations or (b) any agreement between Borrower and Administrative Agent or any Lender (including, without limitation, the Loan Documents).

(c) Borrower shall not:

(i) make any loans to any Equity Holder, any Affiliate of Borrower or any Affiliate of any Equity Holder;

(ii) except as expressly permitted by Administrative Agent in writing, sell, encumber (except with respect to Administrative Agent) or otherwise transfer or dispose of all or substantially all of the properties of Borrower (a sale or disposition will be deemed to be "all or substantially all of the properties of Borrower" if the sale or disposition includes the Property or if the total value of the properties sold or disposed of

in such transaction and during the twelve months preceding such transaction is sixty six and two thirds percent (66-2/3%) or more in value of Borrower's total assets as of the end of the most recently completed fiscal year of Borrower);

(iii) to the fullest extent permitted by law, dissolve, wind-up, or liquidate Borrower;

(iv) merge or consolidate with, or acquire all or substantially all of the assets of, an Affiliate of Borrower or any other Person;

(v) change the nature of the business conducted by Borrower; or

(vi) except as permitted by Administrative Agent in writing, amend, modify or otherwise change the Organizational Documents of Borrower (which approval, after a Secondary Market Transaction with respect to the Loan, may be conditioned upon Administrative Agent's receipt of a Rating Confirmation with respect thereto) pertaining to separateness or Borrower's status as a single-purpose entity or any other respect that could materially and adversely affect the Loan or the Property.

(d) Borrower shall not, and no Equity Holder or other Person on behalf of Borrower shall, without the prior written affirmative vote of both (1) one hundred percent (100%) of the members, partners or stockholders of Borrower and (2) of the Fiduciary Representative of Borrower and/or (if applicable) of any SPE Component Entity of Borrower, undertake any Bankruptcy Action with respect to Borrower.

(e) Borrower shall have no indebtedness or incur any liability other than (i) unsecured debts and liabilities for trade payables and accrued expenses incurred in the ordinary course of its business of operating the Property; provided, however, that such unsecured indebtedness or liabilities (A) are in amounts that are normal and reasonable under the circumstances, but in no event to exceed two percent (2%) of the amount of the Loan to be advanced hereunder, and (B) are not evidenced by a note and are paid when due, but in no event for more than sixty (60) days from the date that such indebtedness or liabilities are incurred, (ii) Permitted Equipment Leases, (iii) Borrower's obligations and liabilities under the Interest Rate Protection Agreement or any Replacement Interest Rate Protection Agreement, and/or (iv) the Debt. No indebtedness other than the Loan shall be secured (senior, subordinated or *pari passu*) by the Property.

(f) The following provisions shall apply only when Borrower is a limited liability company or a partnership. A Bankruptcy Action by or against any partner or member of Borrower, as applicable, shall not cause such partner or member of Borrower, as applicable, to cease to be a partner or member of Borrower and upon the occurrence of a Bankruptcy Action, Borrower shall continue without dissolution. Additionally, to the fullest extent permitted by law, if any partner or member of Borrower, as applicable, ceases to be a partner or member of Borrower, as applicable, such event shall not terminate Borrower and Borrower shall continue without dissolution.

(g) Borrower shall at all times observe in all material respects the applicable legal requirements for the recognition of Borrower as a legal entity separate from any Equity

Holder or Affiliates of Borrower or of any Equity Holder, including, without limitation, as follows:

(i) It shall either (A) maintain its principal executive office and telephone and facsimile numbers separate from that of any Affiliate of itself or of any Equity Holder and shall conspicuously identify such office and numbers as its own, or (B) shall allocate by fairly and reasonably any rent, overhead and expenses for shared office space.

(ii) It shall maintain correct and complete financial statements, accounts, books and records and other Organizational Documents separate from those of any Affiliate of itself or of any Equity Holder or any other Person; provided, however, that Borrower's assets may be included in a consolidated financial statement of its affiliates provided that (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 own books, records, resolutions and agreements as official records.

(iii) It shall maintain its own separate bank accounts and correct, complete and separate books of account.

(iv) It shall file or cause to be filed its own separate tax returns, if required to do so.

(v) It shall hold itself out to the public (including any of its Affiliates' creditors) under its own name and as a separate and distinct Person and not as a department, division or otherwise of any Affiliate of itself or of any Equity Holder.

(vi) It shall observe all customary formalities regarding its existence, including holding meetings and maintaining current and accurate minute books separate from those of any Affiliate of itself or of any Equity Holder.

(vii) It shall hold title to its assets in its own name and act solely in its own name and through its own duly authorized officers and agents. No Affiliate of itself or of any Equity Holder shall be appointed or act as its agent, other than as a property manager or leasing agent with respect to the Property.

(viii) Investments shall be made in its name directly by it or on its behalf by brokers engaged and paid by it.

(ix) Except as required by Administrative Agent, it shall not guarantee, pledge or assume or hold itself out or permit itself to be held out as having guaranteed, pledged or assumed any liabilities or obligations of any Equity Holder or any Affiliate, nor shall it make any loan, except as permitted in the Loan Documents.

(x) It shall not make any distribution or dividend if doing so would cause it not to be solvent.

(xi) Its assets shall be separately identified, maintained and segregated. Its assets shall at all times be held by it (or on its behalf) and if held on its behalf by another Person, shall at all times be kept identifiable (in accordance with customary usages). This restriction requires, among other things, that (A) its funds shall be deposited or invested in its name, (B) its funds shall not be commingled with the funds of any Affiliate of it or of any Equity Holder, (C) it shall maintain all accounts in its own name and with its own tax identification number, separate from those of any Affiliate of it or of any Equity Holder, and (D) its funds shall be used only for its business.

(xii) It shall maintain its assets in such a manner that it is not costly or difficult to segregate, ascertain or identify its individual assets from those of any Affiliate of itself or of any Equity Holder.

(xiii) It shall pay or cause to be paid its own liabilities and expenses of any kind, including but not limited to salaries of its employees (if any), but only to the extent there exists sufficient cash flow from the Property to do so after the payment of all operating expenses of the Property and all amounts due under the Loan and the foregoing shall not require any equity owner to make additional capital contributions to Borrower.

(xiv) It shall not make any distribution or dividend to any Equity Holder if doing so would cause it not to be adequately capitalized to perform its reasonably foreseeable obligations.

(xv) Intentionally omitted.

(xvi) Intentionally omitted.

(xvii) None of its funds shall be invested in securities issued by, nor shall it acquire the indebtedness or obligation of, an Affiliate of itself or of an Equity Holder.

(xviii) It shall maintain an arm's length relationship with each of its Affiliates and may enter into contracts or transact business with its Affiliates only on commercially reasonable terms that are no less favorable to it than is obtainable in the market from a Person that is not an Affiliate of itself or of any Equity Holder.

(xix) It shall correct any misunderstanding that is known by it regarding its name or separate identity.

Notwithstanding the foregoing, in no event shall any beneficial owner of Borrower be required to contribute capital to satisfy any of the foregoing single purpose covenants.

(h) Any indemnification obligation of Borrower to any Equity Holder shall (i) be fully subordinated to the Loan, and (ii) not constitute a claim against Borrower or its assets until such time as the Loan has been indefeasibly paid in accordance with its terms and otherwise has been fully discharged.

(i) The following shall only apply if and when Borrower is a limited partnership. No general partner of Borrower may be an individual. Each general partner of Borrower shall at all times have as its sole purpose to act as the general partner of Borrower, shall be engaged in no other business or have any other purpose, and shall have Organizational Documents that (i) include covenants substantially similar to the foregoing provisions of this **Section 4.27**, inclusive of all single purpose/bankruptcy remote provisions, and (ii) are acceptable to Administrative Agent in its reasonable discretion.

(j) Borrower shall cause the Organizational Documents of Borrower to include, at all times, requirements substantially similar to the foregoing, in a manner reasonably satisfactory to Administrative Agent.

4.28 **Reserve Accounts and Disbursement Requests.** At Administrative Agent's option, as additional security for the Debt, Borrower shall establish and maintain the reserve accounts required by this **Section 4.28**, subject to the security interest therein as more fully set forth in **Section 4.19**, and shall comply with all of the covenants and agreements set forth herein.

(a) Intentionally omitted.

(b) Intentionally omitted.

(c) Intentionally omitted.

(d) Intentionally omitted.

(e) **Early Termination Reserve.** If any Tenant occupying space of more than 2,500 rentable square feet (a "**Terminating Tenant**") gives notice to Borrower that it is exercising an early termination option set forth in its Lease with Borrower, or if Borrower agrees to allow any Tenant to reduce or terminate its obligations under its Lease (subject, in each case, to the restrictions of **Section 4.10(c)** hereof), Borrower shall direct such Tenant that the payment or other consideration in connection therewith (the "**Early Termination Payment**") is to be deposited in the Clearing Account, for application as set forth below. If such Tenant remits the Early Termination Payment directly to Borrower, Borrower shall remit the Early Termination Payment to Administrative Agent, for application as set forth below. Any such Early Termination Payment deposited in the Clearing Account or remitted to Administrative Agent pursuant to the foregoing shall be deposited and held in a reserve fund (the "**Early Termination Reserve**"). Funds deposited in an Early Termination Reserve shall be disbursed as follows:

(i) If Borrower enters into a Lease for the entire premises previously demised under the Lease so terminated (the "**Vacated Space**") with a Tenant reasonably acceptable to Administrative Agent and such Lease satisfies all applicable requirements of **Section 4.10** hereof (any such Lease, a "**Qualified Replacement Lease**"), then all funds in the Early Termination Reserve shall be used first to pay Leasing Costs with respect to such Qualified Replacement Lease upon satisfaction of the conditions set forth in **Section 4.29** hereof; any funds remaining in the Early Termination Reserve after payment of all Leasing Costs with respect thereto shall be disbursed to Borrower as follows: (x) if the monthly net rent payable under the Qualified Replacement Lease is greater than or equal to the monthly net rent payable by the Terminating Tenant under its

Lease as of the date of such termination, then provided no Default is then continuing, such funds remaining in the Early Termination Reserve shall be disbursed to Borrower; and (y) if the monthly net rent payable under the Qualified Replacement Lease is less than the monthly net rent payable by the Terminating Tenant under its Lease as of the date of such termination, then provided no Default is then continuing all funds remaining in the Early Termination Reserve shall be disbursed to Borrower in equal monthly installments over the period that would have remained in the term of the Lease with the Terminating Tenant.

(ii) If Borrower enters into one or more Qualifying Replacement Lease each for less than the entire Vacated Space, no disbursements shall be permitted from the Early Termination Reserve except as follows:

(A) Until such time as the entire Vacated Space has been re-leased pursuant to one or more Qualified Replacement Leases, Lender shall from time to time make disbursements on account of Leasing Costs with respect to the Vacated Space upon satisfaction of the conditions set forth in **Section 4.29** hereof, provided, however, that the disbursements with respect to any portion of the Vacated Space on a per-square foot basis shall not exceed the amount of the Early Termination Payment on a per-square-foot basis; and

(B) At such time as any portion of the Vacated Space has been re-leased pursuant to one or more Qualified Replacement Leases, then after payment of all Leasing Costs with respect to the re-leasing of such Vacated Space, the funds remaining in the Early Termination Reserve applicable to such Qualified Replacement Lease(s) shall be disbursed as follows: (i) Intentionally Omitted; (ii) next, any funds remaining in the Early Termination Reserve applicable to such Qualified Replacement Lease(s) shall be disbursed to Borrower as follows: (x) if the monthly aggregate net rents payable under such Qualified Replacement Lease(s) is greater than or equal to the monthly net rent payable by the Terminating Tenant, and the term of such Qualified Replacement Lease(s) extends to or beyond the scheduled expiration date of the Lease with the Terminating Tenant, then provided no Default is then continuing such funds remaining in the Early Termination Reserve shall be disbursed to Borrower; and (y) if the conditions of clause (x) are not satisfied, then provided no Default is then continuing such funds remaining in the Early Termination Reserve shall be disbursed to Borrower in equal monthly installments over the period that would have remained in the term of the Lease with the Terminating Tenant.

(f) Intentionally omitted.

(g) Additional Capital Repairs and Tenant Improvement/Leasing Reserve. At the earlier to occur of (i) 80% depletion of the Additional Advance allocated for either Leasing Costs or Capital Expenditure Costs, as applicable, or (ii) the beginning of the First Extension Term, Borrower shall establish (A) a replacement reserve for on-going capital repairs at the Property in the amount of \$3,533.88 per month (the "**Replacement Reserve**") and (B) a reserve for Leasing Costs in the amount of \$14,135.50 per month (the "**Leasing Costs Reserve**").

Notwithstanding the foregoing, the Replacement Reserve and the Leasing Costs Reserve shall each be capped at eighteen (18) months collections, to be replenished once the balance falls below twelve (12) months collections. Any Early Termination Payments shall be escrowed by Administrative Agent as provided for in Section 4.28(e) above and shall not apply toward the Leasing Costs Reserve cap. So long as no Event of Default shall exist and be continuing, Administrative Agent shall, to the extent funds are available for such purpose in the Replacement Reserve, the Leasing Costs Reserve or the Early Termination Reserve to be used in connection with Leasing Costs pursuant to Section 4.28, as applicable, disburse to Borrower the amount paid or incurred by Borrower pursuant to and upon satisfaction of the requirements set forth in Exhibit C of this Agreement.

4.29 **Disbursements from the Early Termination Reserve.** So long as no Event of Default shall have occurred and be continuing under this Agreement, all sums in the Early Termination Reserve shall be held by Administrative Agent as set forth above for the purposes set forth in Section 4.28. Administrative Agent shall disburse to Borrower, from the Early Termination Reserve for the purposes set forth in Section 4.28, an amount equal to the actual expenses incurred to date by Borrower, less any prior disbursements to Borrower from the Early Termination Reserve for such expenditure, but only to the extent that such expense is one for which, pursuant to Section 4.28, the proceeds of the Early Termination Reserve may be disbursed; provided however, Administrative Agent shall not be obligated or required to make any such disbursement from the Early Termination Reserve (A) to pay Leasing Costs if any Event of Default has occurred and is continuing, or (B) to Borrower if any Default has occurred and is continuing. Disbursements shall be made to Borrower within ten (10) days following Administrative Agent's receipt of each of the following:

(a) a written request from Borrower for such disbursement, accompanied by a certification by Borrower, substantially in the form therefor then utilized by Administrative Agent or Administrative Agent's servicing agent;

(b) copies of invoices, receipts or other evidence reasonably satisfactory to Administrative Agent verifying payment of the costs and expenses for which Borrower is requesting such disbursement;

(c) for disbursement requests in connection with a single project, or group of related projects, for which Borrower is seeking disbursement of \$25,000 or more, affidavits, lien waivers or other evidence reasonably satisfactory to Administrative Agent showing that all materialmen, laborers, contractors, suppliers and other parties who have or might claim statutory or common law liens, or who have furnished labor, materials or supplies to or in connection with the Property, have been paid (or are being paid out of the proceeds of such disbursement) all amounts due;

(d) for disbursement requests in connection with a single project, or group of related projects, for which Borrower is seeking disbursement of \$100,000 or more, excluding, however, Leasing Commissions, a certification from an inspecting architect or other third party acceptable to Administrative Agent, verifying that the any work for which Borrower is requesting a disbursement has been properly completed and that the cost of such work bears a reasonable relationship to the costs incurred therefor;

(e) if requested by Administrative Agent, for any final disbursement request made in connection with Leasing Costs incurred with respect to each Lease, a current estoppel certificate (in form and substance reasonably acceptable to Administrative Agent) from the tenant under the applicable Lease pursuant to which such Leasing Costs were incurred;

(f) a copy of the certificate of occupancy for the Improvements if, as a result of any work undertaken by Borrower, it was necessary to receive an amendment to the existing certificate of occupancy (or similar instrument) issued with respect to the Improvements, or to obtain a new certificate of occupancy for the Improvements, or a certification of Borrower that no such amended or new certificate of occupancy is required; and

(g) payment of an administrative fee of \$200.00 per request.

Administrative Agent shall not be required to make an advance from the Early Termination Reserve more frequently than once in any thirty (30) day period. In making any disbursement from the Early Termination Reserve, Administrative Agent shall be entitled to rely on the disbursement request from Borrower without any inquiry into the accuracy, validity or contestability of any amount set forth therein. All reasonable third party costs and expenses required to be incurred in connection with the review and approval of each request for a disbursement from the Early Termination Reserve shall be paid by Borrower not later than concurrently with such disbursement. Administrative Agent shall have the right to make disbursement of any amounts requested in such disbursement that were not paid as of the request for such disbursement directly to the contractor, vendor or other provider (or by two-party check jointly to Borrower and such contractor, vendor or other provider), in Administrative Agent's discretion.

4.30 General Provisions Governing Reserves.

(a) The Reserves shall not, unless otherwise explicitly required by applicable law, be or be deemed to be escrow or trust funds. Except as otherwise expressly required by this Agreement, Administrative Agent may, at its discretion, hold the Reserves either in a separate account or commingled by Administrative Agent with any other funds in the possession or control of Administrative Agent. The Reserves are solely for the protection of Administrative Agent, and entail no responsibility on Administrative Agent's part beyond making disbursements upon strict satisfaction of the requirements of **Section 4.6** (as to the Impound Account), **Section 4.28** and/or **Section 4.29** of this Agreement and beyond the allowing of due credit for the sums actually received. In the event that the amounts on deposit in any Reserve is insufficient to pay (or reimburse Borrower for) amounts otherwise properly payable (or reimbursable) from such Reserve, Administrative Agent shall only be obligated to disburse the amount then on deposit in such Reserve, Administrative Agent shall not be obligated or authorized to transfer funds from other Reserves, and Borrower shall pay the amount of such deficiency. Upon full payment of the Debt in accordance with its terms or at such earlier time as Administrative Agent may elect (or at any time as is otherwise expressly required under this Agreement with respect to any particular Reserve), the balance of the Reserves then in Administrative Agent's possession shall be paid over to Borrower and no other party shall have any right or claim thereto. Upon assignment of this Agreement and the Loan by Administrative

Agent, any funds in the Reserves shall be turned over to the assignee (or otherwise credited to such assignee), and any responsibility of the assignor with respect thereto shall terminate.

(b) At any time during the continuance of an Event of Default, in addition to all other remedies of Administrative Agent available under this Agreement or any Loan Document or at law or in equity or otherwise, Administrative Agent may, but shall not be obligated to, apply at any time the balance then remaining in any or all of the Reserves against the Debt in whatever order Administrative Agent shall subjectively determine. No such application of any Reserve shall be deemed to cure any Default or Event of Default hereunder, and any such application shall not limit Borrower's obligation to deposit any deficiency of which Administrative Agent gives notice.

(c) Administrative Agent shall cause funds in each Interest-Bearing Reserve to be deposited into an interest bearing account of the type customarily maintained by Administrative Agent or its Servicer for the investment of similar reserves, which account may not yield the highest interest rate then available. To the extent that any funds in any of the Interest-Bearing Reserves are so invested by Administrative Agent, Borrower shall bear the risk of loss of such investments. Interest payable on such amounts shall be computed based on the daily outstanding balance in the Interest-Bearing Reserve. Such interest shall be calculated on a simple, non-compounded interest basis based solely on contributions made to the Interest-Bearing Reserve by Borrower. All interest earned on amounts contributed to the Interest-Bearing Reserve shall be retained by Administrative Agent and added to the balance in such Interest-Bearing Reserve and shall be disbursed for payment of the items for which other funds in such Interest-Bearing Reserve are to be disbursed. Borrower acknowledges that, except for the Interest-Bearing Reserves as aforesaid, no Reserves shall accrue or bear interest for the benefit of Borrower, and no interest shall be payable thereon by Administrative Agent.

4.31 **Leasing Costs.** Any Leasing Costs incurred by Borrower with respect to any of the Leases set forth on Schedule 1 of Exhibit C shall be paid by Borrower within 180 days of the date hereof.

4.32 **Bankruptcy-Remote Entities.** As a material inducement to Administrative Agent to make the Loan, and recognizing that Administrative Agent will suffer immeasurable damage should Borrower fail to perform as required under this **Section 4.32**, Borrower hereby agrees as follows:

(a) Borrower shall at all times satisfy one of the following requirements: (i) at any time when Borrower is a corporation, Borrower shall have one (1) director who is Independent; (ii) at any time when Borrower is a limited liability company, unless Borrower satisfies the requirements set forth in the following subclause (iii), the sole managing member of Borrower shall be an SPE Component Entity that has one (1) director who is Independent; (iii) at any time when Borrower is a limited liability company organized under the laws of the State of Delaware, in lieu of satisfying the requirements in the foregoing subclause (ii), Borrower is an SPE-Qualifying LLC that has one (1) director who is Independent, or (iv) at any time when Borrower is a limited partnership, the sole general partner of Borrower shall be an SPE Component Entity that has one (1) director who is Independent. Borrower may not be a general partnership unless Administrative Agent approves the Organizational Documents of both

Borrower and each partner of Borrower, and such approval may be conditioned upon Administrative Agent's determination in its sole discretion that both Borrower and each partner of Borrower are "bankruptcy-remote entities" in accordance with then-current standards therefor utilized by applicable Rating Agencies.

(b) Borrower may not undertake, or request Administrative Agent's approval for, any of the events described in subsections (c) and (d) of Section 4.27 without first receiving the affirmative consent of the Fiduciary Representative of Borrower or, if applicable, the affirmative consent of the Fiduciary Representative of the Controlling Entity. In the event of the death, incapacity, resignation or removal of a Fiduciary Representative, Borrower or the Controlling Entity, as the case may be, shall promptly appoint a replacement Fiduciary Representative, and no action requiring the consent of the Fiduciary Representative shall be taken until a replacement Fiduciary Representative has been appointed. In addition, no Fiduciary Representative may be removed unless his or her successor satisfying the definition hereunder has been appointed.

(c) The Organizational Documents of any Person required to include a Fiduciary Representative shall include provisions substantially comparable to the following (together with such modifications as may be approved by Administrative Agent based on changes in relevant law or market standards after the date of this Agreement):

(i) To the fullest extent permitted by law, and notwithstanding any duty otherwise existing at law or in equity, the Fiduciary Representative shall consider only the interests of this Person (and, if the Fiduciary Representative is not at Borrower level, of Borrower), including its creditors, in exercising such person's authority as Fiduciary Representative. Except for duties to the Person in which it is Fiduciary Representative (and, if the Fiduciary Representative is not at Borrower level, duties to Borrower) as set forth in the immediately preceding sentence (including duties to creditors solely to the extent of their respective economic interests in Borrower or such Controlling Entity, but excluding (i) all other interests of such Person, (ii) the interests of other Affiliates of such Person, and (iii) the interests of any group of Affiliates of which the Person is a part), the Fiduciary Representative shall not have any fiduciary duties to the Person, any other member or director of such Person, or to Borrower or Administrative Agent); provided, however, the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing.

(ii) To the fullest extent permitted by law, a Fiduciary Representative shall not be liable to the Person in which it serves for breach of contract or breach of duties (including fiduciary duties), unless the Fiduciary Representative acted in bad faith or engaged in willful misconduct.

(iii) No Fiduciary Representative shall resign or be removed or replaced, in each case unless Administrative Agent receives not less than five (5) business days' prior written notice of (a) any proposed resignation or removal or replacement of such Fiduciary Representative, and (b) the identity of the proposed replacement Fiduciary Representative, together with evidence reasonably satisfactory to Administrative Agent that such replacement satisfies the applicable requirements to be a

Fiduciary Representative, in each case except for removal of a Fiduciary Representative by reason of (y) acts or omissions that constitute willful disregard of such Fiduciary Representative's duties, in accordance with the standards set forth herein, or (z) such Fiduciary Representative having engaged in or having been charged with, or having been convicted of, fraud or other acts constituting a crime under any law applicable to such Fiduciary Representative, in which case a replacement Fiduciary Representative shall be identified and elected or appointed within five (5) business days after Borrower (or, if applicable, such Controlling Entity) knew of such circumstances.

(d) The Organizational Documents of Borrower, of any general partner, manager and/or managing member or Borrower, and of such other Constituent Entities of Borrower and/or the foregoing as Administrative Agent may reasonably determine, shall incorporate requirements substantially similar to the foregoing in a manner satisfactory to Administrative Agent.

ARTICLE V

EVENTS OF DEFAULT

5.1 **Events of Default.** The occurrence of any of the following shall be an "**Event of Default**" hereunder:

(a) Borrower fails to punctually perform any covenant, agreement, obligation, term or condition of the Notes, this Agreement, the Mortgage or any other Loan Document which requires payment of any money to Administrative Agent or any Lender (including, without limitation, the failure of Borrower to repay the entire outstanding principal balance of the Notes in full on the Maturity Date), and (1) in the case of any monthly payment due under the Notes or this Agreement or any payment to any Reserve required under this Agreement, such failure continues for a period of five (5) days after such payment becomes due, (2) in the case of the outstanding principal balance of the Notes due on the Maturity Date, same is not repaid in full on the Maturity Date, (3) in the case of any other amount due from Borrower to Administrative Agent or any Lender, such failure continues for the applicable period set forth therein or, if no period is set forth, for five (5) days after such payment becomes due or, if due on demand, is demanded.

(b) Borrower (i) fails to provide insurance as required by **Section 4.4** hereof or (ii) fails to perform any covenant, agreement, obligation, term or condition set forth in **Section 4.5** hereof or (iii) fails to comply with **Section 4.32** hereof; provided, however, that in connection with any breach or violation of the representations or covenants contained in **Section 4.32**, such breach or violation or failure to comply shall not constitute an Event of Default if (i) such breach or violation or failure to comply was inadvertent, immaterial and non-recurring, and (ii) such breach or violation or failure to comply is (A) curable and (B) Borrower promptly cures such breach or violation or failure to comply within ten (10) Business Days of receiving notice from Administrative Agent such breach or violation or failure to comply.

(c) Borrower fails to perform any other covenant, agreement, obligation, term or condition set forth herein other than those otherwise described in this **Section 5.1** (including

any default under any continuing representation and warranty stated in **Section 4.1** of this Agreement), and, to the extent such failure or default is susceptible of being cured, the continuance of such failure or default for thirty (30) days after written notice thereof from Administrative Agent to Borrower; provided, however, that if such default is susceptible of cure but such cure cannot be accomplished with reasonable diligence within said period of time, and if Borrower commences to cure such default promptly after receipt of notice thereof from Administrative Agent (but in any event within thirty (30) days of such notice), and thereafter continuously and diligently prosecutes the curing of such default, such period of time shall be extended for such period of time as may be necessary to cure such default with reasonable diligence, but not to exceed an additional ninety (90) days.

(d) Any representation or warranty made herein or in any of the other Loan Documents to Administrative Agent or any Lender, as of the date hereof, by Borrower, by Guarantor, was false or misleading in any material respect at the time made.

(e) A Transfer, except as expressly permitted by **Section 4.11**.

(f) A default occurs under any of the other Loan Documents which has not been cured within any applicable grace or cure period therein provided.

(g) Borrower, or Guarantor, or any Affiliate of Borrower or Guarantor undertakes a Bankruptcy Action with respect to Borrower, or Guarantor, or any Constituent Entity of Borrower or Guarantor.

(h) A Bankruptcy Action is commenced against Borrower, or Guarantor, or any Constituent Entity of Borrower or Guarantor, by any Person (other than a Person identified in Paragraph (g) above), and such Bankruptcy Action shall not be dismissed within ninety (90) days after being commenced.

(i) The Property or any part thereof shall be taken on execution or other process of law (other than by eminent domain) in any action against Borrower.

(j) Borrower abandons all or a portion (other than a de minimis portion) of the Property.

(k) The holder of any lien or security interest on the Property (without implying the consent of Administrative Agent to the existence or creation of any such lien or security interest), whether superior or subordinate to the Mortgage or any of the other Loan Documents, declares a default and such default is not cured within any applicable grace or cure period set forth in the applicable document or such holder institutes foreclosure or other proceedings for the enforcement of its remedies thereunder.

(l) The Property, or any part thereof, is subjected to actual physical waste or to removal, demolition or material alteration (other than alterations made in accordance with this Agreement) so that the value of the Property is materially diminished thereby, and Administrative Agent determines that it is not adequately protected from any loss, damage or risk associated therewith.

(m) Any dissolution, termination, partial or complete liquidation, merger or consolidation of Borrower, Guarantor or any Constituent Entity of Borrower or Guarantor without the prior written consent of Administrative Agent, except to the extent same would constitute a Permitted Transfer.

(n) Guarantor (i) fails to meet the net worth and liquid asset requirements set forth in the Indemnity and Guaranty or (ii) fails to deliver a Financial Covenants Certification as defined in and required by the Indemnity and Guaranty and such failure with respect to this clause (ii) continues for ten (10) Business Days after written notice thereof.

(o) There shall occur a material adverse change in the validity or enforceability of any of the Loan Documents or any material right or remedy of Administrative Agent or the Lenders thereunder, or the validity or priority of the lien of the Mortgage that is not solely caused by Administrative Agent or any Lender and, to the extent such is susceptible of being cured, Borrower fails to reasonably cooperate with Administrative Agent to continuously and diligently prosecute such cure.

(p) If (i) (A) any Interest Rate Protection Agreement is terminated for any reason by Borrower, (B) any Interest Rate Protection Agreement is terminated for any reason by the counterparty thereunder, or (C) the counterparty thereunder defaults in the performance of its monetary obligations under any Interest Rate Protection Agreement, and Borrower does not (X) on or before the date such Interest Rate Protection Agreement is terminated (upon a termination of the Interest Rate Protection Agreement under subsection 5.1(p)(i)(A) above), or (Y) five (5) days after such Interest Rate Protection Agreement is terminated (upon a termination of the Interest Rate Protection Agreement under subsection 5.1(p)(i)(B) above), or (Z) five (5) days after a default by the counterparty (under subsection 5.1(p)(i)(C) above), replace such Interest Rate Protection Agreement with an interest rate protection agreement on the same terms and requirements as set forth in **Section 2.2(j)(i)** hereof (including, without limitation, (1) the requirement that such replacement counterparty satisfies the counterparty requirements set forth in **Section 2.2(j)(i)** hereof and (2) the delivery of an assignment of such interest rate protection agreement to CIBC Inc. and a recognition letter from the replacement counterparty thereto, each in compliance with the provisions of **Section 2.2(j)(i)** hereof), or (ii) Borrower fails to timely obtain, renew or replace, as applicable, any Interest Rate Protection Agreement pursuant to the terms, conditions and requirements set forth in **Section 2.2(j)** hereof.

(q) If the credit rating of any counterparty under any Interest Rate Protection Agreement is downgraded below the Minimum Counterparty Credit Rating and such counterparty is not replaced within thirty (30) days with a successor counterparty which satisfies all of the criteria set forth in clauses (A) and (B) of **Section 2.2(j)(i)** hereof.

ARTICLE VI

REMEDIES

6.1 **Remedies.**

(a) Acceleration. During the continuance of an Event of Default (other than an Event of Default described in paragraph (g) or (h) of **Section 5.1**) and at any time and from time to time thereafter, in addition to any other rights or remedies available to it pursuant to the Loan Documents or at law or in equity, Administrative Agent may (with the consent of the Required Lenders to the extent required pursuant to **Section 7.6**) take such action, without notice or demand, that Administrative Agent deems advisable to protect and enforce its rights and the rights of the Lenders against Borrower and in and to the Property; including declaring the Debt to be immediately due and payable (including unpaid interest, Default Rate interest, Late Payment Charges and any other amounts owing by Borrower); and upon any Event of Default described in paragraph (g) or (h) of **Section 5.1**, the Debt (including unpaid interest, Default Rate interest, Late Payment Charges and any other amounts owing by Borrower) shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained in any Loan Document to the contrary notwithstanding.

(b) Remedies Cumulative. During the continuance of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Administrative Agent and the Lenders against Borrower under the Loan Documents or at law or in equity may be exercised by Administrative Agent at any time and from time to time, whether or not all or any of the Debt shall be declared, or be automatically, due and payable, and whether or not Administrative Agent shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents. Any such actions taken by Administrative Agent shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as Administrative Agent may determine in its discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Administrative Agent and the Lenders permitted by law, equity or contract or as set forth in the Loan Documents. Without limiting the generality of the foregoing, Borrower agrees that if an Event of Default is continuing, (i) to the extent permitted by applicable law, Administrative Agent and the Lenders are not subject to any “one action or “election of remedies law or rule, and (ii) all liens and other rights, remedies or privileges provided to Administrative Agent and the Lenders shall remain in full force and effect until Administrative Agent have exhausted all of its remedies against the Property, the Mortgage has been foreclosed, the Property has been sold and/or otherwise realized upon in satisfaction of the Debt or the Debt have been paid in full. To the extent permitted by applicable law, nothing contained in any Loan Document shall be construed as requiring Administrative Agent or any Lender to resort to any portion of the Property for the satisfaction of any of the Debt in preference or priority to any other portion, and Administrative Agent may seek satisfaction out of the entire Property or any part thereof, in its discretion.

(c) Intentionally Omitted.

(d) Delay. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default, or the granting of any indulgence or compromise by Administrative Agent or any Lender shall impair any such remedy, right or power hereunder or 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 shall not be construed to be a waiver of any subsequent Default or Event of Default or to

impair any remedy, right or power consequent thereon. Notwithstanding any other provision of this Agreement, Administrative Agent reserves the right to seek a deficiency judgment or preserve a deficiency claim in connection with the foreclosure of the Mortgage to the extent necessary to foreclose on all or any portion of the Property, the Rents and Profits, the Cash Management Account or any other collateral.

(e) Administrative Agent's Right to Perform. If Borrower fails to perform any covenant or obligation contained herein and such failure shall continue beyond any applicable grace or notice and cure periods (if any), without in any way limiting Administrative Agent's right to exercise any of its rights, powers or remedies as provided hereunder, or under any of the other Loan Documents, Administrative Agent may, but shall have no obligation to, perform, or cause performance of, such covenant or obligation, and all reasonable costs and expenses, liabilities, and all penalties and fines imposed by Governmental Authorities incurred or paid by Administrative Agent in connection therewith, shall be payable by Borrower to Administrative Agent upon demand and if not paid shall be added to the Debt (and to the extent permitted under applicable laws, secured by the Mortgage and other Loan Documents) and shall bear interest thereafter at the Default Rate. Notwithstanding the foregoing, Administrative Agent shall have no obligation to send notice to Borrower of any such failure beyond any specific notice of the initial default required in this Agreement.

(f) Payment of Expenses. Borrower shall pay on demand all of Administrative Agent's reasonable expenses incurred in any efforts to enforce any terms of this Agreement, the Mortgage or any of the other Loan Documents, whether or not any lawsuit is filed and whether or not foreclosure is commenced but not completed, including, but not limited to, reasonable legal fees and disbursements, foreclosure costs and title charges, together with interest thereon from and after the date incurred by Administrative Agent until actually paid by Borrower at the Default Rate. Furthermore, Borrower shall, and does hereby, indemnify Administrative Agent for, and hold Administrative Agent harmless from, any and all losses, costs, expenses, claims (excluding any claims for actual diminution in value, except to the extent such diminution in value would result in Administrative Agent's failure to recover any amount of the entire outstanding Debt), actions, demands, liabilities, loss or damage (excluding any punitive or special damage, except to the extent any such punitive or special damage is asserted against Administrative Agent by Borrower, Guarantor, Property Manager, their respective Affiliates, successors, assigns, shareholders, directors, officers, employees and/or agents, or any Person acting at the direction of any of them, or any third-party) which may or might be incurred by Administrative Agent under this Agreement, the Mortgage or any of the other Loan Documents or by the exercise of rights or remedies hereunder, and from any and all claims and demands whatsoever which may be asserted against Administrative Agent by reason of any alleged obligations or undertakings on Administrative Agent's part with respect to the Property except as expressly set forth in the Loan Documents, except solely if and to the extent finally determined to have resulted from the gross negligence or willful misconduct of Administrative Agent or its successors, assigns, shareholders, directors, officers, employees and/or agents and not from any actions by Borrower, Guarantor, Property Manager, their respective Affiliates, successors, assigns, shareholders, directors, officers, employees and/or agents, or any Person acting at the direction of any of them. Borrower's obligation pursuant to the previous sentence shall include, without limitation, payment to (or reimbursement of) any compensation payable by the holder of the Loan to any servicing agent under a Secondary Market Transaction pursuant to

the Securitization Documents if such payment becomes due solely by reason of the existence and continuance of any Event of Default. Should Administrative Agent incur any such liability, the amount thereof, including, without limitation, costs, expenses and attorneys' fees, together with interest thereon at the Default Rate from the date incurred by Administrative Agent until actually paid by Borrower, shall be due and payable to Administrative Agent from Borrower on demand.

ARTICLE VII

ADMINISTRATIVE AGENT

7.1 **Appointment.** Canadian Imperial Bank of Commerce, acting through its New York Branch, is hereby appointed as Administrative Agent hereunder and under each other Loan Document, and each Lender originally named herein or who hereafter becomes a Lender hereunder hereby irrevocably authorizes Administrative Agent to act as agent for the Lenders and to take such actions as the Lenders are obligated or entitled to take under the provisions of this Agreement and the other Loan Documents and to exercise such powers as are set forth herein or therein, together with such other powers as are reasonably incidental thereto. In addition, Administrative Agent shall have the power to issue and is hereby authorized by the Lenders to issue all of the Lenders' consents and approvals and waivers hereunder. Administrative Agent agrees to act in substantially the same manner that it would act in dealing with a loan held for its own account. Administrative Agent shall not have a fiduciary relationship with respect to any Lender by reason of this Agreement. In performing its functions and duties under this Agreement, Administrative Agent shall act solely as agent of the Lenders and does not assume, and shall not be deemed to have assumed, any obligations toward or relationship of agency or trust with or for Borrower.

7.2 **Reliance on Administrative Agent.** All acts of and communications by Administrative Agent, as agent for the Lenders, shall be deemed legally conclusive and binding; and Borrower or any third party (including any court) shall rely on any and all communications or acts of Administrative Agent with respect to the exercise of any rights or the granting of any consent, waiver or approval on behalf of the Lenders in all circumstances where an action by a Lender is required or permitted pursuant to this Agreement or the provisions of any other Loan Document or by applicable laws without the right or necessity of making any inquiry of such Lender as to the authority of Administrative Agent with respect to such matter. In no event shall any of the foregoing limit the rights or obligations of any Lender with respect to any other Lender pursuant to this ARTICLE VII.

7.3 **Powers.** Administrative Agent shall have and may exercise all powers that the Lenders have under the Loan Documents and shall exercise such powers on behalf of the Lenders. All rights of action (including the right to file proof of claims) under this Agreement or any of the other Loan Documents may be enforced by the Administrative Agent without the possession of the Notes or the production thereof in any trial or other proceedings relating thereto. Any such suit or proceeding instituted by Administrative Agent shall be brought in its name as administrative agent for the Lenders without the necessity of joining as plaintiff or defendant the Lenders. Subject to the provisions of **Section 7.5** hereof, any recovery of judgment shall be for the pro rata benefit of the Lenders.

7.4 **Disbursements.** At least two (2) Business Days (by 11:00 A.M. New York time) prior to the date a disbursement of the Loan is to be made (such date being referred to herein as a “**Funding Date**”), Administrative Agent shall notify each Lender of the amount requested by Borrower, the amount approved by Administrative Agent, the portion of the proposed disbursement to be funded by each Lender and the Funding Date. Each Lender shall make available to Administrative Agent (or the funding bank or entity designated by Administrative Agent), the amount of such Lender’s pro rata share of each disbursement (such pro rata share being referred to herein as an “**Advance**”) in immediately available funds not later than 11:00 A.M. (New York time) on the Funding Date. Administrative Agent shall not and shall not be deemed to be obligated to make available to Borrower any portion of any proposed disbursement prior to Administrative Agent’s receipt of the pro rata share of such proposed disbursement from each Lender. Requests by Administrative Agent for funding by the Lenders of Advances will be made by facsimile or by e-mail. Nothing in this **Section 7.4** shall be deemed to relieve any Lender of its obligation hereunder to make any Advance on any Funding Date, nor shall any Lender be responsible for the failure of any other Lender to perform its obligations to make any Advance hereunder, and the Commitment of any Lender shall not be increased or decreased as a result of the failure by any other Lender to perform its obligation to make any Advances hereunder.

7.5 **Distribution and Apportionment of Payments.**

(a) Subject to **Section 7.5(b)**, payments actually received by Administrative Agent for the account of the Lenders shall be paid to them promptly after receipt thereof by Administrative Agent, but in any event within one (1) Business Day of receipt, provided that if any such payments are not distributed to the Lenders within one (1) Business Day after Administrative Agent’s receipt thereof, Administrative Agent shall pay to such Lenders interest thereon, (x) with respect to Borrower’s payments of interest, at a rate equal to the overnight cost of funds at which federal funds are made available to Administrative Agent (such interest rate to change automatically effective as of the date of each change in the overnight cost of federal funds), and (y) with respect to Borrower’s payments of principal, at a rate equal to the lesser of (i) the overnight cost of funds at which federal funds are made available to Administrative Agent (such interest rate to change automatically effective as of the date of each change in the overnight cost of federal funds), and (ii) if the applicable repayment represents repayment of a portion of the principal of the Loan, the rate of interest applicable to such portion of the Loan, in each case from the date of receipt of such funds by Administrative Agent until such funds are paid in immediately available funds to such Lenders. For purposes of this **Section 7.5**, funds shall be deemed received by Administrative Agent on the date actually received if such funds are received by Administrative Agent not later than 11:00 A.M. (New York time) and shall be deemed received on the next succeeding Business Day if such funds are actually received by Administrative Agent after 11:00 A.M. (New York time). All payments of principal and interest in respect of the Loan, all payments of the fees payable to Lender described in this Agreement (except any fees payable pursuant to the Fee Agreement, which fees shall be payable solely to CIBC Inc.), and all payments in respect of any other obligations of Borrower under the Loan Documents shall be allocated among those Lenders as are entitled thereto, in proportion of their respective Percentages or otherwise as provided herein or in the other Loan Documents, as the case may be. Administrative Agent shall distribute to each Lender at its primary address set forth herein or in its Assignment and Assumption, or at such other address as a Lender may

request in writing, such funds as it may be entitled to receive, provided that Administrative Agent shall in no event be bound to inquire into or determine the validity, scope or priority of any interest or entitlement of any Lender and may suspend all payments and seek appropriate relief (including instructions from the Required Lenders, or all the Lenders, as applicable, or an action in the nature of interpleader) in the event of any doubt or dispute as to any apportionment or distribution contemplated hereby. The order of priority herein is set forth solely to determine the rights and priorities of the Lenders as among themselves and may at any time or from time to time be changed by the Lenders as they may elect, in writing, without necessity of notice to or consent of or approval by Borrower.

(b) If any (but less than all) of the Lenders default (each such Lender, a **“Defaulting Lender”** and each such default, a **“Lender Default Event”**) in funding an Advance or paying any other sum payable by it under this ARTICLE VII on or before the time required herein (such sum is referred to as the **“Lender Default Amount”**), then, in addition to the rights and remedies that may be available to the other Lenders (**“Non-Defaulting Lenders”**) and Borrower at law and in equity:

(i) Administrative Agent, or any other Lender which under the terms of this Agreement is entitled to reimbursement from the Defaulting Lender for all or any portion of the Lender Default Amount, may collect from the Defaulting Lender the Lender Default Amount plus interest thereon at the Default Interest Rate for the period commencing on the date of the Lender Default Event and continuing through and including the date on which the Defaulting Lender repays the Lender Default Amount and interest thereon at the Default Interest Rate and all accrued and unpaid interest thereon in full (the **“Lender Default Period”**);

(ii) Administrative Agent shall provide a notice to Borrower and each Non-Defaulting Lender of each Lender Default Event, which notice shall indicate the amount of the specific Lender Default Amount. From the date of the Lender Default Event until a Defaulting Lender ceases to be a Defaulting Lender, the Defaulting Lender’s right to participate in the administration of the Loan and the Loan Documents, including any rights to vote upon, approve of, consent to or direct any action of Administrative Agent or the Lenders shall be suspended and such rights shall not be reinstated unless and until such Lender ceases to be a Defaulting Lender (and all decisions which are subject to receiving a vote of the required percentage of the Lenders, shall be approved if voted in favor of by the required percentage of the Non-Defaulting Lenders); provided, however, that if Administrative Agent is a Defaulting Lender, Administrative Agent shall continue to serve as Administrative Agent, unless Required Lenders vote to remove and replace Administrative Agent, which removal shall become effective only at such time as Borrower has received (A) written notice thereof, and (B) an executed, recordable instrument pursuant to which the replacement agent assumes the obligations of Administrative Agent under the Loan Documents. A Defaulting Lender shall cease to be a Defaulting Lender only if the Defaulting Lender pays, in full, the Lender Default Amount plus interest thereon at the Default Interest Rate for the Lender Default Period (x) within twenty (20) days of the notice specified in the first sentence of this **Section 7.5(b)(ii)**, or (y) after twenty (20) days of the notice specified in the first sentence of this **Section 7.5(b)(ii)**, with the consent of the Non-Defaulting Lenders. The

parties acknowledge that more than one (1) Lender Default Period may be in effect at any one (1) time with respect to any Lender and also with respect to more than one (1) Lender at any one time;

(iii) it shall be a condition precedent to each Non-Defaulting Lender's obligation to fund its Advance that either one or more Non-Defaulting Lenders or a Replacement Lender fund the Lender Default Amount, and accordingly no Lender shall be deemed a Defaulting Lender on the basis of having refused to fund its Advance if such condition precedent is not satisfied. Any or all of the Non-Defaulting Lenders shall be entitled (but shall not be obligated) to fund the Lender Default Amount, and subject to **Section 7.5(b)(vi)** below, collect interest at the Default Interest Rate from amounts otherwise payable to the Defaulting Lender for the Lender Default Period. If more than one Non-Defaulting Lender elects to fund the Lender Default Amount, the Lender Default Amount shall be apportioned among the electing Non-Defaulting Lenders in the proportion that the amount of the Commitment of each such electing Non-Defaulting Lender bears to the total Commitments of all electing Non-Defaulting Lenders. The actual funding by either one or more Non-Defaulting Lenders or a Replacement Lender of the Lender Default Amount shall not terminate the Lender Default Period with respect to the Default Lender nor relieve the Defaulting Lender of its obligation to pay interest at the Default Interest Rate or other amounts as otherwise provided herein;

(iv) Administrative Agent shall not transfer to a Defaulting Lender any payments made by or on behalf of Borrower to Administrative Agent for the Defaulting Lender's benefit; nor shall a Defaulting Lender be entitled to share in any payments hereunder or under any Note until all Lender Default Amounts, plus interest thereon at the Default Interest Rate for the Lender Default Period, have been paid in full. In the event the Lender Default Amount is funded by one or more Non-Defaulting Lenders pursuant to **Section 7.5(b)(iii)** above, the Defaulting Lender's entire interest in the Loan (including, without limitation, the amount of the prior Advances made by such Defaulting Lender prior to the Lender Default Event, the Loan Documents and proceeds thereof (the "**Defaulting Lender's Loan Interest**") shall be subordinated to any Lender Default Amount funded by any Non-Defaulting Lenders pursuant to **Section 7.5(b)(iii)** above, plus interest which may be due in accordance with **Section 7.5(b)(iii)** above at the Default Interest Rate (to be applied pari passu among the Non-Defaulting Lenders funding the Lender Default Amount), without necessity for executing any further documents;

(v) to achieve such subordination, Administrative Agent shall pay from any payments made by or on behalf of Borrower to Administrative Agent for the Defaulting Lender's benefit which would otherwise be payable to the Defaulting Lender first to those Non-Defaulting Lenders that have elected to fund the Lender Default Amount, interest on the principal amount of the Lender Default Amount at the Default Interest Rate, then to those Non-Defaulting Lenders that have elected to fund the Lender Default Amount, the principal of the Lender Default Amount until paid in full, such payments to be paid pari passu to the Non-Defaulting Lenders until the Lender Default Amount and all interest thereon at the Default Interest Rate has been repaid;

(vi) if, twenty (20) days after a Defaulting Lender's default, there remains any unfunded Lender Default Amount which has not been funded by the Non-Defaulting Lenders or the Defaulting Lender (the "**Unfunded Defaulted Amount**"), then a portion of the Defaulting Lender's interest in the Loan and the Loan Documents and the proceeds thereof equal to the amount of the Unfunded Defaulted Amount (together with interest thereon at the rate applicable to the Lender Default Amount from time to time pursuant to the Loan Documents) shall be subordinated to the interests of the Non-Defaulting Lenders in all of the indebtedness evidenced and secured by the Loan Documents unless and until such Unfunded Defaulted Amount is funded by the Defaulting Lender;

(vii) if a Lender remains a Defaulting Lender for twenty (20) days, and no other Lender or Lenders have funded all amounts not theretofore funded by the Defaulting Lender, then Administrative Agent and Borrower shall each have the right to designate a replacement institutional lender ("**Replacement Lender**") satisfactory to Administrative Agent, which Replacement Lender shall agree to fund all amounts not theretofore funded by the Defaulting Lender and agrees to assume all obligations thereafter to be performed by the Defaulting Lender and upon approval by Administrative Agent such Replacement Lender shall be a Permitted Assignee and the Defaulting Lender shall promptly enter into an Assignment and Assumption with such Replacement Lender as contemplated by ARTICLE IX hereof. For the purposes of clarification, the existence of a Replacement Lender shall not be (and shall not be deemed to be) a cure by a Defaulting Lender of the Lender Default Event and the existence of a Replacement Lender shall not release the Defaulting Lender from any of the obligations of such Defaulting Lender set forth herein, to the extent such Replacement Lender does not fully and completely satisfy such obligations;

(viii) the provisions of this **Section 7.5** shall apply notwithstanding any instruction of Borrower as to its desired application of payments; and

(ix) Administrative Agent shall be entitled to bring an action or suit against such Defaulting Lender in a court of competent jurisdiction to recover the Lender Default Amount, plus interest thereon at the Default Interest Rate and, to the extent such recovery would not fully compensate the Lenders for the Defaulting Lender's breach of this Agreement, to collect damages. In addition, the Defaulting Lender shall indemnify, defend and hold Administrative Agent and each of the other Lenders harmless from and against any and all claims, actions, liabilities, damages, costs and expenses (including attorneys' fees and expenses), plus interest thereon at the Default Rate, for funds advanced by Administrative Agent or any other Lender on account of the Defaulting Lender or any other damages such entities may sustain or incur by reason of or as a direct consequence of the Defaulting Lender's failure or refusal to abide by its obligations under this Agreement.

(c) Each Lender severally represents and warrants as of the date hereof that it is entitled to receive payments hereunder and under the other Loan Documents without the withholding of any tax. At least five (5) Business Days prior to the first date on which interest or fees are payable hereunder for the account of any Lender, each Lender that, as of such date, such

Lender is not incorporated under the laws of the United States of America, or a state thereof, Lender agrees that it will deliver to Administrative Agent two duly completed copies of United States Internal Revenue Service Form 1001 or 4224, certifying in either case that such Lender is entitled to receive payments under this Agreement and its Note without deduction or withholding of any United States federal income taxes. Each Lender which so delivers a Form 1001 or 4224, it further undertakes to deliver Administrative Agent two additional copies of such form (or a successor form) on or before the date that such form expires or becomes obsolete or after the occurrence of any event requiring a change in the most recent forms so delivered by it, and such amendments thereto or extensions or renewals thereof as may be requested by Administrative Agent, in each case certifying that such Lender is entitled to receive payments under this Agreement and its Note without deduction or withholding of any United States federal income taxes, unless an event (including any change in treaty, law or regulation) has occurred prior to the date on which any such delivery would otherwise be required which renders all such forms inapplicable or which would prevent such Lender from duly completing and delivering any such form with respect to it and such Lender advises Administrative Agent that it is not capable of receiving payments without any deduction or withholding of United States federal income tax. Upon Borrower's written request, each applicable Lender shall deliver to Borrower copies of the documents referenced above regarding tax withholding.

7.6 **Consents and Approval.**

(a) Each of the following shall require the approval or consent of the Required Lenders:

(i) declaring the principal amount due under the Notes to be immediately due and payable following an Event of Default or any recession of any such acceleration;

(ii) approval of the exercise of rights and remedies under the Loan Documents following an Event of Default (except such emergency remedies as Administrative Agent determines in good faith are necessary to protect the Lenders);

(iii) appointment of a successor Administrative Agent;

(iv) approval of Post-Default Plan and related matters; and

(v) except as referred to in subsection (b) below, approval of any amendment or modification of this Agreement or any of the other Loan Documents, or issuance of any waiver of any material provision of this Agreement or any of the other Loan Documents.

(b) Each of the following shall require the approval or consent of all of the Lenders (in each case, except as otherwise provided in this Agreement):

(i) extension of the Scheduled Maturity Date (other than in accordance with the terms of the Loan Documents) or forgiveness of all or any portion of the principal amount due under the Notes or any accrued interest thereon, or any other amendment of this Agreement or the other Loan Documents which would reduce the

underlying interest rate or the rate at which fees are calculated or forgive any loan fee, or extend the time of payment of any principal, interest or fees;

(ii) amend the percentage specified in the definition of Required Lenders or otherwise change the definition of Required Lenders;

(iii) increase of the amount of the Loan;

(iv) release of any lien on any material collateral other than in accordance with the Loan Documents (except after payment in full of the Loan);

(v) amendment of the provisions of this ARTICLE VII;

(vi) issuance of a consent to subordinate liens against the Property;

(vii) subordination of the Mortgage to any other lien or encumbrance except in connection with normal and customary (A) access easements for vehicular and pedestrian ingress and egress located in, on, under, over and across the Property and (B) utility easements (which may be granted to governmental authorities or private utility companies, or other property owners) located in, on over, under, across and through the Property for the installation and maintenance of underground potable water lines, sanitary sewer lines, electric lines, storm sewer pipes, cable and telephone lines and other utility lines and facilities necessary for providing such utility services to the Property or other properties, provided such easements do not interfere with or materially and adversely affect the use and operation (or proposed use and operation) of the Property; and

(viii) release of any obligations of Guarantor or any claims against Guarantor.

(c) In addition to the required consents or approvals referred to in subsections (a) and (b) above, Administrative Agent may at any time request instructions from the Required Lenders with respect to any actions or approvals which, by the terms of this Agreement or of any of the Loan Documents, Administrative Agent is permitted or required to take or to grant without instructions from any Lenders, and if such instructions are promptly requested, Administrative Agent shall be absolutely entitled to refrain from taking any action or to withhold any approval and shall not be under any liability whatsoever for refraining from taking any action or withholding any approval under any of the Loan Documents until it shall have received such instructions from the Required Lenders. Without limiting the foregoing, no Lender shall have any right of action whatsoever against Administrative Agent as a result of Administrative Agent acting or refraining from acting under this Agreement or any of the other Loan Documents in accordance with the instructions of the Required Lenders or, where applicable, all Lenders. Administrative Agent shall promptly notify each Lender at any time that the Required Lenders have instructed Administrative Agent to act or refrain from acting pursuant hereto.

(d) Each Lender authorizes and directs Administrative Agent to enter into the Loan Documents for the benefit of the Lenders. Each Lender agrees that any action taken by Administrative Agent, at the direction or with the consent of the Required Lenders in accordance with the provisions of this Agreement or any other Loan Document, and the exercise by

Administrative Agent at the direction or with the consent of the Required Lenders of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all Lenders, except for actions specifically requiring the approval of all Lenders. All communications from Administrative Agent to the Lenders requesting Lenders' determination, consent, approval or disapproval (i) shall be given in the form of a written notice to each Lender, (ii) shall be accompanied by a description of the matter or item as to which such determination, approval, consent or disapproval is requested, or shall advise each Lender where such matter or item may be inspected, or shall otherwise describe the matter or issue to be resolved, (iii) shall include, if requested by a Lender and to the extent not previously provided to such Lender, a summary of all oral information provided to Administrative Agent by Borrower, and all available written materials, in each case relating to the matter or issue to be resolved, and (iv) shall include Administrative Agent's recommended course of action or determination in respect thereof. Each Lender shall reply promptly, but in any event within ten (10) Business Days after receipt of the request therefor from Administrative Agent (the "**Lender Reply Period**"). Unless a Lender shall give written notice to Administrative Agent that it objects to the recommendation or determination of Administrative Agent (together with a written explanation of the reasons behind such objection) within the Lender Reply Period, such Lender shall be deemed to have approved of or consented to such recommendation or determination. With respect to decisions requiring the approval of the Required Lenders or all Lenders, Administrative Agent shall submit its recommendation or determination for approval of or consent to such recommendation or determination to all Lenders and upon receiving the required approval or consent shall follow the course of action or determination recommended to the Lenders by Administrative Agent or such other course of action recommended by the Required Lenders, and each non-responding Lender shall be deemed to have concurred with such recommended course of action.

(e) Notwithstanding anything to the contrary set forth in this Agreement or any other Loan Document, with respect to any decisions to be made by Administrative Agent, Lender or Required Lenders in connection with any action or inaction relating to letters of credit issued or to be issued by any Lender to Administrative Agent in connection with the Loan, including any decision whether or not to draw thereupon, (i) such issuing Lender's consent or approval shall not be necessary even where unanimous Lender approval otherwise would be required hereunder, and (ii) Required Lenders shall mean the required aggregate Percentage of the remaining Lenders (i.e., other than the issuing Lender).

7.7 Agency Provisions Relating to Collateral.

(a) Administrative Agent is hereby authorized on behalf of all Lenders, without the necessity of any notice to or further consent from any Lender, at any time and from time to time, to take any action with respect to any collateral for the Loan or any Loan Document which may be necessary to preserve and maintain such collateral or to perfect and maintain perfected the liens upon such collateral granted pursuant to this Agreement and the other Loan Documents.

(b) Except as provided in this Agreement, Administrative Agent shall have no obligation whatsoever to any Lender or to any other person or entity to assure that any collateral exists or is owned by Borrower or is cared for, protected or insured or has been encumbered or

that the liens granted herein or in any of the other Loan Documents or pursuant hereto or thereto have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority.

(c) Should Administrative Agent commence any proceeding or in any way seek to enforce Administrative Agent's or the Lenders' rights or remedies under the Loan Documents, irrespective of whether as a result thereof Administrative Agent shall acquire title to any collateral, each Lender, upon demand therefor from time to time, shall contribute its share (based on its Percentage) of the costs and/or expenses of any such enforcement or acquisition, including fees of receivers or trustees, court costs, title company charges, filing and recording fees, appraisers' fees and fees and expenses of attorneys to the extent not otherwise reimbursed by Borrower. Without limiting the generality of the foregoing, each Lender shall contribute its share (based on its Percentage) of all costs and expenses incurred by Administrative Agent (including attorneys' fees and expenses) if Administrative Agent employ counsel for advice or other representation (whether or not any suit has been or shall be filed) with respect to any collateral for the Loan or any part thereof, or any of the Loan Documents, or the attempt to enforce any security interest or lien on any collateral, or to enforce any rights of Administrative Agent or the Lenders or any of Borrower's or any other party's obligations under any of the Loan Documents, but not with respect to any dispute between any Administrative Agent and any other Lender(s). It is understood and agreed that in the event Administrative Agent determines it is necessary to engage counsel for Lender from and after the occurrence of a Default or Event of Default, said counsel shall be selected by Administrative Agent and written notice of such selection, together with a copy of such counsel's engagement letter and fee estimate, shall be delivered to the Lenders.

(d) In the event that all or any portion of the collateral for the Loan is acquired by Administrative Agent as the result of the exercise of any remedies hereunder or under any other Loan Document, or is retained in satisfaction of all or any part of Borrower's obligations under the Loan Documents, title to any such collateral or any portion thereof shall be held in the name of one or more of Administrative Agent or a nominee or subsidiary of one or more of Administrative Agent, as agent, for the ratable benefit of the Lenders. Administrative Agent shall prepare a recommended course of action for such collateral (the "**Post-Default Plan**"), which shall be subject to the approval of the Required Lenders. Administrative Agent shall administer the collateral in accordance with the Post-Default Plan, and upon demand therefor from time to time, each Lender will contribute its share (based on its Percentage) of all costs and expenses incurred by Administrative Agent pursuant to the Post-Default Plan, including any operating losses and all necessary operating reserves. To the extent there is net operating income from such collateral, Administrative Agent shall, in accordance with the Post-Default Plan, determine the amount and timing of distributions to Lenders. All such distributions shall be made to Lenders in accordance with their respective Percentages. In no event shall the provisions of this subsection or the Post-Default Plan require any Administrative Agent or any Lender to take an action which would cause such Lender to be in violation of any applicable regulatory requirements.

7.8 **Lender Actions Against Borrower or the Collateral.** Each Lender agrees that it will not take any action, nor institute any actions or proceedings, against Borrower or any other person hereunder or under any other Loan Documents with respect to exercising claims against

Borrower or rights in any collateral without the consent of the Required Lenders. With respect to any action by Administrative Agent to enforce the rights and remedies of Administrative Agent and Lenders with respect to Borrower and any collateral in accordance with the terms of this Agreement, each Lender hereby consents to the jurisdiction of the court in which such action is maintained.

7.9 **Assignment and Participation.** No Lender shall be permitted to assign or sell all or any portion of its rights and obligations under this Agreement to Borrower, Guarantor or any Affiliate of Borrower or Guarantor.

7.10 **Ratable Sharing.** Subject to **Sections 7.4** and **7.5**, the Lenders agree among themselves that (a) with respect to all amounts received by them which are applicable to the payment of the Loan (except any fees paid pursuant to the Fee Agreement, which fees shall be payable solely to Canadian Imperial Bank of Commerce, acting through its New York Branch), equitable adjustment will be made so that, in effect, all such amounts will be shared among them ratably in accordance with their Percentages, whether received by voluntary payment, by the exercise of the right of set-off or banker's lien, by counterclaim or cross action or by the enforcement of any or all of the Loan Documents or any collateral, and (b) if any of them shall by voluntary payment or by the exercise of any right of counterclaim, set-off, banker's lien or otherwise, receive payment of a proportion of the aggregate amount of the Loan held by it which is greater than its Percentage of the payments on account of the Loan, the one receiving such excess payment shall purchase, without recourse or warranty, an undivided interest and participation (which it shall be deemed to have done simultaneously upon the receipt of such payment) in such obligations owed to the others so that all such recoveries with respect to such obligations shall be applied ratably in accordance with their Percentages; provided, that if all or part of such excess payment received by the purchasing party is thereafter recovered from it, those purchases shall be rescinded and the purchase prices paid for such participations shall be returned to that party to the extent necessary to adjust for such recovery, but without interest except to the extent the purchasing party is required to pay interest in connection with such recovery. All sums received by any Lender by voluntary payment or by the exercise of any right of counterclaim, set-off, banker's lien or otherwise shall be reported to Administrative Agent within two (2) Business Days of receipt thereof and such sums shall be credited to the Debt.

7.11 **General Immunity.** Neither Administrative Agent nor any of its directors, officers, agents or employees shall be liable to Borrower or any Lender for any action taken or omitted to be taken by it or them hereunder or under any other Loan Document or in connection herewith or therewith, except for its or their own gross negligence or willful misconduct. In the absence of gross negligence, Administrative Agent shall not be liable for any apportionment or distribution of payments made by it in good faith pursuant to **Section 7.5**, and if any such apportionment or distribution is subsequently determined to have been made in error the sole recourse of any Lender to whom payment was due, but not made, shall be to recover from the recipients of such payments any payment in excess of the amount to which they are determined to have been entitled.

7.12 **No Responsibility for Loan, Recitals.** Neither Administrative Agent nor any of its directors, officers, agents or employees shall be responsible for or have any duty to ascertain, inquire into, or verify (a) any statement, warranty or representation made in connection with any

Loan Document or any use of the Loan; (b) the performance or observance of any of the covenants or agreements of any party to any Loan Document; (c) the satisfaction of any condition specified in this Agreement, except receipt of items purporting to be the items required to be delivered to any Administrative Agent; or (d) the validity, effectiveness or genuineness of any Loan Document or any other instrument or writing furnished in connection therewith, provided that the foregoing shall not release any Administrative Agent from liability for its gross negligence or willful misconduct.

7.13 **Action on Instructions of the Lenders.** Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder and under any other Loan Document in accordance with written instructions signed by all the Lenders (or the Required Lenders, if such action may be directed hereunder by the Required Lenders), and such instructions and any action taken or failure to act pursuant thereto shall be binding on all of Lenders. Each Lender, severally to the extent of its Percentage, hereby agrees to indemnify Administrative Agent against and hold it harmless from any and all liability, cost and expense that it may incur by reason of taking or continuing to take any such action, provided that the foregoing shall not release Administrative Agent from liability for its gross negligence or willful misconduct.

7.14 **Employment of Agents and Counsel.** Administrative Agent may undertake any of its duties as Administrative Agent hereunder and under any other Loan Document by or through employees, agents, and attorneys-in-fact and shall not be liable to the Lenders, except as to money or securities received by them or their authorized agents, for the default or misconduct of any such agents or attorneys-in-fact. Administrative Agent shall be entitled to advice of counsel concerning all matters pertaining to the agency hereby created and its duties hereunder and under any other Loan Document.

7.15 **Reliance on Documents; Counsel.** Administrative Agent shall be entitled to rely upon any notice, consent, certificate, affidavit, letter, telegram, statement, paper or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons, and, in respect to legal matters, upon the opinion of counsel selected by Administrative Agent, which counsel may be an employee of Administrative Agent, provided that the foregoing shall not release Administrative Agent from liability for its gross negligence or willful misconduct. Any such counsel shall be deemed to be acting on behalf of the Lenders in assisting Administrative Agent with respect to the Loan, but shall not be precluded from also representing Administrative Agent in any matter in which the interests of Administrative Agent and the other Lenders may differ.

7.16 **Administrative Agent's Reimbursement and Indemnification.** The Lenders agree to reimburse and indemnify Administrative Agent ratably (a) for any amounts (excluding principal and interest on the Loan and loan fees) not reimbursed by Borrower for which Administrative Agent is entitled to reimbursement under the Loan Documents, and (b) for any other expenses incurred by Administrative Agent on behalf of the Lenders, in connection with the preparation, execution, delivery, administration and enforcement of the Loan Documents, if not paid by Borrower; provided, however, that except in the case of an emergency or other situation where Administrative Agent determines that prompt action is needed to protect the interests of the Lenders, Administrative Agent shall obtain the approval of the Required Lenders

(i) to undertake any course of action which in Administrative Agent's judgment is likely to result in unreimbursable expenses in excess of One Hundred Thousand Dollars (\$100,000) or (ii) to continue a course of action if at any time unreimbursable expenses resulting therefrom actually exceed \$100,000, (c) for any expenses incurred by Administrative Agent on behalf of the Lenders which may be necessary or desirable to preserve and maintain collateral or to perfect and maintain perfected the liens upon the collateral granted pursuant to this Agreement and the other Loan Documents, if not paid by Borrower, (d) for any amounts and other expenses incurred by Administrative Agent on behalf of the Lenders in connection with any default by any Lender hereunder or under the other Loan Documents, if not paid by such Lender, and (e) for any liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever which may be imposed on, incurred by or asserted against such Administrative Agent in any way relating to or arising out of the Loan Documents or any other document delivered in connection therewith or the transactions contemplated thereby, or the enforcement of any of the terms thereof or of any such other documents, provided that no Lender shall be liable for any of the foregoing to the extent they arise from the gross negligence or willful misconduct of Administrative Agent.

7.17 **Rights as a Lender.** With respect to its Commitment, if any, Administrative Agent shall have the same rights, powers and obligations hereunder and under any other Loan Document as any Lender and may exercise such rights and powers as though it were not an Administrative Agent, and the term "Lender" or "Lenders" shall, unless the context otherwise indicates, include such Administrative Agent in its individual capacities. Borrower and each Lender acknowledge and agree that Administrative Agent, the Lenders and/or their respective Affiliates may accept deposits from, lend money to, hold other investments in, and generally engage in any kind of trust, debt, equity or other transaction or have other relationships, in addition to those contemplated by this Agreement or any other Loan Document, with Borrower or any of its Affiliates in which Borrower or such affiliate is not restricted hereby from engaging with any other person.

7.18 **Lenders' Credit Decisions.** Each Lender acknowledges that it has, independently and without reliance upon Administrative Agent or any other Lender and based on the financial statements and other information prepared by Borrower and such other documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement and the other Loan Documents. Each Lender also acknowledges that it will, independently and without reliance upon Administrative Agent or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement and the other Loan Documents.

7.19 **Notice of Events of Default.** Should Administrative Agent receive any written notice of the occurrence of a Default or Event of Default, or should Administrative Agent send Borrower a notice of Default or Event of Default, Administrative Agent shall promptly give notice thereof to each other Lender.

7.20 **Successor Administrative Agent.**

(a) Administrative Agent may resign from the performance of all its functions and duties hereunder at any time, by giving at least sixty (60) days prior written notice to Lenders and Borrower. Such resignation shall take effect on the date set forth in such notice or as otherwise provided below. Such resignation by Administrative Agent as administrative agent shall not affect its obligations hereunder, if any, as a Lender. Additionally, if Administrative Agent is grossly negligent or commits willful misconduct, the Required Lenders may remove Administrative Agent from its role as Administrative agent for the Lenders, without affecting Administrative Agent's rights or obligations as a Lender.

(b) Upon resignation by or replacement Administrative Agent, or any successor Administrative Agent, the Required Lenders shall appoint a successor Administrative Agent. If no successor Administrative Agent shall have been so appointed by the Required Lenders, and shall have accepted such appointment within sixty (60) days after the retiring Administrative Agent's giving notice of resignation, then the retiring Administrative Agent may appoint a successor Administrative Agent. Upon the acceptance of any appointment as an Administrative Agent hereunder by a successor Administrative Agent, Administrative Agent's resignation shall become effective and such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of Administrative Agent and Administrative Agent upon the recordation of a written designation and acceptance, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents other than its liability, if any, for duties and obligations accrued prior to its retirement. After any retiring Administrative Agent's resignation hereunder as an Administrative Agent, the provisions of this ARTICLE VII shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as an Administrative Agent hereunder and under the other Loan Documents. The new Administrative Agent shall promptly deliver to Borrower a copy of the designation and acceptance.

7.21 **Withholding of Taxes.**

(a) Payments to Be Free and Clear. Unless otherwise required by applicable law, all sums payable by Borrower under this Agreement and the other Loan Documents shall be paid free and clear of, and without any deduction or withholding on account of, any Special Taxes. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Special Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Special Tax is an Indemnified Tax, then the sum payable by Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) the applicable Recipient of such payment receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Payment of Other Taxes by Borrower. Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) Indemnification by Borrower. Borrower shall indemnify each Recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Borrower by a Lender (with a copy to Administrative Agent), or by Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) Indemnification by the Lenders. Each Lender shall severally indemnify Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that Borrower has not already indemnified Administrative Agent for such Indemnified Taxes and without limiting the obligation of Borrower to do so) and (ii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Special Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by Administrative Agent to the Lender from any other source against any amount due to Administrative Agent under this paragraph (d).

(e) Evidence of Payments. As soon as practicable after any payment of Special Taxes by Borrower to a Governmental Authority pursuant to this **Section 7.21**, Borrower shall deliver to Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Administrative Agent.

(f) Evidence of Exemption from U.S. Withholding Tax.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Special Tax with respect to payments made under any Loan Document shall deliver to Borrower and Administrative Agent, at the time or times reasonably requested by Borrower or Administrative Agent, such properly completed and executed documentation reasonably requested by Borrower or Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower or Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by Borrower or Administrative Agent as will enable Borrower or Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in this **Section 7.21(f)(ii)(A)**, **(ii)(B)** and **(ii)(D)** below) shall not be required if in the Lender's reasonable judgment such completion, execution

or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that Borrower is a U.S. Person:

(A) any Lender that is a U.S. Person shall deliver to Borrower and Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or Administrative Agent), executed originals of IRS Form W-9 (or any successor form thereto, as approved by Administrative Agent) certifying that such Lender is exempt from U.S. federal backup withholding Special Tax;

(B) any Foreign Lender shall deliver to Borrower and Administrative Agent (in such number of copies as shall be reasonably requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN or W-8BEN-E, as applicable (or any successor form thereto, as approved by Administrative Agent), establishing an exemption from, or reduction of, U.S. federal withholding Special Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or W-8BEN-E, as applicable (or any successor form thereto, as approved by Administrative Agent), establishing an exemption from, or reduction of, U.S. federal withholding Special Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(2) executed originals of IRS Form W-8ECI (or any successor form thereto, as approved by Administrative Agent);

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit J-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a **“U.S. Tax Compliance Certificate”**) and (y) executed originals of IRS Form W-8BEN or W-8BEN-E, as applicable; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY (or any successor form thereto, as approved by Administrative Agent), accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E (or any successor form thereto, as approved by Administrative Agent), as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit J-2 or Exhibit J-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable (or any successor form thereto, as approved by Administrative Agent); provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit J-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower and Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or Administrative Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Special Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit Borrower or Administrative Agent to determine the withholding or deduction required to be made;

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Special Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to Borrower and Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by Borrower or Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Borrower or Administrative Agent as may be necessary for Borrower and Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement; and

(E) Administrative Agent shall deliver to Borrower on or prior to the date on which the Administrative Agent becomes the Administrative Agent under this Agreement (and from time to time thereafter upon the reasonable request of Borrower) an executed original of IRS Form W-9 (or any successor form thereto, as approved by Administrative Agent) certifying the Administrative

Agent is a U.S. Person and that the Administrative Agent is exempt from United States federal backup withholding Special Tax.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower and the Administrative Agent in writing of its legal inability to do so.

(g) Tax Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Special Taxes as to which it has been indemnified pursuant to this **Section 7.21** (including by the payment of additional amounts pursuant to this **Section 7.21**), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Special Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Survival. Each party's obligations under this **Section 7.21** shall survive the resignation or replacement of Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

(i) Defined Terms. For purposes of this **Section 7.21**, the term "applicable law" includes FATCA.

7.22 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under **Section 2.2(e)**, or requires Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to **Section 7.21**, then such Lender shall (at the request of Borrower) use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to **Section 2.2(e)** or **Section 7.21**, as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. Borrower hereby agrees to pay all reasonable

costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 2.2(e), or if Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 7.21 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 7.22(a), or if any Lender is a Defaulting Lender, then Borrower may, at its sole expense and effort, upon notice to such Lender and Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 9.1), all of its interests, rights (other than its existing rights to payments pursuant to Section 2.2(e) or Section 7.21) and obligations under this Agreement and the related Loan Documents to a Permitted Assignee that satisfies the Eligibility Requirements and is approved by Administrative Agent in its sole discretion, and which Permitted Assignee shall and shall be required to assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

(i) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents from the assignee (to the extent of such outstanding principal and accrued interest and fees) or Borrower (in the case of all other amounts);

(ii) in the case of any such assignment resulting from a claim for compensation under Section 2.2(e) or payments required to be made pursuant to Section 7.21, such assignment will result in a reduction in such compensation or payments thereafter; and

(iii) such assignment does not conflict with applicable law.

With the exception of Section 7.22, the provisions of Section 9.1 and this ARTICLE VII may be amended without Borrower's consent, written or otherwise.

ARTICLE VIII

MISCELLANEOUS TERMS AND CONDITIONS

8.1 Time of Essence. Time is of the essence with respect to all provisions of the Loan Documents.

8.2 Release of Mortgage. If all of the Debt be paid and all other obligations under the Loan Documents be performed (in accordance and in compliance with the terms and provisions of the Loan Documents), then and in that event only, upon delivery and recordation of a written satisfaction or reconveyance of the Mortgage (in form reasonably acceptable to Administrative Agent), all rights under the Mortgage shall terminate except for those provisions thereof which by their terms survive, and the Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced thereby, which shall be released by

Administrative Agent in due form at Borrower's cost. No release of the Mortgage or the lien thereof shall be valid unless executed by Administrative Agent.

8.3 **Certain Rights of Administrative Agent.** Without affecting Borrower's liability for the payment of any of the Debt, Administrative Agent may (with the consent of the Required Lenders or the Lenders to the extent required pursuant to **Section 7.6**) from time to time: (a) without notice to Borrower, release any Person liable for the payment of the Debt; (b) without notice to Borrower, extend or modify the terms of payment of the Debt; (c) without notice to Borrower, accept additional real or personal property of any kind as security or alter, substitute or release any property securing the Debt; (d) upon written notice to Borrower, consent in writing to the making of any subdivision map or plat thereof; (e) without notice to Borrower, join in granting any easement therein; or (f) without notice to Borrower, join in any extension agreement of the Mortgage or any agreement subordinating the lien hereof.

8.4 **Waiver of Certain Defenses.** No action for the enforcement of the lien of the Mortgage or of any provision thereof shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the Notes or any of the other Loan Documents.

8.5 **Notices.** All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of the same in person to the intended addressee, or by depositing the same with Federal Express or another reputable private courier service for next business day delivery, with all charges prepaid, or by depositing the same in the United States mail, postage prepaid, certified mail, return receipt requested, in any event addressed to the intended addressee at its address set forth below or at such other address as may be designated by such party as herein provided. All notices, demands and requests shall be effective upon such personal delivery, or one (1) business day after being deposited with the private courier service, or three (3) business days after being deposited in the United States mail as required above. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, demand or request sent. By giving to the other party hereto at least fifteen (15) days' prior written notice thereof in accordance with the provisions hereof, the parties hereto shall have the right from time to time to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America. All notices, demands, requests or other communications shall be addressed as follows:

If to Administrative Agent:

Canadian Imperial Bank of Commerce, acting through its New York Branch
One South Wacker Drive
Suite 3500
Chicago, Illinois 60606
Attn: Real Estate Group

with a copy to:

CIBC Inc.
425 Lexington Avenue
4th Floor
New York, New York 10017
Attn: Real Estate Group, Mr. Todd Roth

and to:

Dentons US LLP
1221 Avenue of the Americas
New York, NY 10020-1089
Attn: Gary A. Goodman

If to Borrower:

DRA Advisors LLC
220 East 42nd Street
New York, NY 10017
Attention: Dean Sickles
Email: dsickles@draadvisors.com

with a copy to:

Blank Rome LLP
405 Lexington Avenue
New York, New York 10174
Attention: Martin Luskin, Esq. with a concurrent copy to Samantha Wallack, Esq.
Email: mluskin@blankrome.com
Email: szweig@blankrome.com

with a copy to:

M&J Wilkow, Ltd.
20 South Clark Street, Suite 3000
Chicago, IL 60603
Attention: Marc R. Wilkow
Email: mwilkow@wilkow.com

8.6 **Successors and Assigns.** The terms, provisions, indemnities, covenants and conditions hereof shall be binding upon Borrower and the successors and assigns of Borrower, including all successors in interest of Borrower in and to all or any part of the Property, and shall inure to the benefit of Administrative Agent and the Lenders, their respective successors and assigns, and shall constitute covenants running with the land. All indemnities in this Agreement for the benefit of Administrative Agent and the Lenders shall inure to the benefit of Administrative Agent and the Lenders and each of their respective directors, officers, shareholders, partners, members, managers, employees and agents (including, without limitation, any Servicers), and pledgees and participants of the Debt, and their respective successors and

assigns. All references in this Agreement to Borrower, Administrative Agent or the Lenders shall be deemed to include each such party's successors and assigns. If Borrower consists of more than one Person, each will be jointly and severally liable to perform the obligations of Borrower.

8.7 **Severability.** A determination that any provision of this Agreement is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Agreement to any Person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other Persons or circumstances.

8.8 **Interpretation.** Within this Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular shall be held and construed to include the plural, and vice versa, unless the context otherwise requires. The headings of the sections and paragraphs of this Agreement are for convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof. In the event of any inconsistency between the provisions hereof and the provisions in any of the other Loan Documents, it is intended that the provisions of this Agreement shall be controlling.

8.9 **Waiver: Discontinuance of Proceedings.** Administrative Agent may waive any single Event of Default by Borrower hereunder without waiving any other prior or subsequent Event of Default. Administrative Agent may remedy any Event of Default by Borrower hereunder without waiving the Event of Default remedied. Neither the failure by Administrative Agent to exercise, nor the delay by Administrative Agent in exercising, any right, power or remedy upon any Event of Default by Borrower hereunder shall be construed as a waiver of such Event of Default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Administrative Agent of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or waiver of any provision hereof nor consent to any departure by Borrower therefrom shall in any event be effective unless the same shall be in writing and signed by Administrative Agent, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose given. No notice to nor demand on Borrower in any case shall of itself entitle Borrower to any other or further notice or demand in similar or other circumstances. Acceptance by Administrative Agent of any payment in an amount less than the amount then due on any of the Debt shall be deemed an acceptance on account only and shall not in any way affect the existence of a Default or an Event of Default hereunder. In case Administrative Agent shall have proceeded to invoke any right, remedy or recourse permitted hereunder or under the other Loan Documents and shall thereafter elect to discontinue or abandon the same for any reason, Administrative Agent shall have the unqualified right to do so and, in such an event, Borrower and Administrative Agent shall be restored to their former positions with respect to the Debt, the Loan Documents, the Property and otherwise, and the rights, remedies, recourses and powers of Administrative Agent shall continue as if the same had never been invoked.

8.10 **Governing Law.** THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, AND MADE BY THE ADMINISTRATIVE AGENT AND THE LENDERS

AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE NOTES DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTIONS EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PREMISES IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF BORROWER, THE ADMINISTRATIVE AGENT AND EACH LENDER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT AND THE NOTES, AND THIS AGREEMENT, THE NOTES AND, EXCEPT AS PROVIDED ABOVE IN THIS **SECTION 8.10**, THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW

8.11 **Counting of Days.** The term “days” when used herein shall mean calendar days. If any time period ends on a Saturday, Sunday or holiday officially recognized by the state within which the Real Estate is located, the period shall be deemed to end on the next succeeding Business Day.

8.12 **Relationship of the Parties.** The relationship between Borrower and the Lenders is that of a borrower and a lender only and neither of those parties is, nor shall it hold itself out to be, the agent, employee, joint venturer or partner of the other party.

8.13 **Application of the Proceeds of the Notes.** To the extent that proceeds of the Notes are used to pay indebtedness secured by any outstanding lien, security interest, charge or prior encumbrance against the Property, such proceeds have been advanced by the Lenders at Borrower’s request and Lenders shall be subrogated to any and all rights, security interests and liens owned by any owner or holder of such outstanding liens, security interests, charges or encumbrances, irrespective of whether said liens, security interests, charges or encumbrances are released.

8.14 **Unsecured Portion of Indebtedness.** If any part of the Debt cannot be lawfully secured by the Mortgage or if any part of the Property cannot be lawfully subject to the lien and

security interest thereof to the full extent of such indebtedness, then all payments made shall be applied on said indebtedness first in discharge of that portion thereof which is unsecured by the Mortgage.

8.15 **Cross Default.** An Event of Default shall be a default (without further rights to cure) under each of the other Loan Documents.

8.16 **Exculpation.**

(a) Notwithstanding anything in the Loan Documents to the contrary, but subject to the qualifications set forth in this **Section 8.16**, Administrative Agent agrees that (i) Borrower shall be liable for the Debt and for the other obligations arising under the Loan Documents to the full extent (but only to the extent) of the Collateral, (ii) during the continuance of any Event of Default, any judicial or other proceedings brought by Administrative Agent against Borrower shall be limited to the preservation, enforcement and foreclosure, or any thereof, of the liens, security titles, estates, assignments, rights and security interests now or at any time hereafter securing the Debt, and no attachment, execution or other writ of process shall be sought, issued or levied upon any assets, properties or funds of Borrower other than the Collateral, except with respect to the liability described below in this **Section 8.16**, and (iii) in the event of a foreclosure of such liens, security titles, estates, assignments, rights or security interests securing the Debt and/or the other obligations of Borrower under the Loan Documents, no judgment for any deficiency upon the Debt shall be sought or obtained by Administrative Agent against Borrower, except with respect to the liability described below in this **Section 8.16**; provided, however, that, notwithstanding the foregoing provisions of this **Section 8.16**, Borrower shall be fully liable, and subject to legal action, for all losses (excluding any punitive or special damages, except to the extent any such punitive or special damages are asserted against Administrative Agent or any Lender by Borrower, Guarantor, Property Manager, their respective Affiliates, successors, assigns, shareholders, directors, officers, employees and/or agents, or any Person acting at the direction of any of them, or any third-party), and reasonable costs and expenses incurred by Administrative Agent (including, without limitation, the fees and expenses of Administrative Agent's counsel) by reason of:

(i) intentional misappropriation or conversion of any Rents and Profits, or other funds constituting proceeds of the Property in violation of the Loan Documents (which misappropriation may include, without limitation, (A) rent and other payments received from Tenants paid more than one month in advance, and not applied in accordance with the Loan Documents or paid to Administrative Agent upon an Event of Default; and/or (B) failure to apply Rents and Profits in accordance with the terms of this Agreement and the other Loan Documents), or failure to otherwise deposit rents in accordance with the terms of this Agreement, in each case to the full extent of the funds misappropriated or misapplied;

(ii) any security deposits not delivered to Administrative Agent upon foreclosure of the Mortgage (or similar sale pursuant to the terms thereof) or an action or conveyance in lieu thereof, except to the extent previously applied in accordance with the terms of the related Lease;

(iii) proceeds (A) paid under any insurance policies (or paid as a result of any other claim or cause of action against any person or entity) by reason of damage, loss or destruction to all or any portion of the Property, or (B) resulting from the condemnation or other taking in lieu of condemnation of all or any portion of the Property, or any of them, in each case to the full extent of such proceeds, which were received by Borrower, not previously delivered to Administrative Agent, but which, under the terms of the Loan Documents, should have been delivered to Administrative Agent;

(iv) any willful misconduct by Borrower or Guarantor, or any Person acting Controlled by Borrower or Guarantor (including, without limitation, removal of any portion of the Property in violation of the terms of the Loan Documents) that materially impairs (A) the security provided to Administrative Agent and the Lenders, or (B) the recovery by Administrative Agent and/or any Lender of all Debt and other obligations owing under the Loan Documents, or (C) the performance by Borrower of its non-monetary obligations under the Loan Documents;

(v) intentional material physical waste committed on the Property by Borrower or Guarantor, or any Person controlled by either of them; or intentional damage to the Property by Borrower or Guarantor, or any Person controlled by either of them, except for normal wear, tear and casualty (not intentionally caused by Borrower, Guarantor, Property Manager, their respective Affiliates, successors, assigns, shareholders, directors, officers, employees and/or agents, or any Person acting at the direction of any of them), and condemnation;

(vi) failure to pay or make deposits to the Impound Account as required hereunder on account of, any (A) Taxes or Other Charges, or other amounts which (if unpaid) could create liens on any portion of the Property which would be superior to the lien or security title granted to Administrative Agent pursuant to the Loan Documents, or (B) premiums on insurance policies required under the Loan Documents to be maintained by Borrower or with respect to the Property, provided that Borrower shall not have liability under this **Section 8.16(a)(vi)** to the extent that revenue from the Property is insufficient to pay such amounts;

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

(viii) damages arising from a breach of the Hazardous Substances Indemnity Agreement.

(ix) any Minor Transfer Violation.

(b) Furthermore, notwithstanding the foregoing provisions of this **Section 8.16** or anything to the contrary in the Loan Documents, the Loan shall be fully recourse to Borrower (and the exculpatory provisions above shall be of no force or effect) upon the occurrence of any of the following:

(i) the filing by Borrower of a voluntary bankruptcy petition or for the assignment for the benefit of creditors (or any similar state law insolvency proceeding), or the filing of an involuntary bankruptcy petition against Borrower: (A) by Guarantor or Borrower, as the case may be, or by any or Affiliate thereof (each a **“Restricted Entity”**); (B) by any Person acting at the direction or request of, or in collusion or by agreement with, Borrower, Guarantor or any Restricted Entity; or (C) by any other Person if Borrower or Guarantor, as the case may be, fails to oppose in court such filing in good faith, or Borrower, Guarantor or any Restricted Entity otherwise consents to, agrees with, files court papers in any way supportive of, or joins in such filing; or

(ii) any Transfer (other than a Minor Transfer Violation) occurs without the prior written consent of Administrative Agent if such consent is required by this Agreement and/or otherwise violates the requirements of the Loan Documents; or

(iii) Borrower fails to obtain Administrative Agent’s prior written consent to any subordinate financing or other voluntary lien encumbering the Property (excluding mechanic’s and/or materialman’s liens) if such consent is required by the Loan Documents.

(c) Nothing contained in this **Section 8.16** shall (i) be deemed to be a release or impairment of the Debt or the other obligations of Borrower under the Loan Documents or the lien of the Loan Documents upon the Property, or (ii) preclude Administrative Agent from foreclosing the Loan Documents during the continuance of any Event of Default or from enforcing any of the other rights of Administrative Agent except as stated in this section, or (iii) reduce, release, relieve, waive, limit or impair in any way whatsoever the liability of Guarantor pursuant to any guaranty or indemnity executed and delivered in connection with the Loan, or release, relieve, reduce, waive or impair in any way whatsoever, any obligation of any party to such instrument, or (iv) waive any right that Administrative Agent may have under Section 506 (a), 506 (b), 1111(b) or any other provisions of the U.S. Bankruptcy Code to file a claim for the full amount of the Loan or to require that all Collateral shall continue to secure all of the Debt in accordance with the Loan Documents.

8.17 **No Merger.** It is the desire and intention of the parties hereto that the Mortgage and the lien thereof do not merge in fee simple title to the Property. It is hereby understood and agreed that should Administrative Agent or any Lender acquire any additional or other interests in or to the Property or the ownership thereof, then, unless a contrary intent is manifested by Administrative Agent as evidenced by an appropriate document duly recorded, the Mortgage and the lien thereof shall not merge in such other or additional interests in or to the Property, toward the end that the Mortgage may be foreclosed as if owned by a stranger to said other or additional interests.

8.18 **Administrative Agent May File Proofs of Claim.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Borrower or the principals or general partners or members in Borrower, or their respective creditors or property, Administrative Agent, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or

advisable in order to have the claims of Administrative Agent allowed in such proceedings for the entire Debt at the date of the institution of such proceedings and for any additional amount which may become due and payable by Borrower hereunder after such date.

8.19 **No Representation.** By accepting delivery of any item required to be observed, performed or fulfilled or to be given to Administrative Agent pursuant to the Loan Documents, including, but not limited to, any officer's certificates, balance sheet, statement of profit and loss or other financial statement, survey, appraisal or insurance policy, and/or by conducting its own underwriting, due diligence and investigations into Borrower, Guarantor, the Property and related matters, Administrative Agent shall not be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance of delivery thereof shall not be or constitute any warranty, consent or affirmation with respect thereto by Administrative Agent.

8.20 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. 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. Each Loan Document other than this Agreement may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties thereto had signed the same signature page. Any signature page of any such Loan Document may be detached from any counterpart of such Loan Document without impairing the legal effect of any signatures thereon and may be attached to another counterpart of such Loan Document identical in form thereto but having attached to it one or more additional signature pages.

8.21 **Recording and Filing.** Borrower will cause the Loan Documents and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded and re-filed in such manner and in such places as Administrative Agent shall reasonably request, and will pay on demand all such recording, filing, re-recording and re-filing taxes, fees and other charges. Borrower shall reimburse Administrative Agent, or its Servicer, for the reasonable costs incurred in obtaining a tax service company to verify the status of payment of Taxes and Other Charges on the Property if Borrower fails to provide the evidence required herein.

8.22 **Entire Agreement and Modification.** This Agreement and the other Loan Documents contain the entire agreements between the parties relating to the subject matter hereof and thereof and all prior agreements relative hereto and thereto which are not contained herein or therein are terminated. This Agreement and the other Loan Documents may not be amended, revised, waived, discharged, released or terminated orally but only by a written instrument or instruments executed by the party against which enforcement of the amendment, revision, waiver, discharge, release or termination is asserted. Any alleged amendment, revision, waiver, discharge, release or termination which is not so documented shall not be effective as to any party.

8.23 Secondary Market Transaction.

(a) Cooperation. Borrower acknowledges that Administrative Agent may effectuate a Secondary Market Transaction. Borrower shall cooperate, at no out of pocket cost to Borrower and Guarantor, in good faith with Administrative Agent in effecting any such Secondary Market Transaction and shall cooperate in good faith to implement all requirements imposed by any Investor or Rating Agency involved therein, including, without limitation, all structural or other changes to Borrower and/or the Debt, and modifications to any Loan Documents; provided, however, that Borrower shall not be required to modify any Loan Documents if such modification would (A) increase the interest rate payable under the Notes, (B) shorten the period until the stated maturity of the Notes or decrease the time periods during which Borrower is permitted to perform obligations under the Loan Documents, (C) modify the amortization of principal of the Notes, or (D) modify any other material term of the Debt. Borrower shall provide such information and documents relating to Borrower, Guarantor, the Property and any Tenants as Administrative Agent may reasonably request in connection with such Secondary Market Transaction. Borrower shall make available to Administrative Agent all information concerning its business and operations that Administrative Agent may reasonably request.

(b) Disclosure; Indemnification. Administrative Agent shall be permitted to share all information provided in connection with the Loan with the Investors, Rating Agencies, investment banking firms, accounting firms, law firms and other third-party advisory firms involved with the Loan Documents or the applicable Secondary Market Transaction. It is understood that the information provided to Administrative Agent in connection with the Loan may ultimately be incorporated into the offering documents for the Secondary Market Transaction and thus potential Investors may also see some or all of the information with respect to the Loan, the Property, Borrower and the Equity Holders. Borrower irrevocably waives any and all rights it may have under any applicable laws (including, without limitation, any right of privacy) to prohibit such disclosure. Administrative Agent and all of the aforesaid third-party advisors and professional firms shall be entitled to rely on the information supplied by, or on behalf of, Borrower. Borrower hereby indemnifies Administrative Agent as to any losses, claims (excluding any claims for actual diminution in value, except to the extent such diminution in value would result in Administrative Agent's failure to recover any amount of the entire outstanding Debt), damages (excluding any punitive or special damages, except to the extent any such punitive or special damages are asserted against Administrative Agent by Borrower, Guarantor, Property Manager, their respective Affiliates, successors, assigns, shareholders, directors, officers, employees and/or agents, or any Person acting at the direction of any of them, or any third-party) or liabilities that arise out of or are based upon any untrue statement of any material fact contained in the information provided by or on behalf of Borrower, or arise out of or are based upon the omission to state therein a material fact required to be stated in such information, or necessary in order to make the statements in such information, or in light of the circumstances under which they were made, not materially misleading. Administrative Agent may publicize the existence of the Debt in connection with its marketing for a Secondary Market Transaction or otherwise as part of its business development.

(c) Borrower acknowledges that, as part of the Securitization Documents, the parties to a Secondary Market Transaction may, in their sole discretion, elect to impose certain

requirements as conditions precedent to certain actions by one or more of the Servicers (including, without limitation, that such Servicer obtain a Rating Confirmation. No requirement or condition imposed upon such Servicer pursuant to such Securitization Documents as a condition precedent to the granting or denying of any consent or approval, or the taking or refusal to take of any action, pursuant to this Agreement (except only for any action required of Administrative Agent hereunder) shall give rise to any claim or cause of action by Borrower against Administrative Agent, or give Borrower any defense for failure to perform its obligations under the Loan Documents. Borrower further acknowledges that the cost of any Rating Confirmation required by the Securitization Documents shall be payable by Borrower.

(d) Definitions. A “**Secondary Market Transaction**” shall be (1) any sale of this Agreement, the Mortgage, the Notes and other Loan Documents to one or more investors as a whole loan, (2) a participation of the Debt to one or more investors, (3) a securitization of the Loan, (4) any other sale or transfer of the Debt or any interest therein to one or more investors. “**Investor**” shall mean any actual or potential purchaser, transferee, assignee, servicer, participant or investor in a Secondary Market Transaction.

8.24 **Intentionally Omitted.**

8.25 **Component Notes.** Administrative Agent, without in any way limiting Administrative Agent’s other rights hereunder, in its sole and absolute discretion, shall have the right at any time to require Borrower to execute and deliver “component” notes (which may include senior and junior notes), which notes may be paid in such order of priority as may be designated by Administrative Agent, provided that (a) the aggregate principal amount of such “component” notes shall equal the outstanding principal balance of the Loan immediately prior to the creation of such “component” notes, (b) the weighted average interest rate of all such “component” notes shall on the date created equal the interest rate which was applicable to the Loan immediately prior to the creation of such “component” notes, (c) the debt service payments on all such “component” notes shall on the date created equal the debt service payment which was due under the Loan immediately prior to the creation of such component notes and (d) the other terms and provisions of each of the “component” notes shall be identical in substance and substantially similar in form to the Loan Documents. Borrower shall cooperate with all reasonable requests of Administrative Agent in order to establish the “component” notes and shall execute and deliver such documents as shall reasonably be required by Administrative Agent in connection therewith, all in form and substance reasonably satisfactory to Administrative Agent and Borrower, including, without limitation, the severance of security documents if requested. It shall be an Event of Default if Borrower fails to comply with any of the terms, covenants or conditions of this **Section 8.25** after the expiration of ten (10) Business Days after notice thereof.

8.26 **Cooperation with Syndication.** Borrower acknowledges that Administrative Agent may elect to syndicate a portion of the Loan to one or more Lenders (the “**Syndication**”) and in connection therewith, Borrower will take all actions as Administrative Agent may reasonably request to assist Administrative Agent in its Syndication effort. Without limiting the generality of the foregoing, Borrower shall, at the request of Administrative Agent (i) reasonably cooperate to facilitate the review of the Loan and the Property by any prospective lender; (ii) reasonably comply with requests to assist Administrative Agent and otherwise cooperate (at no

out-of-pocket expense to Borrower or Guarantor) with Administrative Agent in the preparation of information offering materials (which assistance may include reviewing and commenting on drafts of such information materials and drafting portions thereof); (iii) deliver updated information on Borrower and the Property, to the extent such information is available, at no out of pocket cost to Borrower or Guarantor; (iv) make representatives of Borrower available at reasonable times and upon reasonable notice to meet with prospective lenders at tours of the Property and bank meetings; (v) facilitate direct contact between the senior management and advisors of Borrower and any prospective lender; and (vi) provide Administrative Agent with all information reasonably deemed necessary by it to complete the Syndication successfully. Borrower agrees to take such further action (at no out of pocket cost and expense to Borrower), in connection with documents and amendments to the Loan Documents, as may reasonably be required to effect such Syndication.

8.27 **Updated Appraisals.** Administrative Agent shall have the right to cause to be prepared, from time to time, at Borrower's expense, a new or updated appraisal of the Property prepared by an M.A.I. appraiser selected by Administrative Agent; provided that absent the existence of an Event of Default or with respect to any such appraisal that is prepared in order to determine the Loan to Value Ratio on the last day of the Initial Interest-Only Period, Borrower shall not be required to pay for the cost of more than one such new or updated appraisal in any calendar year. In connection with any new or updated appraisal of the Property requested by Administrative Agent, Borrower shall cooperate with Administrative Agent and the appraiser in connection therewith, and shall provide to the appraiser such information as the appraiser shall request in order to prepare such new or updated appraisal.

8.28 **SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL.**

(a) BORROWER, ADMINISTRATIVE AGENT AND EACH OF THE LENDERS HEREBY IRREVOCABLY (I) AGREE THAT ANY SUIT, ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE NOTES, ANY SECURITY DOCUMENT, OR ANY OTHER LOAN DOCUMENT MAY BE BROUGHT IN A COURT OF RECORD IN THE CITY OF NEW YORK, COUNTY OF NEW YORK OR IN THE COURTS OF THE UNITED STATES OF AMERICA LOCATED IN SUCH STATE AND COUNTY, (II) CONSENT TO THE JURISDICTION OF EACH SUCH COURT IN ANY SUCH SUIT, ACTION OR PROCEEDING, (III) WAIVE ANY OBJECTION WHICH IT MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY OF SUCH COURTS AND ANY CLAIM THAT ANY SUCH SUIT, ACTION OR PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM AND (IV) AGREE AND CONSENT THAT ALL SERVICE OF PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY STATE OR FEDERAL COURT SITTING IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, STATE OF NEW YORK MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO BORROWER, ADMINISTRATIVE AGENT OR A LENDER, AS APPLICABLE, AT THE ADDRESS FOR NOTICES PURSUANT TO **SECTION 8.5** HEREOF, AND SERVICE SO MADE SHALL BE COMPLETE FIVE (5) DAYS AFTER THE SAME SHALL HAVE BEEN SO MAILED. NOTHING IN THIS **SECTION 8.28** SHALL AFFECT THE RIGHT OF THE ADMINISTRATIVE AGENT OR ANY LENDER TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR AFFECT THE

RIGHT OF ADMINISTRATIVE AGENT OR ANY LENDER TO BRING ANY SUIT, ACTION OR PROCEEDING AGAINST BORROWER OR THE PROPERTY OF BORROWER IN THE COURTS OF ANY OTHER JURISDICTIONS.

(b) ADMINISTRATIVE AGENT AND BORROWER, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVE, RELINQUISH AND FOREVER FORGO THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THE DEBT OR ANY CONDUCT, ACT OR OMISSION OF ADMINISTRATIVE AGENT OR BORROWER, OR ANY OF THEIR DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH ADMINISTRATIVE AGENT OR BORROWER, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.

8.29 **Intentionally Omitted.**

ARTICLE IX

ASSIGNMENTS AND PARTICIPATIONS; LENDER'S RIGHT TO ASSIGN AND GRANT PARTICIPATIONS

9.1 **Assignments and Participations.**

(a) Each Lender shall have the right to assign or transfer its rights and obligations arising under this Agreement and any of its rights and security hereunder and under the other Loan Documents, in whole or in part, to any Permitted Assignee without the consent of Borrower but with the prior consent of the Administrative Agent, not to be unreasonably withheld (provided that no consent of the Administrative Agent shall be required for an assignment of all or a portion of any Commitment or Loans to an assignee that is a Lender with a Commitment immediately prior to giving effect to such assignment), provided that no consent of the Administrative Agent shall be required for an assignment of all or a portion of any Commitment or Loans to an assignee that is a Lender with a Commitment immediately prior to giving effect to such assignment; provided, however, that (i) the parties to each such assignment shall execute and exchange an assignment and assumption agreement ("**Assignment and Assumption**") in substantially the form of Exhibit G attached hereto, (ii) each such assignment or transfer shall be of all of such Lender's rights and obligations to the extent of the Percentage so assigned, (iii) each assignment or transfer is made upon at least fifteen (15) days prior written notice to Administrative Agent, (iv) each assignment or transfer is consented to by Administrative Agent, such consent not to be unreasonably withheld if the proposed assignee or transferee is a Permitted Assignee, meets the Eligibility Requirement and has provided to Administrative Agent such documents and/or information as Administrative Agent shall reasonably request in connection with such assignment or transfer, and (v) no assignment or transfer to an Affiliate of a Lender shall relieve such Lender of any obligations hereunder unless such Affiliate meets the Eligibility Requirements. Notwithstanding the foregoing, CIBC Inc., as the initial Lender, may assign interests in the Loan to any Permitted Assignee without regard to

Eligibility Requirements in connection with Assignment and Assumption Agreements it enters into in syndicating the Loan. Upon such execution and exchange and if such Assignment and Assumption has been properly completed and consented to if required herein upon the effective date specified in the applicable Assignment and Assumption, (A) the Permitted Assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it and assumed by it pursuant to such Assignment and Assumption, have the rights and obligations of a Lender hereunder and under the other Loan Documents, and Borrower hereby agrees that all of the rights and remedies of a Permitted Assignee in connection with the interest so assigned shall be enforceable against Borrower by Administrative Agent on behalf of such Permitted Assignee with the same force and effect and to the same extent as the same would have been enforceable but for such assignment, and (B) the assignor thereunder shall, to the extent that rights and obligations hereunder and under the other Loan Documents have been assigned by it pursuant to such Assignment and Assumption, relinquish its rights and be released from all of its obligations hereunder and thereunder. Notwithstanding anything to the contrary contained herein, no Lender shall be permitted to assign all or any portion of its rights or obligations under this Agreement and the other Loan Documents to Borrower or any Affiliate of Borrower. All the rights and remedies of Borrower in connection with the interest so assigned shall be enforceable against such Permitted Assignee.

Notwithstanding the provisions of this **Section 9.1**, CIBC Inc. may enter into an assignment with any Affiliate without the prior consent of Administrative Agent, Lender or Borrower.

(b) Promptly upon receipt of a fully executed and completed Assignment and Assumption, Administrative Agent shall record the information contained therein in its records and Administrative Agent shall promptly deliver a copy thereof to Borrower (provided that neither the Administrative Agent nor the Lender shall be liable for any failure to give such notice). Such Assignment and Assumption shall not affect or modify, in any way, the obligations of Borrower under the Loan Documents, including obligations with respect to payments of principal and interest under the Loan.

(c) Administrative Agent shall maintain a copy of each Assignment and Assumption delivered to and accepted by it and shall record in its records the name and address of such Lender and the Commitment of, and Percentage of the Loan owing to, such Lender from time to time. Borrower, Administrative Agent, and the Lenders may treat each entity whose name is so recorded as an Administrative Agent hereunder for all purposes of this Agreement.

(d) Anything in this Agreement to the contrary notwithstanding, and without the need to comply with any of the formal or procedural requirements of this Agreement, including this Section, each Lender may at any time and from time to time pledge and assign all or any portion of its rights under all or any of the Loan Documents to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from its obligations hereunder. To facilitate any such pledge or assignment, Administrative Agent shall, at the request of a Lender, enter into a letter agreement with the Federal Reserve Bank in, or substantially in, the form of the exhibit to Appendix C to the Federal Reserve Bank of New York Operating Circular No. 12.

(e) Anything in this Agreement to the contrary notwithstanding, any Lender may assign all or any portion of its rights and obligations under this Agreement to another branch bank or Affiliate of such Lender without first obtaining the approval of Administrative Agent or Borrower, provided that (A) such Lender remains liable hereunder unless Administrative Agent shall otherwise agree, (B) at the time of such assignment such Lender is not in default under its obligations hereunder, (C) such Lender gives Administrative Agent at least fifteen (15) days prior written notice of any such assignment, and (D) the parties to such assignment execute and deliver to Administrative Agent an Assignment and Assumption.

(f) Each Lender shall have the right, without the consent of Borrower, to sell participations to one or more other persons or entities (each, a “**Participant**”) in or to all or a portion of its rights and obligations hereunder and under the other Loan Documents; provided, however, that (i) such Lender’s obligations under this Agreement (including without limitation its Commitment to Borrower hereunder) shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of its obligations hereunder, (iii) Borrower, Administrative Agent and other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement and with regard to any and all payments to be made under this Agreement, and (iv) the holder of any such participation interest shall not be entitled to voting rights under this Agreement or the other Loan Documents.

(g) Borrower acknowledges and agrees that Administrative Agent and/or a Lender may provide to any prospective Permitted Assignee or prospective Participant originals or copies of this Agreement, any other Loan Document and any other documents, instruments, certificates, opinions, insurance policies, letters of credit, reports, requisitions and other materials and information of every nature or description, and may communicate all oral information, at any time submitted by or on behalf of Borrower or Guarantor or received by Administrative Agent or such Lender in connection with the Loan or with respect to Borrower or Guarantor; provided that in each case, each such recipient agrees to hold such information confidentially pursuant to a confidentiality agreement on commercially reasonable terms, which may include, without limitation, any such recipient’s electronic agreement and/or electronic signature to any electronic confidentiality agreement on commercially reasonable terms. In order to facilitate assignments, transfers or grants of participation interests to a Permitted Assignee or a Participant, Borrower shall execute such further documents, instruments or agreements as Administrative Agent may reasonably request, including, without limitation, one or more new or replacement promissory notes, dated as of the effective date of an Assignment and Assumption, after giving effect to such Assignment and Assumption, in exchange for the surrender from Administrative Agent to Borrower of the then outstanding promissory Note, marked “Replaced” or “Substituted”, unless the original of such Note is required to be maintained by Administrative Agent under applicable law; provided, however, that Borrower shall not be required to execute any document or agreement which would decrease its rights, or increase its obligations, relative to those set forth in this Agreement or any of the other Loan Documents (including financial obligations, personal recourse, representations and warranties and reporting requirements). In addition, Borrower agrees to cooperate with Administrative Agent and each Lender in the exercise of such Lenders’ rights pursuant to this **Section 9.1**, including providing such information and documentation regarding Borrower as Administrative Agent, Lender or any potential Permitted Assignee or

Participant may reasonably request and to meet with potential Permitted Assignees and/or Participants.

(h) Borrower shall not be responsible for the payment of costs and expenses incurred by the Administrative Agent and the Lenders in connection with any syndication (via sale or participation) of any interest in the Loan by such Lenders to one or more Permitted Assignees or Participants.

(i) No Permitted Assignee of any rights and obligations under this Agreement shall be permitted to subassign such rights and obligations and no Participant in any rights and obligations under this Agreement shall be permitted to sell subparticipations of such rights and obligations without the express written consent of Administrative Agent.

9.2 **Prohibition of Assignments by Borrower.** Borrower shall not assign or attempt to assign its rights under this Agreement or under any other Loan Document and any purported assignment shall be void.

9.3 **Prohibition of Transfers in Violation of ERISA.** In addition to the prohibitions set forth in **Section 9.2** above and in the Mortgage, and not in limitation thereof, Borrower shall not assign, sell, pledge, encumber, transfer, hypothecate or otherwise dispose of its interest or rights in this Agreement or in the Property, or attempt to do any of the foregoing or suffer any of the foregoing, nor shall any party owning a direct or indirect interest in Borrower assign, sell, pledge, encumber, transfer, hypothecate or otherwise dispose of any of its rights or interest (direct or indirect) in Borrower, attempt to do any of the foregoing or suffer any of the foregoing, if such action would cause the Loan, or the exercise of any of Administrative Agent's or the Lenders' rights in connection therewith, to constitute a prohibited transaction under ERISA or the Internal Revenue Code (unless Borrower furnishes a legal opinion satisfactory to Administrative Agent that the transaction is exempt from the prohibited transaction provisions of ERISA and the Internal Revenue Code) or otherwise result in Administrative Agent or any Lender being deemed in violation of any applicable provision of ERISA. Borrower agrees to indemnify and hold Administrative Agent and the Lenders free and harmless from and against all losses, costs (including attorneys' fees and expenses), taxes, damages (excluding any punitive or special damages, except to the extent any such punitive or special damages are asserted against Administrative Agent or any Lender by Borrower, Guarantor, Property Manager, their respective Affiliates, successors, assigns, shareholders, directors, officers, employees and/or agents, or any Person acting at the direction of any of them, or any third-party) and expenses Administrative Agent and the Lenders may suffer by reason of the investigation, defense and settlement of claims and in obtaining any prohibited transaction exemption under ERISA necessary or desirable in Administrative Agent's sole judgment or by reason of a breach of the foregoing prohibitions.

9.4 **Acknowledgment and Consent to Bail-In of EEA Financial Institutions.** Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(c) a reduction in full or in part or cancellation of any such liability;

(d) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(e) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS]

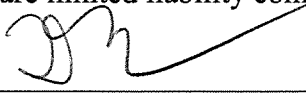
IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

BORROWER:

G&I IX MJW LAKE POINTE III & IV LLC,
a Delaware limited liability company

By: G&I IX MJW Lake Pointe JV LLC,
a Delaware limited liability company, its sole member

By: G&I IX Investment Lake Pointe LLC,
a Delaware limited liability company, its managing member

By:  _____

Name: David Gray

Title: Vice President

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

LENDER:

CIBC INC.,
a Delaware corporation

By: _____
Name: Todd Roth
Title: Managing Director

ADMINISTRATIVE AGENT:

CANADIAN IMPERIAL BANK OF COMMERCE,
ACTING THROUGH ITS NEW YORK BRANCH

By: _____
Name: Todd Roth
Title: Authorized Signatory

SCHEDULE 1

COMMITMENT AND PERCENTAGE AMOUNTS

LENDER	COMMITMENT	PERCENTAGE
CIBC Inc.	\$13,815,000.00	100%
Total	\$13,815,000.00	100%

EXHIBIT A

LEGAL DESCRIPTION OF THE REAL ESTATE

TRACT 1:

Parcel I: (Fee parcel)

Part of the Northwest Quarter of Section 21, Township 17 North, Range 4 East in Marion County, Indiana, more particularly described as follows:

Commencing at the Southeast corner of said Northwest Quarter Section; thence along the South line thereof, South 89 degrees 06 minutes 37 seconds West (assumed bearing) 1199.71 feet; thence North 00 degrees 00 minutes 52 seconds West 12.57 feet to a point on the centerline of East 82nd Street as located by D.O.T. plans for Project ST-05-004A, which point is also the Southwest corner of the Grant of Right of Way for Allison Pointe Boulevard as recorded September 9, 1987 as Instrument No. 87-105141 in the Office of the Recorder of Marion County, Indiana (the next seven courses are along the Westerly and Southerly lines of said Grant of Right of Way); (1) thence continuing North 00 degrees 00 minutes 52 seconds West 536.80 feet to a curve having a radius 385.00 feet, the radius point of which bears North 89 degrees 59 minutes 08 seconds East; (2) thence Northerly and Northeasterly along said curve 212.52 feet to a point which bears North 58 degrees 23 minutes 15 seconds West from said radius point; (3) thence North 31 degrees 36 minutes 45 seconds East 762.23 feet to a curve having a radius of 305.00 feet, the radius point of which bears North 58 degrees 23 minutes 15 seconds West; (4) thence Northerly, Northwesterly and Westerly along said curve 650.79 feet to a point which bears North 00 degrees 38 minutes 30 seconds West from said radius point; (5) thence South 89 degrees 21 minutes 30 seconds West 401.44 feet to a curve having a radius of 100.00 feet, the radius point of which bears South 00 degrees 38 minutes 30 seconds East; (6) thence Southwesterly along said curve, 82.98 feet to a point which bears North 48 degrees 11 minutes 15 seconds West from said radius point, and which point is on a reverse curve having a radius of 100.00 feet, the radius point of which bears North 48 degrees 11 minutes 15 seconds West; (7) thence Southwesterly along said curve, 82.98 feet to the POINT OF BEGINNING, which point bears South 00 degrees 38 minutes 30 seconds East from said radius point; thence South 00 degrees 38 minutes 30 seconds East 473.16 feet to a point on the South line of the North Half of said Northwest Quarter Section; thence along said South line, South 89 degrees 11 minutes 38 seconds West 385.13 feet to a point which bears North 89 degrees 11 minutes 38 seconds East 734.61 feet from the Southwest corner of said North Half Quarter Section; thence North 00 degrees 38 minutes 30 seconds West 315.15 feet; thence North 64 degrees 13 minutes 35 seconds East 39.25 feet to a curve having a radius of 81.00 feet, the radius point of which bears North 25 degrees 46 minutes 25 seconds West; thence Northeasterly along said curve, 91.71 feet to a point which bears North 89 degrees 21

minutes 30 seconds East from said radius point; thence North 00 degrees 38 minutes 30 seconds West 144.11 feet; thence North 89 degrees 21 minutes 30 seconds East 206.18 feet to a point on the Westerly right-of-way line of said Allison Pointe Boulevard, which point is on a curve having a radius of 100.00 feet, the radius point of which bears North 74 degrees 52 minutes 51 seconds East; thence Southeasterly along said curve 131.81 feet to the POINT OF BEGINNING.

Parcel II: (Easement parcel)

Non-exclusive easement for drainage of storm water, recreational and other purposes for the benefit of Parcel I as created and granted in a declaration of easement in Allison Lake dated October 28, 1992 and recorded December 31, 1992 as Instrument #92-174237 and re-recorded March 29, 1993 as Instrument #93-35746 and as further provided in the Declaration of Development Standards, Covenants and Restrictions for Allison Pointe as set out and fully described in Instrument dated September 8, 1987 and recorded September 9, 1987, as Instrument No. 87-105148, as amended by First Amendment to Declaration of Development Standards dated September 25, 1987 and recorded September 28, 1987 as Instrument No. 87-112389, as further amended by Second Amendment to Declaration of Development Standards, Covenants, and Restrictions for Allison Pointe, recorded November 5, 1992 as Instrument No. 92-147049, as modified by Assignment dated June 16, 1996 and recorded July 5, 1996 as Instrument No. 96-91794, as modified by Third Amendment to Declaration of Development Standards, Covenants, and Restrictions for Allison Pointe dated March 14, 1997 and recorded March 25, 1997 as Instrument No. 97-44965, as modified by Fourth Amendment to Declaration of Development Standards dated January 30, 1998 and recorded February 6, 1998 as Instrument No. 98-19003, and further modified by Fifth Amendment to Declaration of Development Standards dated May 28, 1998 and recorded June 5, 1998 as Instrument No. 98- 95006.

Parcel III: (Easement parcel)

A non-exclusive easement for landscaping and signage and other purposes for the benefit of Parcel I as created and granted in a declaration of easement in Allison Pointe Boulevard Buffer Tracts dated October 28, 1992 and recorded December 31, 1992 as Instrument #92-174238 and re-recorded March 29, 1993 as Instrument #93-35747, and as further provided in the Declaration of Development Standards, Covenants and Restrictions for Allison Pointe as set out and fully described in Instrument dated September 8, 1987 and recorded September 9, 1987 as Instrument No. 87-105148, as amended by First Amendment to Declaration of Development Standards dated September 25, 1987 and recorded September 28, 1987 as Instrument No. 87-112389, as further amended by Second Amendment to Declaration of Development Standards, Covenants, and Restrictions for Allison Pointe, recorded November 5, 1992 as Instrument No. 92-147049, as modified by Assignment dated June 16, 1996 and recorded July 5, 1996 as Instrument No. 96-91794, as modified by Third Amendment to Declaration of Development Standards, Covenants

and Restrictions for Allison Pointe dated March 14, 1997 and recorded March 25, 1997 as Instrument No. 97-44965, as modified by Fourth Amendment to Development Standards dated January 30, 1998 and recorded February 6, 1998 as Instrument No. 98-19003, and further modified by Fifth Amendment to Declaration of Development Standards dated May 28, 1998 and recorded June 5, 1998 as Instrument No. 98-95006 in the Office of the Recorder of Marion County, Indiana.

Parcel IV: (Easement parcel)

A non-exclusive easement for access as created in an Access Easement recorded August 5, 1997 as Instrument #97-108040 in the Office of the Recorder of Marion County, Indiana. (Benefits Parcel I)

Parcel V: (Easement Parcel)

A non-exclusive easement for shared access as created in a Cross Traffic (Shared Access) Easement Agreement recorded September 19, 1997 as Instrument #97-135250 in the Office of the Recorder of Marion County, Indiana. (Benefits Parcel I)

Parcel IV: (Easement parcel)

A non-exclusive easement for access as created in a Limited Warranty Deed recorded March 25, 1997 as Instrument #97-44966 in the Office of the Recorder of Marion County, Indiana. (Benefits Parcel I)

TRACT 2:

Parcel I: (Fee parcel)

Part of the Northwest Quarter of Section 21, Township 17 North, Range 4 East in Marion County, Indiana, more particularly described as follows:

Commencing at the Southeast corner of said Northwest Quarter section; thence along the South line thereof, South 89 degrees 06 minutes 37 seconds West (assumed bearing) 1199.71 feet thence North 00 degrees 00 minutes 52 seconds West 12.57 feet to a point on the centerline of East 82nd Street as located by DOT plans for Project ST-05-004A, which point is also the Southwest corner of the Grant of Right of Way for Allison Pointe Boulevard as recorded September 9, 1987 as Instrument 87-105141 in the Office of the Recorder of Marion County, Indiana (the next five courses are along the Westerly and Southerly lines of said Grant of Right of Way); (1) thence continuing North 00 degrees 00 minutes 52 seconds West 536.80 feet to a curve having a radius of 385.00 feet, the radius point of which bears North 89 degrees 59 minutes 08 seconds East; (2) thence Northerly and Northeasterly along said curve 212.52 feet to a point which bears North 58 degrees 23 minutes 15 seconds West from said radius point; (3) thence North 31 degrees 36 minutes 45 seconds East 762.23 feet to a curve having a radius of

305.00 feet, the radius point of which bears North 58 degrees 23 minutes 15 seconds West; (4) thence Northerly, Northwesterly and Westerly along said curve 650.79 feet to a point which bears North 00 degrees 38 minutes 30 seconds West from said radius point; (5) thence South 89 degrees 21 minutes 30 seconds West 204.00 feet to the POINT OF BEGINNING, which point is also the Northwest corner of a 4.244 acre tract described in a Warranty Deed recorded June 4, 1990 as Instrument 90-54079 in said Recorder's Office; thence along the West line of said 4.244 acre tract South 00 degrees 38 minutes 30 seconds East 537.17 feet to a point on the South line of the North Half of said Northwest Quarter Section; thence along said South line, South 89 degrees 11 minutes 38 seconds West 345.00 feet; thence North 00 degrees 38 minutes 30 seconds West 473.16 feet to a point on the Southerly right of way line of said Allison Pointe Boulevard, which point is on a curve having a radius of 100.00 feet, the radius point of which bears North 00 degrees 38 minutes 30 seconds West (the next three courses are along the Southerly line of said Allison Pointe Boulevard); (1) thence Easterly and Northeasterly along said curve. 82.98 feet to a point which bears South 48 degrees 11 minutes 15 seconds East from said radius point, and which point is on a reverse curve having a radius of 100.00 feet, the radius point of which bears South 48 degrees 11 minutes 15 seconds East; (2) thence Northeasterly and Easterly along said curve, 82.98 feet to a point which bears North 00 degrees 38 minutes 30 seconds West from said radius point; (3) thence North 89 degrees 21 minutes 30 seconds East 197.44 feet to the POINT OF BEGINNING.

Parcel II: (Easement Parcel)

A non-exclusive easement for shared access as created in a Cross Traffic (Shared Access) Easement Agreement recorded September 19, 1997 as Instrument #97-135250 in the Office of the Recorder of Marion County, Indiana. (Benefits Parcel I)

Parcel III: (Easement parcel)

Non-exclusive easement for drainage of storm water, recreational and other purposes for the benefit of Parcel I as created and granted in a declaration of easement in Allison Lake dated October 28, 1992 and recorded December 31, 1992 as Instrument #92-174237 and re-recorded March 29, 1993 as Instrument #93-35746 and as further provided in the Declaration of Development Standards, Covenants and Restrictions for Allison Pointe as set out and fully described in Instrument dated September 8, 1987 and recorded September 9, 1987, as Instrument No. 87-105148, as amended by First Amendment to Declaration of Development Standards dated September 25, 1987 and recorded September 28, 1987 as Instrument No. 87-112389, as further amended by Second Amendment to Declaration of Development Standards, Covenants, and Restrictions for Allison Pointe, recorded November 5, 1992 as Instrument No. 92-147049, as modified by Assignment dated June 16, 1996 and recorded July 5, 1996 as Instrument No. 96-91794, as modified by Third Amendment to Declaration of Development Standards, Covenants, and Restrictions for Allison Pointe dated March 14, 1997 and recorded March 25, 1997 as Instrument No. 97-44965, as modified by Fourth Amendment to Declaration of Development

Standards dated January 30, 1998 and recorded February 6, 1998 as Instrument No. 98-19003, and further modified by Fifth Amendment to Declaration of Development Standards dated May 28, 1998 and recorded June 5, 1998 as Instrument No. 98- 95006.

Parcel IV: (Easement parcel)

A non-exclusive easement for landscaping and signage and other purposes for the benefit of Parcel I as created and granted in a declaration of easement in Allison Pointe Boulevard Buffer Tracts dated October 28, 1992 and recorded December 31, 1992 as Instrument #92-174238 and re-recorded March 29, 1993 as Instrument #93-35747, and as further provided in the Declaration of Development Standards, Covenants and Restrictions for Allison Pointe as set out and fully described in Instrument dated September 8, 1987 and recorded September 9, 1987 as Instrument No. 87-105148, as amended by First Amendment to Declaration of Development Standards dated September 25, 1987 and recorded September 28, 1987 as Instrument No. 87-112389, as further amended by Second Amendment to Declaration of Development Standards, Covenants, and Restrictions for Allison Pointe, recorded November 5, 1992 as Instrument No. 92-147049, as modified by Assignment dated June 16, 1996 and recorded July 5, 1996 as Instrument No. 96-91794, as modified by Third Amendment to Declaration of Development Standards, Covenants and Restrictions for Allison Pointe dated March 14, 1997 and recorded March 25, 1997 as Instrument No. 97-44965, as modified by Fourth Amendment to Development Standards dated January 30, 1998 and recorded February 6, 1998 as Instrument No. 98-19003, and further modified by Fifth Amendment to Declaration of Development Standards dated May 28, 1998 and recorded June 5, 1998 as Instrument No. 98-95006 in the Office of the Recorder of Marion County, Indiana.

EXHIBIT B

INTENTIONALLY DELETED

EXHIBIT C

FUTURE FUNDING PROVISIONS

1. Timing and Method of Advances. On the date hereof, Lenders have advanced to Borrower the principal amount of \$11,475,000.00 (the “**Initial Advance**”), which Initial Advance represents a portion of the principal amount of the Loan evidenced by the Notes. Borrower hereby acknowledges receipt of the Initial Advance. Subsequent to the date hereof, Borrower shall be entitled to receive additional disbursements of the proceeds of the Loan (each, an “**Additional Advance**”), up to the additional principal amount of \$2,340,000.00 (such amount, the “**Future Funding**”, being the difference between the face amount of the Notes and the amount of the Initial Advance) in accordance with and subject to all of the terms, conditions, and agreements contained in this Exhibit C within ten (10) Business Days after compliance with all conditions precedent thereto, and provided that (a) no Default or Event of Default has occurred and is continuing and (b) there shall be no Cash Management Period. Additional Advances shall be made from time to time, but not more frequently than once in any 30 day period and in increments of not less than \$100,000.00, and only upon compliance by Borrower with all of the conditions precedent to such disbursement set forth in this Exhibit C and all of the requirements applicable to such disbursement set forth in this Exhibit C.

2. Intentionally Omitted.

3. Leasing Costs. Borrower agrees that, upon the execution of any Lease approved or deemed approved in accordance with Section 4.10 of this Agreement, Borrower shall timely perform all build-out, construction, tenant improvement work and other work required to be performed by Borrower under such Lease (the foregoing, “**Tenant Improvements**”) and timely pay as and when due any and all commissions to brokers in connection with such Lease (“**Leasing Commissions**”; the costs of Leasing Commissions and Tenant Improvements are hereinafter referred to collectively as “**Leasing Costs**”). Borrower shall perform all Tenant Improvements in a good and workmanlike manner, in accordance with all applicable codes and regulations, and each case in a manner reasonably satisfactory to Administrative Agent and as necessary to maintain the Property in good condition and in compliance with all Applicable Laws.

4. Capital Expenditures. Borrower agrees that it will perform all Capital Expenditures in a good and workmanlike manner, in accordance with all applicable codes and regulations, and each case in a manner reasonably satisfactory to Administrative Agent and as necessary to maintain the Property in good condition and in compliance with all applicable laws, ordinances, rules and regulations. The costs incurred by Borrower for Repairs are hereinafter referred to as “**Capital Expenditure Costs**”.

5. Intentionally Omitted.

6. Documents to be Furnished for Each Additional Advance. As a condition precedent to each Additional Advance, Borrower shall furnish or cause to be furnished to Administrative Agent the following documents covering such Additional Advance, in form and substance reasonably satisfactory to Administrative Agent:

(a) A request by Borrower (a “**Draw Request**”), in form approved by Administrative Agent, executed by persons properly authorized to execute the same, for an Additional Advance, together with invoices and any other reasonable backup documentation for such requested Additional Advance (including, without limitation, invoices or other evidence reasonably satisfactory to Administrative Agent that fixtures and equipment are, or upon payment will be, free of any purchase money security interest therein and evidence satisfactory to Administrative Agent that all fixtures and equipment are and, upon payment, will be and remain free of security interests of all kinds);

(b) For disbursement requests in connection with a single project for which Borrower is seeking reimbursement of \$50,000 or more, signed lien waivers from each contractor, vendor or leasing broker providing or supplying services, labor or materials covering all work for which such Additional Advance is to be made, together with such invoices, contracts or other supporting data as Administrative Agent may reasonably require to evidence that all costs for which such Additional Advance is sought have been incurred;

(c) For disbursement requests in connection with a group of related projects for which Borrower is seeking reimbursement of \$200,000 or more, signed lien waivers from each contractor, vendor or leasing broker providing or supplying services, labor or materials covering all work for which such Additional Advance is to be made, together with such invoices, contracts or other supporting data as Administrative Agent may reasonably require to evidence that all costs for which such Additional Advance is sought have been incurred

(d) A copy of the certificate of occupancy for the Improvements if, as a result of any Tenant Improvements, it was necessary to receive an amendment to the existing certificate of occupancy (or similar instrument) issued with respect to the Improvements, or to obtain a new certificate of occupancy for the Improvements;

(e) For disbursement requests in connection with a single project for which Borrower is seeking reimbursement of \$200,000 or more, excluding, however, Leasing Commissions, a certification from an inspecting architect or other third party acceptable to Administrative Agent, verifying that any work for which Borrower is requesting a disbursement has been properly completed and that the cost of such work bears a reasonable relationship to the costs incurred therefore;

(f) For disbursement requests in connection with a group of related projects for which Borrower is seeking reimbursement of \$200,000 or more, excluding, however, Leasing Commissions, a certification from an inspecting architect or other third party acceptable to Administrative Agent, verifying that any work for which Borrower is requesting a disbursement has been properly completed and that the cost of such work bears a reasonable relationship to the costs incurred therefore;

(g) If such disbursement request is (x) in connection with tenant improvement costs incurred by Borrower under a Lease and such disbursement request is for the final payment of the costs of the applicable tenant improvement work or (y) in connection with a final tenant improvement allowance payable by Borrower to a tenant under a Lease, then the applicable tenant shall deliver to Administrative Agent an estoppel certificate in form and substance

reasonably satisfactory to Administrative Agent, setting forth, among other things, that: (i) all landlord's work in connection with the construction of the premises demised under such Lease has been completed, (ii) all tenant improvement allowances payable by Borrower to the tenant under such Lease have been paid by Borrower (or, if such disbursement is for the payment of a tenant improvement allowance and such disbursement shall be paid directly to the applicable tenant, that all tenant improvement allowances payable by Borrower to the tenant under such Lease other than the amounts to be paid to such tenant pursuant to such disbursement have been paid by Borrower); (iii) the tenant under such Lease has taken possession of and is in occupancy of its leased premises, and has commenced paying full, unabated rent under its Lease, and (iv) the applicable Lease is in full force and effect and no default has occurred and is continuing under such Lease.

(h) Administrative Agent shall have received, in form and substance reasonably satisfactory to it, a title continuation indicating any new matters of record from the title insurance company (the "**Title Insurance Company**") that issued the Title Insurance Policy, which continuation would be dated as of the date of such requested Additional Advance, indicating that since the preceding Additional Advance (or, in the case of the first Additional Advance after the date hereof, since the issuance of the Title Insurance Policy) there has been no lien, encumbrance or other matter, including, without limitation, any tax or survey matter, not theretofore approved by Administrative Agent in writing, together with other evidence reasonably satisfactory to Administrative Agent that no mechanics' liens have been filed and remain filed with respect to the Property. The cost of such title continuation shall be paid by Borrower. If any intervening mechanics' liens are filed against the Property, Administrative Agent shall not be obligated to make the requested Additional Advance unless and until Borrower shall have caused such liens to be discharged of record or caused the Title Insurance Company to provide affirmative coverage over such liens in a manner (and based upon facts and circumstances) acceptable to Administrative Agent in its sole discretion;

(i) Such other instruments, documents and information which may be required by the Title Insurance Company;

(j) A determination (which may be based in whole or in part on a certificate of Borrower) by Administrative Agent, in its sole discretion, that no Default or Event of Default has occurred and is continuing under this Loan Agreement;

(k) Payment to Administrative Agent of an administrative fee in the amount of \$1,500 in connection with each request for an Additional Advance; and

(l) Such other instruments, documents and information pertaining to the Property, Borrower, the Budget or the requested Additional Advance that Administrative Agent may reasonably request (including, without limitation, permits, approvals of contracts, plans and schedules).

(m) Borrower shall also furnish to Administrative Agent, from time to time, supplementary statements advising Administrative Agent of any changes in the information covered by the statement from Borrower furnished in connection with any previous Additional Advance. Administrative Agent may require Borrower, if no such supplementary statement is

furnished in connection with any disbursement, to furnish a written statement to the effect that no changes have occurred since the most recent Additional Advance.

7. Amounts to be Advanced. Each Additional Advance shall be disbursed to Borrower for costs incurred by Borrower Leasing Costs and Capital Expenditures, subject to the following additional requirements and limitations:

(a) In no event shall the aggregate amount of all Additional Advances made hereunder exceed \$2,340,000.00;

(b) In no event shall the aggregate amount of all Additional Advances made hereunder for the payment of Leasing Costs exceed \$1,190,000. Such Additional Advances for the payment of Leasing Costs shall be available until the last day of the later of the Scheduled Maturity Date or the First Extension Term only;

(c) In no event shall the aggregate amount of all Additional Advances made hereunder for the payment of Capital Expenditures exceed \$1,150,000. Such Additional Advances for the payment of Capital Expenditures shall be available until the last day of the Scheduled Maturity Date only;

(d) Each Draw Request is made with respect to Leasing Costs solely arising from a Lease that is (i) executed after the date hereof with a new Tenant or for the renewal of a Lease with any existing Tenant as of the date hereof and (ii) approved or deemed approved in accordance with Section 4.10 of this Agreement; and

(e) At the time of such Additional Advance made hereunder for the payment of Leasing Costs, the Property shall have an As-Is DY (taking into account the amount of the proposed Additional Advance when calculating the then outstanding principal balance of the Loan) of equal to or greater than the As-Is DY immediately prior to such Additional Advance.

8. (a) Leasing Costs Carve Out. No Additional Advance for Leasing Costs shall be used in connection with Leasing Costs incurred by Borrower with respect to any of the Leases set forth on Schedule 1 to this Exhibit C. Further, any such Leasing Costs incurred by Borrower in connection with the Leases set forth on Schedule 1 shall be paid by Borrower within 180 days of the date hereof.

(b) Additional Conditions to Additional Advances for Leasing Costs. Any requests for an Additional Advance in connection with costs incurred by Borrower for Leasing Costs shall, in addition to the terms of this Exhibit C, also be subject to all of the terms, provisions and conditions set forth in Sections 4.28 and 4.30 of this Agreement that are generally applicable to the disbursement of funds from the Early Termination Reserve.

9. Payments Directly to Contractors and Subcontractors. In connection with any Additional Advance with respect to costs which have been incurred by Borrower (which, for the avoidance of doubt, shall include reimbursement of tenant allowances) but which have not yet been paid, Administrative Agent may if Administrative Agent elects to do so in its sole discretion, make payments for the costs incurred for Leasing Costs and Capital Expenditures directly to any applicable contractor, subcontractor, materialman or vendor of fixtures or

equipment. At Administrative Agent's option, any Additional Advance may be made into an escrow as hereinafter provided and subsequently disbursed to Borrower by the Title Insurance Company acting as escrow agent. In the event such Additional Advance is disbursed to the Title Insurance Company in escrow, further disbursement of the Additional Advance shall be made by and through the Title Insurance Company pursuant to the provisions of a construction escrow agreement in the form then in use by such Title Insurance Company with such modifications thereto as are required by Administrative Agent and Borrower. Borrower agrees to join as a party to such escrow agreement and to comply with the requirements set forth therein (which shall be in addition to and not in substitution for the requirements contained in this Loan Agreement) and to pay the fees and expenses of the Title Company charged in connection with the performance of its duties under such construction escrow agreement. If such option is exercised, the Additional Advance shall be deemed to be disbursed to Borrower from the date of deposit into such escrow and interest shall accrue on those proceeds from that date.

10. Retainage. At the time of each Additional Advance to pay for Tenant Improvements, Administrative Agent may withhold a percentage (as may be required by the applicable contract) of the invoice amount with respect to the total amount then due the applicable contractors, subcontractors and material suppliers for costs of the Tenant Improvements. Any amounts so retained will be advanced at Administrative Agent's discretion and in connection with the applicable contract, but no later than upon the final Additional Advance made upon completion of the Tenant Improvements.

11. Administrative Agent's Right to Make Disbursements to Cure Borrower's Defaults. In the event that any Default shall occur, Administrative Agent may (but shall not be required to) perform any of such covenants and agreements which Borrower has failed to perform after applicable notice and cure periods (if any). Any amounts incurred or expended by Administrative Agent in connection therewith may be disbursed by Administrative Agent to itself as an Additional Advance. The authorization hereby granted is irrevocable, and no further direction or authorization from Borrower is necessary for Administrative Agent to make such Additional Advances.

12. Administrative Agent's Right to Employ Consultant. Administrative Agent may employ a consultant (the "Construction Consultant") to review all matters related to any Additional Advance, and all reasonable costs incurred by Administrative Agent with respect to such Construction Consultant shall be paid by Borrower.

13. Compliance with Laws. Borrower will (a), comply, and will cause any other Person performing or supervising any Tenant Improvements to comply, promptly and in all material respects with all Applicable Laws and will furnish Administrative Agent, on demand, with official searches made by any governmental authority and (b) promptly provide Administrative Agent and any Construction Consultant retained by Administrative Agent with copies of all governmental approvals after issuance thereof.

14. Inspection. Borrower shall permit representatives of Administrative Agent and its Construction Consultant to visit and inspect the Property on reasonable advance notice, to examine its books of record and account, to make copies and abstracts therefrom, and to discuss its affairs, finances and accounts with its principal officers, engineers and independent

accountants (and by this provision Borrower authorizes said accountants to discuss with such persons such affairs, finances and accounts, but after prior notice to Borrower of such discussions), all at such reasonable times during business hours and at such intervals as such Person may desire. Without limiting the foregoing, representatives of Administrative Agent and its Construction Consultant shall have the right on reasonable advance notice to (a) inspect the Property and all materials to be used in connection with the construction work performed by Borrower pursuant to this Exhibit C from time to time and to witness the construction thereof, (b) to examine all detailed plans and shop drawings in connection with the construction of the Improvements and (c) meet with the representatives of any the architects, engineers, or other design professionals, and any contractors or subcontractors of Borrower to discuss the status and issues relating to the construction work performed by Borrower pursuant to this Exhibit C (and by this provision Borrower authorizes such architects, engineers, or other design professionals, and any contractors or subcontractors of Borrower to cooperate and discuss with such persons such matters, but after prior notice to Borrower of such discussions).

15. Borrower to Pay Expenses. Borrower shall pay all reasonable costs incurred by Administrative Agent in connection with each Additional Advance or otherwise in connection with any of the matters or transactions contemplated by this Exhibit C, including, without limitation, legal fees incurred by Administrative Agent.

16. Fees and Expenses. Borrower hereby authorizes Administrative Agent to make Additional Advances to pay for (i) any reasonable expenses payable in accordance with this Exhibit C hereof, including, without limitation, the reasonable fees and expenses of the Construction Consultant, (ii) endorsements to the Title Insurance Policy and (iii) any administrative fee payable to Administrative Agent in accordance with this Exhibit C, notwithstanding that Borrower may not have requested an Additional Advance of such amounts. Administrative Agent, in its sole discretion, may make such Additional Advances authorized under this Section notwithstanding that a Default or Event of Default has occurred and is continuing under the terms hereof or any other Loan Document. The authorizations hereby granted are irrevocable, and no further direction or authorization from Borrower is necessary for Administrative Agent to make such disbursements.

EXHIBIT C - SCHEDULE 1

Liquid Transportation
Carbonite
Bleeke
HighPoint Global
Holland and Holland
Western and Southern

EXHIBIT D

CLEARING ACCOUNT AND OPERATING ACCOUNT INFORMATION

CLEARING ACCOUNT:

Account Name: G&I IX MJW Lake Pointe III & IV LLC (Lockbox)
Account Number: 2748657

Clearing Bank Name: CIBC Bank USA
ABA Number: 071006486

Clearing Bank
Branch Address: 120 South LaSalle Street
Chicago, Illinois 60603

Lockbox Address:

First Class Mail:

G&I IX MJW Lake Pointe III & IV LLC
P.O. Box 775910
Chicago, IL 60677-5910

G&I IX MJW Lake Pointe III & IV

Lockbox #775910

Overnight Mail via special courier:

G&I IX MJW Lake Pointe III & IV LLC
Lockbox Number 775910
350 East Devon Ave
Itasca, IL 60143

OPERATING ACCOUNT:

Account Name: G&I IX MJW Lake Pointe III & IV LLC-Depository
Account Number: 2732157

Bank Name: CIBC Bank USA
ABA Number: 071006486

Clearing Bank
Branch Address: 120 South LaSalle Street
Chicago, Illinois 60603

EXHIBIT E

FORM OF TENANT DIRECTION LETTER

[BORROWER/MANAGER LETTERHEAD]

[Date]

[Addressee]

Re: Payment Direction Letter for Lake Pointe Center III & IV office property located in Indianapolis, Indiana.

Dear [_____]:

G&I IX MJW LAKE POINTE III & IV LLC, a Delaware limited liability company (the “**Borrower**”) is the owner of the Lake Pointe Center III & IV office property located in Indianapolis, Indiana (the “**Property**”). _____ (the “**Manager**”) is the property manager of the Property. Borrower has mortgaged the Property to Canadian Imperial Bank of Commerce, acting through its New York Branch, as administrative agent for certain lenders (together with its successors and assigns in such capacity, the “**Administrative Agent**”) and has agreed that all rents due for the Property will be paid directly to a bank selected by the Administrative Agent. Therefore, from and after the date hereof, all rent to be paid by you under the [LEASE] between you and Borrower (the “**Lease**”) should be sent directly to the following address pursuant to the following described wiring instructions:

Lockbox Address:

USPS: G&I IX MJW Lake Pointe III & IV LLC

[_____]

[_____]

Overnight Delivery: G&I IX MJW Lake Pointe III & IV LLC

[_____]

[_____]

ACH or Wire: [_____]

[_____]

ABA # [_____]

Acct # [_____]

Acct Name: G&I IX MJW Lake Pointe III & IV LLC
(Lockbox)

These payment instructions cannot be withdrawn or modified without the prior written consent of the Administrative Agent or its agent (the “**Servicer**”). Until you receive written instructions from the Administrative Agent or the Servicer, continue to send all rent

payments due under the Lease to _____. All rent payments must be delivered to CIBC Bank USA no later than the day on which such amounts are due under the Lease.

If you have any questions concerning this letter, please contact [____] at [____]. We appreciate your cooperation in this matter.

[SIGNATURES ON FOLLOWING PAGE]

BORROWER:

G&I IX MJW LAKE POINTE III & IV LLC,
a Delaware limited liability company

By: G&I IX MJW Lake Pointe JV LLC,
a Delaware limited liability company,
its sole member

By: G&I IX Investment Lake Pointe LLC
a Delaware limited liability company,
its managing member

By: _____
Name: _____
Title: _____

EXHIBIT F

INTENTIONALLY OMITTED

EXHIBIT G

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement"), is dated as of this ____ day of _____, 20__, and is made between ("Assignor") and _____ ("Assignee").

PRELIMINARY STATEMENT

Assignor is a party to that certain Loan Agreement dated as of [_____, 2018] (as the same may be amended, supplemented, restated or otherwise modified from time to time shall be referred to herein as the "Loan Agreement"), among Borrower, the Lenders party thereto and Canadian Imperial Bank of Commerce, acting through its New York Branch, as Administrative Agent for the Lenders, pursuant to which Lenders agreed to make a loan of up to [_____] AND 00/100 DOLLARS (\$_____) (the "Loan") as more particularly described therein. All capitalized terms not otherwise defined herein shall have the meaning set forth in the Loan Agreement, unless the context otherwise requires.

AGREEMENT

Assignor and Assignee, in consideration of the matters described in the foregoing Preliminary Statement, which are incorporated herein, and in consideration of the mutual covenants and agreements and provisions herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, do hereby covenant and agree as follows:

1. Assignment and Assumption. Assignor hereby sells and assigns to Assignee, and Assignee hereby purchases and assumes from Assignor, an undivided interest in and to the Loan and the Loan Documents and Assignor's rights and obligations thereunder, which interest shall equal [____] percent (____%) of the Loan, such that after giving effect to this assignment the Assignee shall hold [____] percent (____%) of the Loan and a commitment to fund the Loan in the maximum amount of [\$_____], together with the outstanding rights and obligations under the Loan Agreement and the other Loan Documents in connection with such Loan. In consideration of such assignment by Assignor and the assumption by Assignee, on the date hereof (a) Assignee shall pay to Assignor such amounts as are specified in any written agreement or exchange of letters between them, and (b) Assignee shall pay to Administrative Agent an assignment processing fee of [\$_____].

2. Rights and Obligations. After giving effect to the Assignment and Assumption contained in Section 1 hereof, (a) Assignee shall have the rights and obligations of a Lender under the Loan Documents with respect to the rights and obligations assigned to the Assignee hereunder, and (b) Assignor shall relinquish its rights and be released from its obligations under the Loan Documents with respect to the rights and obligations assigned to Assignee hereunder; provided, however, that Assignor shall retain all of its rights to indemnification under the Loan Documents for any events, acts or omissions occurring before the effective date hereof. Except as Assignor and Assignee may otherwise agree on and after the Effective Date, the Assignee shall be entitled to receive from Administrative Agent all payments of principal, interest,

Breakage Costs, and fees payable pursuant to and in accordance with the Loan Documents with respect to the interest assigned hereby, accruing and payable on and after the date hereof.

3. Representations of the Assignor; Limitations on the Assignor's Liability. Assignor represents and warrants that it is the legal and beneficial owner of the interest being assigned by it hereunder and that such interest is free and clear of any adverse claim. It is understood and agreed that the assignment and assumption hereunder is made without recourse to Assignor and that Assignor makes no other representations or warranties of any kind to Assignee. Neither Assignor nor any of its respective officers, directors, employees, agents or attorneys shall be responsible for (a) the due execution (other than by Assignor), legality, validity, enforceability, genuineness, sufficiency or collectability of any of the Loan Documents, including documents granting the Assignor and the Lenders a security interest in assets of Borrower or Guarantor, (b) any representation, warranty or statement made in or in connection with any of the Loan Documents, (c) the financial condition or creditworthiness of Borrower, (d) the performance of or compliance with any of the terms or provisions of any of the Loan Documents, (e) inspecting any of the property, books or records of Borrower, (f) the validity, enforceability, perfection, priority, condition, value or sufficiency of any collateral securing or purporting to secure the Loan, or (g) any mistake, error of judgment, or action taken or omitted to be taken in connection with the Loan or the Loan Documents.

4. Representations and Covenants of the Assignee. Assignee (a) confirms that it has received a copy of the Loan Agreement, together with copies of such financial statements, Loan Documents and other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Agreement, (b) agrees that it will, independently and without reliance upon Assignor, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, (c) appoints and authorizes Administrative Agent to take such action as Administrative Agent on its behalf and to exercise such powers under the Loan Documents as are delegated to Administrative Agent by the terms thereof, together with such powers as are reasonably incidental thereto, subject to the provisions of ARTICLE VII of the Loan Agreement, (d) agrees that it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender, (e) confirms that none of the funds, monies, assets or other consideration being used to make the purchase and assumption hereunder are "plan assets" as defined under ERISA and that its rights, benefits and interests in and under the Loan Documents will not be "plan assets" under ERISA, and (f) if Assignee is organized under the laws of a jurisdiction outside of the United States of America, it has attached hereto completed and signed copies of Internal Revenue Service Forms 1001 and 4224 and any forms that may be required by the United States Internal Revenue Service in order to certify Assignee's exemption from United States withholding taxes with respect to all payments to be made to Assignee under the Loan Agreement and the Notes or such other documents as are necessary to indicate that all such payments are subject to such rates at a rate reduced by an applicable tax treaty.

5. Indemnity. Assignee agrees to indemnify and hold the Assignor harmless against any and all losses, costs and expenses (including reasonable attorneys' fees) and liabilities incurred by Assignor in connection with or arising in any manner from Assignee's non-performance of the obligations assumed under this Agreement.

6. Governing Law. This Agreement shall be governed by the internal law, and not the law of conflicts, of the State.

7. Notices. Notices shall be given under this Agreement in the manner set forth in the Loan Agreement. For the purpose hereof, the addresses of the parties hereto (until notice of a change is delivered) shall be (a) the addresses set forth in the Loan Agreement with respect to the Assignor, and (b) the following address with respect to Assignee:

[_____

Facsimile:_____]]
Telephone:_____]]
Attention: [_____]]

with a copy to:

[_____

Facsimile:_____]]
Telephone:_____]]
Attention: [_____]]

8. Counterparts. This Agreement may be executed in one or more counterparts, each of which may be executed by one or more parties hereto, but all of which, when taken together, shall constitute a single agreement.

9. Conflicts. This Agreement embodies the entire agreement and understanding between the parties hereto and supersede all prior agreements and understandings between the parties hereto relating to the subject matter hereof. In the event of any conflict between the terms of this Agreement and any such other written agreement, the terms of such other agreement shall be controlling.

10. Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. Assignee may not assign, grant participation interests or transfer any of its rights or obligations under this Agreement except in full compliance with the terms and provisions of the Loan Agreement.

11. New Notes. On or promptly after the date hereof, Borrower, Administrative Agent, Assignor and Assignee shall make appropriate arrangements so that a new Notes executed by Borrower, dated as of the effective date of this Agreement, after giving effect to this Agreement, is issued to Assignee, in exchange for the surrender by Assignor to Borrower of the outstanding Notes, marked "Canceled".

12. Wiring Instructions. All payments to Administrative Agent in respect of Advances of the Loan shall be made by wire transfer of immediately available funds in accordance with the provisions of the Loan Agreement and sent to the account set forth on

Exhibit A hereto and made a part hereof, or to such other account as Administrative Agent shall designate in writing to Assignee. All payments to Assignee shall be made by wire transfer of immediately available funds in accordance with the provisions of the Loan Agreement and sent to the account set forth on Exhibit B hereto and made a part hereof, or to such other account as Assignee shall designate in writing to Administrative Agent.

[No Further Text on this Page; Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers as of the date first above written.

ASSIGNOR

CANADIAN IMPERIAL BANK OF
COMMERCE, NEW YORK BRANCH,
a Canadian chartered bank
(as agent for CIBC Inc., a Delaware corporation)

BY: _____
Name:
Title:

[ASSIGNEE]

BY: _____
Name:
Title:

Exhibit A

Account of Administrative Agent for Advances

Funds transfer information for payments due to Administrative Agent:

CANADIAN IMPERIAL BANK OF COMMERCE, NEW YORK BRANCH

Bank Name:	The Bank of New York
ABA #:	021-000-018
Account #:	890-0331-046
Reference:	REAL ESTATE - BR 704 Lake Pointe Center III & IV
Notify:	Maria Mazzitelli
Telephone:	416-780-9611
Alt. Contact:	Judy Isaac (Alternate Contact)
Alt. Phone:	416-542-4530
Facsimile:	905-415-9484

Exhibit B

Account of Assignee for Distributions

Funds transfer information for payments due to Assignee:

Credit Bank:

ABANo.:

Account Number:

For Credit to:

Attn:

Reference:

EXHIBIT H

RENT ROLL

(see attached)

Lease Abstract - Asset Management

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Lake Pointe Center III (844700)

11/02/2018

Rents_And_Charges

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Current Lease Data as of 11/02/2018

Monthly Lease Charges from 11/02/2018

Amendment Type	Units	Leased Sqft	Current Rent/Mth	Current Annual \$/SF	Remaining Term	From	To	From	To	Amount	per SF / Yr	Type
80997400	American Alternative Investments LLC											
Original Lease	250	10,840	18,970	21.00	66	10/13/2017	04/30/2024	11/01/2018	10/31/2019	18,970.00	21.00	rent
								11/01/2019	10/31/2020	19,421.67	21.50	rent
								11/01/2020	10/31/2021	19,873.33	22.00	rent
								11/01/2021	10/31/2022	20,325.00	22.50	rent
								11/01/2022	10/31/2023	20,776.67	23.00	rent
								11/01/2023	04/30/2024	21,228.33	23.50	rent
80616700	Bleeke Dillon Crandall PC											
Renewal	420	6,054	0	0.00	65	01/01/2018	03/31/2024	11/01/2018	03/31/2019	0.00	0.00	rent
								04/01/2019	10/31/2019	10,594.50	21.00	rent
								11/01/2019	10/31/2020	10,846.75	21.50	rent
								11/01/2020	10/31/2021	11,099.00	22.00	rent
								11/01/2021	10/31/2022	11,351.25	22.50	rent
								11/01/2022	10/31/2023	11,603.50	23.00	rent
								11/01/2023	03/31/2024	11,855.75	23.50	rent
80616500	Carbonite, Inc.											
Renewal	300	22,685	38,753	20.50	80	01/01/2018	06/30/2025	07/01/2018	12/31/2018	38,753.34	20.50	rent
								01/01/2019	12/31/2019	39,698.75	21.00	rent
								01/01/2020	12/31/2020	40,643.96	21.50	rent
								01/01/2021	12/31/2021	41,589.17	22.00	rent
								01/01/2022	12/31/2022	42,534.38	22.50	rent
								01/01/2023	12/31/2023	43,479.58	23.00	rent
								01/01/2024	12/31/2024	44,424.79	23.50	rent
								01/01/2025	06/30/2025	45,370.00	24.00	rent
80136002	Conference Room											
Original Lease	150	1,010	0	0.00	1	08/18/2014	MTM					

Lease Abstract - Asset Management

Lake Pointe Center III (844700)

Rents_And_Charges

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Current Lease Data as of 11/02/2018

Monthly Lease Charges from 11/02/2018

Amendment Type	Units	Leased Sqft	Current Rent/Mth	Current Annual \$/SF	Remaining Term	From	To	From	To	Amount	per SF / Yr	Type
80975800	Cunningham Agency LLC											
Original Lease	130	4,483	7,658	20.50	46	06/01/2017	08/31/2022	06/01/2018	05/31/2019	7,658.46	20.50	rent
								06/01/2019	05/31/2020	7,845.25	21.00	rent
								06/01/2020	05/31/2021	8,032.04	21.50	rent
								06/01/2021	05/31/2022	8,218.83	22.00	rent
								06/01/2022	08/31/2022	8,405.63	22.50	rent
80396802	Fitness Center											
Original Lease	FITCTR	1,091	0	0.00	1	03/01/2017	MTM					
81010000	IKIO LED Lighting LLC											
Original Lease	128	2,094	960	5.50	25	12/01/2017	11/30/2020	06/01/2018	11/30/2018	3,664.50	21.00	rent
								11/01/2018	11/30/2018	(2,704.75)	(15.50)	rentcon
								12/01/2018	11/30/2019	3,751.75	21.50	rent
								12/01/2019	11/30/2020	3,839.00	22.00	rent
80971000	Lake Pt III - Bike Storage											
Original Lease	BIKESTOR	37	0	0.00	1	03/01/2017	MTM					
80970900	Lake Pt III - Mgmt Office											
Original Lease	BLDGOFF	121	0	0.00	1	03/01/2017	MTM					
80616600	Liquid Transport LLC											
Remeasure	400	17,614	28,623	19.50	118	09/01/2018	08/31/2028	09/01/2018	08/31/2028	0.00	0.00	cam
								09/01/2018	08/31/2023	28,622.76	19.50	rent
								09/01/2023	08/31/2028	32,292.34	22.00	rent
80616400	Tom James Company											
Renewal	140	4,139	7,329	21.25	24	11/01/2015	10/31/2020	01/01/2018	10/31/2020	696.32	2.02	cam
								01/01/2018	10/31/2020	56.80	0.16	taxes
								11/01/2018	10/31/2019	7,329.48	21.25	rent
								11/01/2019	10/31/2020	7,501.94	21.75	rent

Lease Abstract - Asset Management

Lake Pointe Center III (844700)

Rents_And_Charges

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Current Lease Data as of 11/02/2018

Monthly Lease Charges from 11/02/2018

Amendment Type	Units	Leased Sqft	Current Rent/Mth	Current Annual \$/SF	Remaining Term	From	To	From	To	Amount	per SF / Yr	Type
80976500	Volt Information Sciences Inc											
Original Lease	100	4,612	8,071	21.00	49	11/01/2017	11/30/2022	11/01/2018	10/31/2019	8,071.00	21.00	rent
								11/01/2019	10/31/2020	8,263.17	21.50	rent
								11/01/2020	10/31/2021	8,455.33	22.00	rent
								11/01/2021	10/31/2022	8,647.50	22.50	rent
								11/01/2022	11/30/2022	8,839.67	23.00	rent
	Available											
	120	2,406	0	0.00	0							
	200A	5,900	0	0.00	0							
	200B	4,127	0	0.00	0							

Lease Abstract - Asset Management

Lake Pointe Center IV (844800)

Rents_And_Charges

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Current Lease Data as of 11/02/2018

Monthly Lease Charges from 11/02/2018

Amendment Type	Units	Leased Sqft	Current Rent/Mth	Current Annual \$/SF	Remaining Term	From	To	From	To	Amount	per SF / Yr	Type
80616900	Envigo RMS Inc											
Renewal	120A, 130, 400	25,683	44,731	20.90	44	04/16/2017	06/30/2022	04/16/2017	06/30/2022	0.00	0.00	cam
								04/16/2017	06/30/2022	0.00	0.00	taxes
								07/01/2018	06/30/2019	44,731.23	20.90	rent
								07/01/2019	06/30/2020	45,587.33	21.30	rent
								07/01/2020	06/30/2021	46,443.43	21.70	rent
								07/01/2021	06/30/2022	47,299.53	22.10	rent
80617200	Highpoint Global											
Contraction	120, 310	25,500	0	0.00	57	09/01/2018	07/31/2023	09/01/2018	12/31/2018	0.00	0.00	rent
								01/01/2019	12/31/2019	44,093.75	20.75	rent
								01/01/2020	12/31/2020	45,156.25	21.25	rent
								01/01/2021	12/31/2021	46,218.75	21.75	rent
								01/01/2022	12/31/2022	47,281.25	22.25	rent
								01/01/2023	07/31/2023	48,343.75	22.75	rent
80617000	Holland & Holland											
Renewal	128	1,225	0	0.00	37	11/01/2018	11/30/2021	11/01/2018	11/30/2018	0.00	0.00	rent
								12/01/2018	10/31/2019	2,194.79	21.50	rent
								11/01/2019	10/31/2020	2,245.83	22.00	rent
								11/01/2020	10/31/2021	2,296.88	22.50	rent
								11/01/2021	11/30/2021	2,347.92	23.00	rent

Lease Abstract - Asset Management

Lake Pointe Center IV (844800)

Rents_And_Charges

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Current Lease Data as of 11/02/2018

Monthly Lease Charges from 11/02/2018

Amendment Type	Units	Leased Sqft	Current Rent/Mth	Current Annual \$/SF	Remaining Term	From	To	From	To	Amount	per SF / Yr	Type
80617100	The Healthcare Group LLC											
Renewal	200	5,147	11,647	27.16	55	08/01/2017	05/31/2023	08/01/2017	05/31/2023	0.00	0.00	cam
								08/01/2017	05/31/2023	0.00	0.00	taxes
								03/01/2018	11/30/2018	11,647.42	27.16	rent
								12/01/2018	11/30/2019	11,931.50	27.82	rent
								12/01/2019	11/30/2020	12,215.58	28.48	rent
								12/01/2020	11/30/2021	12,499.67	29.14	rent
								12/01/2021	11/30/2022	12,783.75	29.80	rent
								12/01/2022	05/31/2023	13,067.83	30.47	rent
Expansion	210A	1,671	0	0.00	55	11/01/2017	05/31/2023					
80616800	Western & Southern Life Insurance											
Original Lease	110	3,829 *	6,222	19.50	5	03/06/2014	03/31/2019	01/01/2018	03/31/2019	393.02	1.23	cam
								01/01/2018	03/31/2019	10.56	0.03	taxes
								04/01/2018	03/31/2019	6,222.13	19.50	rent
Renewal	110	3,829	0	0.00	69	04/01/2019	07/31/2024	04/01/2019	07/31/2019	0.00	0.00	rent
								08/01/2019	03/31/2020	6,860.29	21.50	rent
								04/01/2020	03/31/2021	7,019.83	22.00	rent
								04/01/2021	03/31/2022	7,179.38	22.50	rent
								04/01/2022	03/31/2023	7,338.92	23.00	rent
								04/01/2023	03/31/2024	7,498.46	23.50	rent
								04/01/2024	07/31/2024	7,658.00	24.00	rent
	Available											
	100	2,303	0	0.00	0							
	220	3,055	0	0.00	0							
	230	8,083	0	0.00	0							
	102	1,639	0	0.00	0							
	110B	1,403	0	0.00	0							

Lease Abstract - Asset Management

Lake Pointe Center IV (844800)

Rents_And_Charges

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Current Lease Data as of 11/02/2018

Monthly Lease Charges from 11/02/2018

Amendment Type	Units	Leased Sqft	Current Rent/Mth	Current Annual \$/SF	Remaining Term	From	To	From	To	Amount	per SF / Yr	Type
	210B	1,340	0	0.00	0							

Leased Square Footage

137,835 Total Leased SF

30,256 Total Available SF

168,091 Total SF

\$172,965.57 Total Current Monthly Rents

* Denotes that SF is not included in the Report totals to avoid double counting due to the timing of Amendments

EXHIBIT I
ORGANIZATION CHART

(see attached)

Lake Pointe III & IV Indianapolis, IN

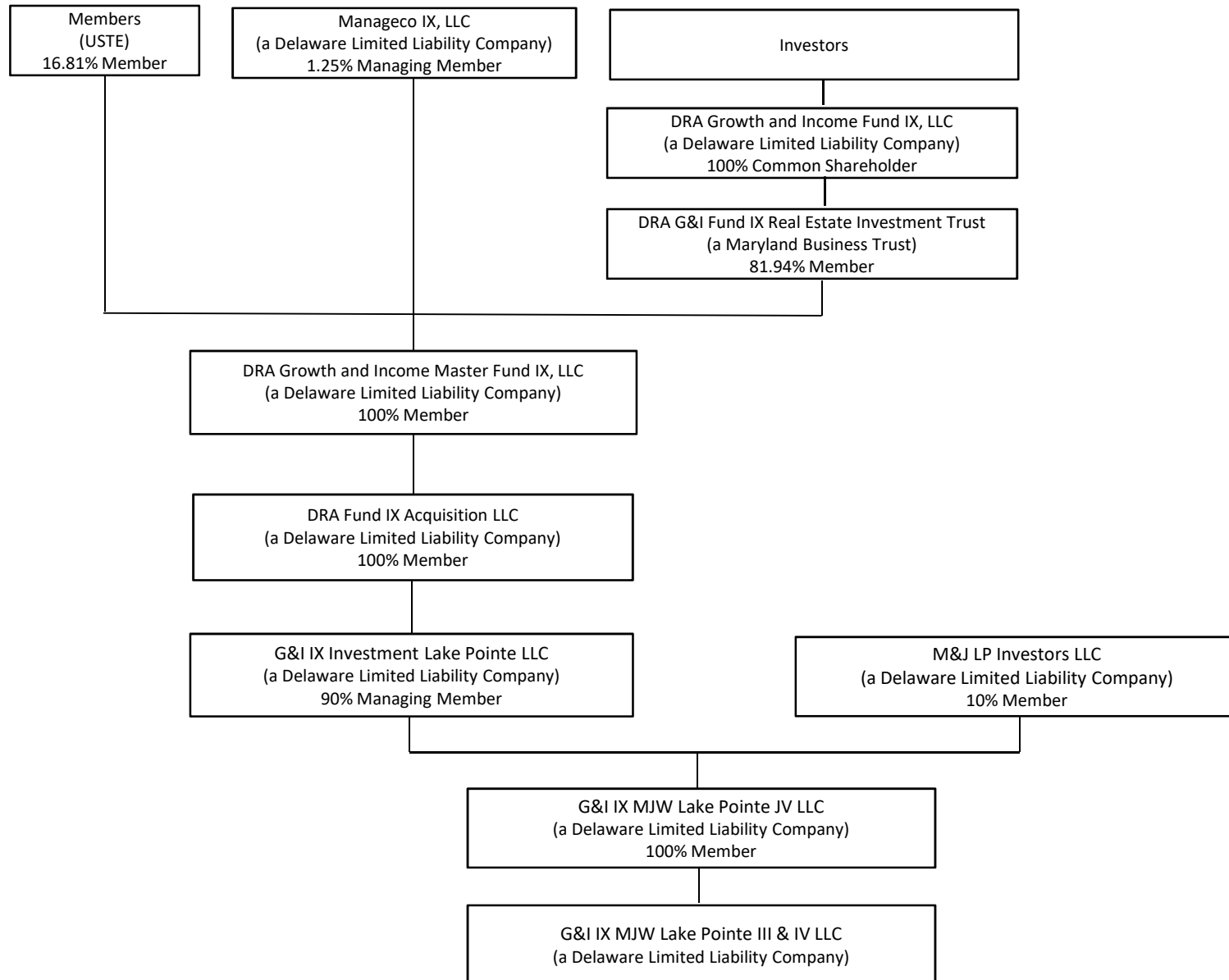


EXHIBIT J-1

Form of U.S. Tax Compliance Certificate

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Loan Agreement dated as of [____], 2018 as amended, supplemented or otherwise modified from time to time, the "Loan Agreement", among [____], and each lender from time to time party thereto.

Pursuant to the provisions of Section 7.21 of the Loan Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN or W-8BEN-E, as applicable. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Loan Agreement and used herein shall have the meanings given to them in the Loan Agreement.

[NAME OF LENDER]

By: _____

Name:

Title:

Date: _____, 20[__]

EXHIBIT J-2

Form of U.S. Tax Compliance Certificate

(For Non-U.S. Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Loan Agreement dated as of [], 2018 (as amended, supplemented or otherwise modified from time to time the “Loan Agreement”), among [] and each lender from time to time party thereto.

Pursuant to the provisions of Section 7.21 of the Loan Agreement, the undersigned hereby, certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN or W-8BEN-E, as applicable. By executing this certificate the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned,, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Loan Agreement and used herein shall have the meanings given to them in the Loan Agreement.

By:_____

Name:

Title:

Date: _____, 20[__]

EXHIBIT J-3

Form of U.S. Tax Compliance Certificate

(For Non-U.S. Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Loan Agreement dated as of [], 2018 (as amended, supplemented or otherwise modified from time to time the “Loan Agreement”), among [] and each lender from time to time thereto.

Pursuant to the provisions of Section 7.21 of the Loan Agreement, the undersigned hereby, certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect to such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or W-8BEN-E, as applicable, or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or W-8BEN-E, as applicable, from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the, undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Loan Agreement and used herein shall have the meanings given to them in the Loan Agreement.

[NAME OF LENDER]

By: _____

Name:

Title:

EXHIBIT J-4

Form of U.S. Tax Compliance Certificate

(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Loan Agreement dated as of [], 2018 (as amended, supplemented or otherwise modified from time to time, the “Loan Agreement”), among [], and each lender from time to time party thereto.

Pursuant to the provisions of Section 7.21 of the Loan Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loans(s)), (iii) with respect to the extension of credit pursuant to this Credit Agreement or any other Loan Document neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or W-8BEN-E, as applicable, or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or W-8BEN-E, as applicable, from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Loan Agreement and used herein shall have the meanings given to them in the Loan Agreement.

[NAME OF LENDER]

By: _____

Name:

Title:

EXHIBIT K
INTENTIONALLY OMITTED