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

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**FORM 10-Q**

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

For the quarterly period ended September 30, 2014

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number 01-11350

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**CONSOLIDATED-TOMOKA LAND CO.**

(Exact name of registrant as specified in its charter)

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**Florida**  
(State or other jurisdiction of  
incorporation or organization)

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

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

**32117**  
(Zip Code)

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

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

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

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

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

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

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

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

Class of Common Stock Outstanding  
October 22, 2014  
\$1.00 par value 5,867,180

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**PART I - FINANCIAL INFORMATION****ITEM 1. FINANCIAL STATEMENTS**

CONSOLIDATED-TOMOKA LAND CO.  
CONSOLIDATED BALANCE SHEETS

	(Unaudited) September 30, 2014	December 31, 2013
<b>ASSETS</b>		
Property, Plant, and Equipment:		
Land, Timber, and Subsurface Interests	\$ 15,312,067	\$ 15,291,911
Golf Buildings, Improvements, and Equipment	3,298,993	3,103,979
Income Properties, Land, Buildings, and Improvements	172,641,924	154,902,374
Other Furnishings and Equipment	994,941	955,597
Construction in Progress	—	987,303
Total Property, Plant, and Equipment	192,247,925	175,241,164
Less, Accumulated Depreciation and Amortization	(14,865,344)	(13,260,856)
Property, Plant, and Equipment - Net	177,382,581	161,980,308
Land and Development Costs	22,863,889	23,768,914
Intangible Assets - Net	6,697,873	6,359,438
Assets Held for Sale	3,153,762	—
Impact Fee and Mitigation Credits	5,649,220	6,081,433
Commercial Loan Investments	27,399,082	18,845,053
Cash and Cash Equivalents	2,219,256	4,932,512
Restricted Cash	1,425,507	366,645
Investment Securities	864,342	729,814
Net Pension Asset	492,806	407,670
Other Assets	4,188,156	2,711,893
Total Assets	<u>\$252,336,474</u>	<u>\$226,183,680</u>
<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>		
Liabilities:		
Accounts Payable	\$ 712,355	\$ 872,331
Accrued Liabilities	5,483,109	4,726,809
Deferred Revenue	3,449,265	3,344,351
Accrued Stock-Based Compensation	428,217	247,671
Income Taxes Payable	110,559	1,044,061
Deferred Income Taxes - Net	33,989,478	32,552,068
Long-Term Debt	81,190,011	63,227,032
Total Liabilities	<u>125,362,994</u>	<u>106,014,323</u>
Shareholders' Equity:		
Common Stock -25,000,000 shares authorized; \$1 par value, 5,907,650 shares issued and -5,867,180 shares outstanding at September 30, 2014; 5,866,759 shares issued and 5,852,125 shares outstanding at December 31, 2013	5,831,083	5,767,192
Treasury Stock - 40,470 shares at September 30, 2014; 14,634 shares at December 31, 2013	(1,381,566)	(453,654)
Additional Paid-In Capital	10,565,383	8,509,976
Retained Earnings	112,111,407	106,581,305
Accumulated Other Comprehensive Loss	(152,827)	(235,462)
Total Shareholders' Equity	<u>126,973,480</u>	<u>120,169,357</u>
Total Liabilities and Shareholders' Equity	<u>\$252,336,474</u>	<u>\$226,183,680</u>

See Accompanying Notes to Consolidated Financial Statements

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

	Three Months Ended		Nine Months Ended	
	September 30, 2014	September 30, 2013	September 30, 2014	September 30, 2013
<b>Revenues</b>				
Income Properties	\$ 3,864,632	\$ 3,298,447	\$ 10,821,121	\$ 9,445,677
Interest Income from Commercial Loan Investments	382,087	644,198	1,581,746	644,198
Real Estate Operations	8,645,034	1,369,397	10,925,215	2,010,722
Golf Operations	994,651	981,118	3,844,428	3,758,629
Agriculture and Other Income	182,731	20,845	258,052	149,028
<b>Total Revenues</b>	<u>14,069,135</u>	<u>6,314,005</u>	<u>27,430,562</u>	<u>16,008,254</u>
<b>Direct Cost of Revenues</b>				
Income Properties	(456,869)	(427,341)	(1,281,380)	(1,038,922)
Real Estate Operations	(3,435,357)	(174,411)	(3,758,283)	(480,152)
Golf Operations	(1,309,789)	(1,321,337)	(4,155,009)	(4,154,338)
Agriculture and Other Income	(34,158)	(33,821)	(144,690)	(120,275)
<b>Total Direct Cost of Revenues</b>	<u>(5,236,173)</u>	<u>(1,956,910)</u>	<u>(9,339,362)</u>	<u>(5,793,687)</u>
General and Administrative Expenses	(1,506,964)	(1,207,593)	(4,562,645)	(4,221,831)
Impairment Charges	(421,040)	—	(421,040)	(616,278)
Depreciation and Amortization	(886,618)	(732,427)	(2,505,007)	(2,128,185)
<b>Total Operating Expenses</b>	<u>(8,050,795)</u>	<u>(3,896,930)</u>	<u>(16,828,054)</u>	<u>(12,759,981)</u>
<b>Operating Income</b>	<u>6,018,340</u>	<u>2,417,075</u>	<u>10,602,508</u>	<u>3,248,273</u>
Interest Income	14,246	—	42,564	391
Interest Expense	(569,154)	(509,898)	(1,554,583)	(1,316,026)
<b>Income from Continuing Operations</b>				
Before Income Tax Expense	5,463,432	1,907,177	9,090,489	1,932,638
Income Tax Expense	(1,984,741)	(735,713)	(3,388,483)	(736,121)
<b>Income from Continuing Operations</b>	<u>3,478,691</u>	<u>1,171,464</u>	<u>5,702,006</u>	<u>1,196,517</u>
Income from Discontinued Operations (Net of Tax)	—	70,840	—	634,602
<b>Net Income</b>	<u>\$ 3,478,691</u>	<u>\$ 1,242,304</u>	<u>\$ 5,702,006</u>	<u>\$ 1,831,119</u>
<b>Per Share Information:</b>				
Basic and Diluted				
Income from Continuing Operations	\$ 0.60	\$ 0.21	\$ 0.99	\$ 0.21
Income from Discontinued Operations (Net of Tax)	—	0.01	—	0.11
<b>Net Income</b>	<u>\$ 0.60</u>	<u>\$ 0.22</u>	<u>\$ 0.99</u>	<u>\$ 0.32</u>
Dividends Declared and Paid	<u>\$ 0.00</u>	<u>\$ 0.00</u>	<u>\$ 0.03</u>	<u>\$ 0.03</u>

See Accompanying Notes to Consolidated Financial Statements

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

	Three Months Ended		Nine Months Ended	
	September 30, 2014	September 30, 2013	September 30, 2014	September 30, 2013
Net Income	\$ 3,478,691	\$ 1,242,304	\$ 5,702,006	\$ 1,831,119
Other Comprehensive Income				
Unrealized Gain on Investment Securities (Net of Tax of \$2,464 and \$51,893 for the three and nine months ended September 30, 2014, respectively)	3,926	—	82,635	—
Total Other Comprehensive Income, Net of Tax	3,926	—	82,635	—
Total Comprehensive Income	<u>\$ 3,482,617</u>	<u>\$ 1,242,304</u>	<u>\$ 5,784,641</u>	<u>\$ 1,831,119</u>

See Accompanying Notes to Consolidated Financial Statements

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

	Common Stock	Treasury Stock	Additional Paid-In Capital	Retained Earnings	Accumulated Other Comprehensive Loss	Total Shareholders' Equity
Balance December 31, 2013	\$5,767,192	\$ (453,654)	\$ 8,509,976	\$106,581,305	\$ (235,462)	\$120,169,357
Net Income	—	—	—	5,702,006	—	5,702,006
Stock Repurchase	—	(927,912)	—	—	—	(927,912)
Exercise of Stock Options	26,255	—	1,175,883	—	—	1,202,138
Vested Restricted Stock	37,500	—	370,471	—	—	407,971
Stock Issuance	136	—	6,106	—	—	6,242
Stock Compensation Expense from Restricted Stock Grants and Equity Classified Stock Options	—	—	502,947	—	—	502,947
Cash Dividends (\$0.03 per share)	—	—	—	(171,904)	—	(171,904)
Other Comprehensive Income, Net of Tax	—	—	—	—	82,635	82,635
Balance September 30, 2014	<u>\$5,831,083</u>	<u>\$(1,381,566)</u>	<u>\$10,565,383</u>	<u>\$ 112,111,407</u>	<u>\$ (152,827)</u>	<u>\$126,973,480</u>

See Accompanying Notes to Consolidated Financial Statements

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

	Nine Months Ended	
	September 30, 2014	September 30, 2013
Cash Flow from Operating Activities:		
Net Income	\$ 5,702,006	\$ 1,831,119
Adjustments to Reconcile Net Income to Net Cash Provided by Operating Activities:		
Depreciation and Amortization	2,505,008	2,211,346
Loan Cost Amortization	173,964	147,917
Loss (Gain) on Disposition of Property, Plant, and Equipment and Intangible Assets	—	(557,216)
Loss (Gain) on Disposition of Assets Held for Sale	—	26,367
Impairment Charges	421,040	616,278
Discount Accretion on Commercial Loan Investments	(649,658)	(526,966)
Accretion of Commercial Loan Investments Origination Fees	(10,156)	—
Amortization of Fees on Acquisition of Commercial Loan Investments	29,711	20,021
Deferred Income Taxes	1,385,517	(710,518)
Non-Cash Compensation	1,021,955	852,536
Decrease (Increase) in Assets:		
Refundable Income Taxes	—	239,720
Land and Development Costs	905,025	712,064
Impact Fees and Mitigation Credits	432,213	180,908
Net Pension Asset	(85,136)	—
Other Assets	(1,650,227)	(667,578)
Increase (Decrease) in Liabilities:		
Accounts Payable	(159,976)	13,342
Accrued Liabilities	756,300	(819,688)
Deferred Revenue	104,914	3,348,632
Accrued Stock-Based Compensation	—	14,707
Net Pension Obligation	—	91,751
Income Taxes Payable	(933,502)	1,356,638
Net Cash Provided By Operating Activities	<u>9,948,998</u>	<u>8,381,380</u>
Cash Flow from Investing Activities:		
Acquisition of Property, Plant, and Equipment	(20,815,135)	(36,790,580)
Acquisition of Intangible Assets	(1,069,145)	(2,920,739)
Acquisition of Commercial Loan Investments	(27,388,926)	(17,655,367)
Increase in Restricted Cash	(1,058,862)	(322,562)
Proceeds from Disposition of Property, Plant, and Equipment, Net	63,762	7,198,436
Proceeds from Disposition of Assets Held for Sale, Net	—	3,407,133
Principal Payments Received on Commercial Loan Investments	19,465,000	95,000
Net Cash Used In Investing Activities	<u>(30,803,306)</u>	<u>(46,988,679)</u>
Cash Flow from Financing Activities:		
Proceeds from Long-Term Debt	69,025,000	85,250,000
Payments on Long-Term Debt	(51,062,021)	(47,649,817)
Cash Proceeds from Exercise of Stock Options	869,918	519,849
Cash Used to Purchase Common Stock	(927,912)	—
Cash from Excess Tax Benefit from Vesting of Restricted Stock	407,971	101,032
Dividends Paid	(171,904)	(172,080)
Net Cash Provided By Financing Activities	<u>18,141,052</u>	<u>38,048,984</u>
Net Decrease in Cash	(2,713,256)	(558,315)
Cash, Beginning of Year	4,932,512	1,301,739
Cash, End of Period	<u>\$ 2,219,256</u>	<u>\$ 743,424</u>

See Accompanying Notes to Consolidated Financial Statements



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

Supplemental Disclosure of Cash Flows:

Income taxes totaling approximately \$2.5 million and \$187,000 were paid during the nine months ended September 30, 2014 and 2013, respectively. Income taxes refunded totaling approximately \$39,000 were received during the nine months ended September 30, 2013, while no refunds were received during the nine months ended September 30, 2014.

Interest totaling approximately \$1.4 million and \$1.1 million was paid in the first nine months of 2014 and 2013, respectively.

During the year ended December 31, 2012, the Company recorded a legal reserve in the amount of approximately \$723,000 related to a certain legal proceeding. This non-cash transaction was reflected on the consolidated balance sheet as an increase in accrued liabilities and on the consolidated statement of operations as an increase in general and administrative expenses. During the first quarter of the year ended December 31, 2013, the Company settled this legal proceeding resulting in a non-cash conveyance of certain acreage in the amount of approximately \$703,000. This non-cash transaction was reflected on the consolidated balance sheet as a decrease in land and development costs and accrued liabilities.

See Accompanying Notes to Consolidated Financial Statements

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)**

**NOTE 1. DESCRIPTION OF BUSINESS AND PRINCIPLES OF INTERIM STATEMENTS**

***Description of Business***

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

We are a diversified real estate operating company. We own and manage commercial real estate properties in ten states in the U.S., as well as five self-developed, multi-tenant, flex-office properties, located in Florida. As of September 30, 2014, we owned thirty-seven single-tenant income-producing properties, with more than 924,000 square feet of gross leasable space. We also own and manage a land portfolio of over 10,500 acres. As of September 30, 2014, we had four commercial loan investments including a fixed-rate mezzanine commercial mortgage loan collateralized by the borrower’s equity interest in a hotel property in Atlanta, Georgia, a fixed-rate first mortgage commitment for the redevelopment of an existing vacant retail property into a Container Store in Glendale, Arizona, which is expected to open during the first quarter of 2015, a variable-rate B-Note secured by a retail shopping center in Sarasota, Florida, and a variable-rate mezzanine commercial mortgage loan collateralized by the borrower’s equity interest in a hotel property in Dallas, Texas. Our golf operations consist of the LPGA International golf club, which is managed by a third party. We also lease property for twenty-one billboards, have agricultural operations that are managed by a third party, which consists of leasing land for hay and sod production, timber harvesting, and hunting leases, and own and manage subsurface interests. The results of our agricultural and subsurface leasing operations are included in Agriculture and Other Income and Real Estate Operations, respectively, in our consolidated statements of operations.

***Interim Financial Information***

The accompanying unaudited consolidated financial statements have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission. These unaudited consolidated financial statements do not include all of the information and notes required by accounting principles generally accepted in the United States of America (“GAAP”) for complete financial statements and should be read in conjunction with the Company’s Annual Report on Form 10-K for the year ended December 31, 2013, which provides a more complete understanding of the Company’s accounting policies, financial position, operating results, business properties, and other matters. The unaudited consolidated financial statements reflect all adjustments which are, in the opinion of management, necessary to present fairly the financial position of the Company and the results of operations for the interim periods.

The results of operations for the three and nine months ended September 30, 2014 are not necessarily indicative of results to be expected for the year ending December 31, 2014.

***Principles of Consolidation***

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

***Use of Estimates in Preparation of Financial Statements***

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

Because of the fluctuating market conditions that currently exist in the Florida and national real estate markets, and the volatility and uncertainty in the financial and credit markets, it is possible that the estimates and assumptions, most notably those related to the Company’s investment in income properties and net pension asset, could change materially during the time span associated with the continued volatility of the real estate and financial markets or as a result of a significant dislocation in those markets.

***Cash and Cash Equivalents***

Cash and cash equivalents include cash on hand and bank demand accounts.

**Restricted Cash**

Restricted cash totaled approximately \$1.4 million at September 30, 2014 of which approximately \$322,000 is being held in a reserve primarily for property taxes and insurance escrows in connection with our financing of two properties acquired in January 2013, approximately \$284,000 is being held in escrow related to a land transaction which closed in December 2013, and approximately \$270,000 is being held in reserve for future interest and property tax payments in connection with our construction loan on a vacant retail property in Glendale, Arizona. Additionally, approximately \$550,000 is being held in a reserve related to certain required tenant improvements for the Lowes in Katy, Texas.

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

***Investment Securities***

The Company determines the appropriate classification of its investments in debt and equity securities at the time of purchase and reevaluates such determinations at each balance sheet date in accordance with *ASC Topic 320, Investments – Debt and Equity Securities*. Marketable equity securities are classified as available-for-sale, and are carried at fair market value, with the unrealized gains and losses, net of tax, included in the determination of comprehensive income and reported in shareholders' equity. The fair value of securities is determined by quoted market prices.

***Fair Value of Financial Instruments***

The carrying amounts of the Company's financial assets and liabilities including cash and cash equivalents, restricted cash, investment securities, accounts receivable, and accounts payable at September 30, 2014 and December 31, 2013, approximate fair value because of the short maturity of these instruments. The carrying amount of the Company's investments in commercial loans approximate fair value at September 30, 2014 and December 31, 2013, since the floating and fixed rates of the loans reasonably approximates current market rates for notes with similar risks and maturities. The carrying amount of the Company's long-term debt approximates fair value at September 30, 2014 and December 31, 2013, since the floating rate of our credit facility and the fixed rates of our secured financings reasonably approximate current market rates for notes with similar risks and maturities.

***Fair Value Measurements***

The Company's estimates of fair value of financial and non-financial assets and liabilities based on the framework established in the fair value accounting guidance. The framework specifies a hierarchy of valuation inputs which was established to increase consistency, clarity and comparability in fair value measurements and related disclosures. The guidance describes a fair value hierarchy based upon three levels of inputs that may be used to measure fair value, two of which are considered observable and one that is considered unobservable. The following describes the three levels:

- Level 1 – Valuation is based upon quoted prices in active markets for identical assets or liabilities.
- Level 2 – Valuation is based upon inputs other than Level 1 that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities, quoted prices in markets that are not active or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.
- Level 3 – Valuation is generated from model-based techniques that use at least one significant assumption not observable in the market. These unobservable assumptions reflect estimates of assumptions that market participants would use in pricing the asset or liability. Valuation techniques include option pricing models, discounted cash flow models and similar techniques.

***Classification of Loans***

Loans held for investment are stated at the principal amount outstanding and include the unamortized deferred loan fees in accordance with GAAP.

***Commercial Loan Investment Impairment***

The Company's commercial loans are held for investment. For each loan, the Company evaluates the performance of the collateral property and the financial and operating capabilities of the borrower/guarantor, in part, to assess whether any deterioration in the credit has occurred and for possible impairment of the loan. Impairment would reflect the Company's determination that it is probable that all amounts due according to the contractual terms of the loan would not be collected. Impairment is measured based on the present value of the expected future cash flows from the loan discounted at the effective rate of the loan or the fair value of the collateral. Upon measurement of impairment, the Company would record an allowance to reduce the carrying value of the loan with a corresponding recognition of loss in the results of operations. Significant exercise of judgment is required in determining impairment, including assumptions regarding the estimate of expected future cash flows, collectability of the loan, the value of the underlying collateral and other provisions including guarantees. The Company has determined that, as of September 30, 2014, no allowance for impairment was required.

***Interest Income Recognition***

Interest income on commercial loan investments includes interest payments made by the borrower and the accretion of purchase discounts and loan origination fees, offset by the amortization of fees. Interest payments are accrued based on the actual coupon rate and the outstanding principal balance and purchase discounts and origination fees are accreted into income using the effective yield method, adjusted for prepayments.

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

***Purchase Accounting for Acquisitions of Real Estate Subject to a Lease***

In accordance with the Financial Accounting Standards Board (“FASB”) guidance on business combinations, the fair value of the real estate acquired with in-place leases is allocated to the acquired tangible assets, consisting of land, building and tenant improvements, and identified intangible assets, consisting of the value of in-place leases, based in each case on their relative fair values. The Company has determined that income property purchases with a pre-existing lease at the time of acquisition qualify as a business combination, in which case acquisition costs are expensed in the period the transaction closes. For income property purchases in which a new lease is originated at the time of acquisition, the Company has determined that these asset purchases qualify as asset acquisitions, outside the scope of the business combination standards and accordingly, the acquisition costs are capitalized with the purchase.

***Reclassifications***

Certain items in the prior period’s consolidated statements of operations have been reclassified to conform to the presentation of statements of operations for the nine months ended September 30, 2014. Specifically, loan cost amortization was previously included in depreciation and amortization on the consolidated financial statements and is now included in interest expense. These reclassifications had no effect on the current and prior periods of income (loss) from continuing operations before taxes. Additionally, certain items in the prior period’s consolidated statements of cash flows have been reclassified to conform to the current presentation. Specifically, the change in impact fees and mitigation credits was previously included with other assets and is now a separate line item to conform to the new line item on the consolidated balance sheets. The changes in accrued stock-based compensation and the net pension obligation were previously included with the change in accrued liabilities and are now separate line items to conform to the consolidated balance sheet presentation. These reclassifications had no effect on the net increase or decrease in cash and cash equivalents.

**NOTE 2. INCOME PROPERTIES**

During the nine months ended September 30, 2014, the Company acquired two income properties at an acquisition cost of approximately \$20.0 million. Of the total acquisition cost, approximately \$7.1 million was allocated to land, approximately \$11.8 million was allocated to buildings and improvements, and approximately \$1.1 million was allocated to intangible assets pertaining to the in-place lease value. The amortization period for the approximate \$1.1 million allocated to intangible assets was approximately 10.6 years at the time of acquisition. Additionally, during the nine months ended September 30, 2014, construction was completed on two self-developed properties, known as the Williamson Business Park, in Daytona Beach, Florida for a total cost of approximately \$2.4 million of which approximately \$2.2 million was incurred for building and improvements and approximately \$221,000 was related to the transfer of basis in the previously owned land.

On July 17, 2014, the Company acquired a 52,665 square-foot building situated on approximately 7 acres leased to American Signature Furniture, in Daytona Beach, Florida. The lease has approximately 6 years remaining on an initial term of 15 years. The total purchase price was approximately \$5.3 million, and is located within an approximately 250,000 square-foot retail shopping center anchored by Best Buy, PetSmart and Barnes & Noble. The Company also owns the property leased to Barnes & Noble.

Also during the quarter ended September 30, 2014, the Company completed a five year extension of the lease with Best Buy in McDonough, GA with four one-year extension options at a slightly reduced rate.

During the nine months ended September 30, 2013, the Company acquired nine income properties at a total acquisition cost of approximately \$39.5 million. Of the total acquisition cost, approximately \$13.2 million was allocated to land, approximately \$23.4 million was allocated to buildings and improvements, and approximately \$2.9 million was allocated to intangible assets pertaining to the in-place lease value. The weighted average amortization period for the approximate \$2.9 million allocated to intangible assets was approximately 10.5 years at the time of acquisition.

**NOTE 3. DISCONTINUED OPERATIONS**

No income properties were disposed of during the nine months ended September 30, 2014. However, the 14,560 square-foot building located in Apopka, Florida, which is leased to Walgreens was presented as assets held for sale on the consolidated balance sheet as of September 30, 2014 as the property is under contract and considered highly probable to close. As the Company has adopted ASU 2014-08, the operating results of this property have not been included in discontinued operations as the disposition does not qualify as a discontinued operation.

During the nine months ended September 30, 2013, the Company sold its interest in three properties for a combined gain of approximately \$531,000. Upon the sales, the properties' operating results were included in discontinued operations for each period presented.

Following is a summary of income from discontinued operations:

	Three Months Ended		Nine Months Ended	
	September 30, 2014	September 30, 2013	September 30, 2014	September 30, 2013
Leasing Revenue and Other Income	\$ —	\$ 132,902	\$ —	\$ 585,443
Costs and Other Expenses	(—)	(17,575)	(—)	(83,160)
Income from Operations	—	115,327	—	502,283
Gain on Sale of Property	—	—	—	530,849
Income before Income Tax Expense	—	115,327	—	1,033,132
Income Tax Expense	(—)	(44,487)	(—)	(398,530)
Income from Discontinued Operations	\$ —	\$ 70,840	\$ —	\$ 634,602

**NOTE 4. COMMERCIAL LOAN INVESTMENTS**

On January 31, 2014, the Company acquired a mezzanine loan secured by the borrower's equity interest in an upper upscale hotel in Atlanta, Georgia, that was previously subject to the Company's first commercial mortgage loan investment. The Company purchased the \$5.0 million performing loan at par. The loan matures in February 2019 and bears a fixed interest rate of 12.00% per annum. Interest revenue recognized during the three and nine months ended September 30, 2014 was approximately \$153,000 and \$405,000, respectively.

On May 16, 2014, the Company funded approximately \$3.1 million of a \$6.3 million first mortgage commitment for the redevelopment of an existing vacant retail property into a Container Store located in Glendale, Arizona, which is expected to open during the first quarter of 2015. During the three months ended September 30, 2014, approximately \$431,000 in draws were funded by the Company, leaving a remaining commitment of approximately \$2.8 million, which may be drawn by the borrower as construction costs are incurred. The loan matures in November 2015, includes one nine-month extension option, and bears a fixed interest rate of 6.00% per annum. At closing, a loan origination fee of approximately \$79,000 was received by the Company and is being accreted ratably into income through the contractual maturity date in November 2015. Total interest revenue recognized during the three and nine months ended September 30, 2014 was approximately \$57,000 and \$84,000, respectively.

On May 20, 2014, the Company acquired an approximate \$9.0 million B-Note secured by a retail shopping center located in Sarasota, Florida. The loan matures in June 2015, includes three one-year extension options, and bears a floating interest rate of 30-day London Interbank Offer Rate ("LIBOR") plus 725 basis points. The loan is subordinate to an approximately \$48.0 million A-Note collateralized by the same property, for a total debt balance of \$57.0 million. Interest revenue recognized during the three and nine months ended September 30, 2014 was approximately \$170,000 and \$247,000, respectively.

On September 30, 2014, the Company acquired a mezzanine loan secured by the borrower's equity interest in an upper upscale hotel in Dallas, Texas. The Company purchased the \$10.0 million performing loan at par. The loan matures in September 2016 and bears a floating interest rate of 30-day LIBOR plus 725 basis points. The loan is junior to a \$64.0 million first mortgage on the hotel in Dallas, Texas. Interest revenue recognized during the three and nine months ended September 30, 2014 was approximately \$2,000.

[Table of Contents](#)**NOTE 4. COMMERCIAL LOAN INVESTMENTS (continued)**

The Company's commercial loan investment portfolio comprised the following at September 30, 2014:

Description	Date of Investment	Maturity Date	Original Face Amount	Current Face Amount	Carrying Value	Coupon Rate
Mezz - Hotel - Atlanta, GA	January 2014	February 2019	\$ 5,000,000	\$ 5,000,000	\$ 5,000,000	12.00%
Construction - Container Store - Glendale, AZ	May 2014	November 2015	\$ 6,300,000	\$ 3,507,208	\$ 3,438,615	6.00%
B-Note - Retail Shopping Center - Sarasota, FL	May 2014	June 2015	\$ 8,960,467	\$ 8,960,467	\$ 8,960,467	30-day LIBOR plus 7.25%
Mezz - Hotel - Dallas, TX	September 2014	September 2016	\$ 10,000,000	\$ 10,000,000	\$ 10,000,000	30-day LIBOR plus 7.25%
<b>Total</b>			<b>\$ 30,260,467</b>	<b>\$ 27,467,675</b>	<b>\$ 27,399,082</b>	

The carrying value of the commercial loan investments as of September 30, 2014 consisted of the following:

	Total
Current Face Amount	\$27,467,675
Unaccreted Origination Fees	(68,593)
<b>Total Commercial Loan Investments</b>	<b>\$27,399,082</b>

On August 7, 2013, the Company acquired a \$19.6 million first mortgage loan secured by a hotel in Atlanta, Georgia, for approximately \$17.5 million, a discount of approximately \$2.05 million. The discount was being accreted into income ratably through the contractual maturity date in March 2014, which is included in Interest Income from Commercial Loan Investments in the consolidated financial statements. On January 6, 2014, the remaining commercial mortgage loan principal of \$19.5 million was paid in full. The total revenue recognized during the nine months ended September 30, 2014 which was recognized entirely during the quarter ended March 31, 2014, was approximately \$844,000 including the remaining accretion of the purchase discount of approximately \$650,000, interest income of approximately \$36,000, and an exit fee of approximately \$195,000, offset by the remaining amortization of fees of approximately \$37,000. The total revenue recognized during the nine months ended September 30, 2013, which was recognized entirely during the quarter ended September 30, 2013, was approximately \$644,000 including accretion of the purchase discount of approximately \$527,000 and interest income of approximately \$137,000, offset by approximately \$20,000 of amortization of loan origination fees

The Company's commercial loan investment portfolio comprised the following at December 31, 2013:

Description	Date of Investment	Maturity Date	Original Face Amount	Current Face Amount	Carrying Value	Coupon
Hotel - Atlanta, GA	August 2013	March 2014	\$ 19,560,000	\$ 19,465,000	\$ 18,845,053	30-day LIBOR plus 4.50%
<b>Total</b>			<b>\$ 19,560,000</b>	<b>\$ 19,465,000</b>	<b>\$ 18,845,053</b>	

The carrying value of the commercial loan investments as of December 31, 2013 consisted of the following:

	Total
Current Face Amount	\$19,465,000
Unamortized Fees	29,711
Unaccreted Purchase Discount	(649,658)
<b>Total Commercial Loan Investments</b>	<b>\$18,845,053</b>

**NOTE 5. LAND AND SUBSURFACE INTERESTS**

During the nine months ended September 30, 2014, the Company sold approximately 3.1 acres to Halifax Humane Society, Inc. for \$391,500, or approximately \$128,000 per acre, for a gain of approximately \$347,000. This parcel is located on LPGA Boulevard, just west of I-95 in Daytona Beach, Florida and is adjacent to an existing property owned by Halifax Humane Society, Inc.

During the three months ended September 30, 2014, the Company sold approximately 75.6 acres of land, located on the east side of Interstate 95, to a distribution center for approximately \$7.8 million, or approximately \$103,000 per acre, for a gain at closing of approximately \$3.9 million with an additional gain of approximately \$324,000 to be recognized on a percentage-of-completion basis as certain road improvements are completed through the estimated completion date of February 2015. In addition, the Company expects to receive payments totaling approximately \$1.1 million in late 2015 from Volusia County, based upon certain milestones being achieved including when the distribution center receives its certificate of occupancy and the dates when specified numbers of jobs have been created at the buyer's operations. Although there can be no assurances that the Company will receive the \$1.1 million, such payments would bring the total gain on the sale to approximately \$5.3 million.

During the three and nine months ended September 30, 2013, there were no land transactions.

During 2011, an eight-year oil exploration lease covering approximately 136,000 net mineral acres primarily located in Lee County and Hendry County, Florida was executed and an approximate \$914,000 first year rental payment was received. An additional approximate \$922,000, representing the guaranteed payment for the second year's delay rent, was received in September 2012. The two payments totaling approximately \$1.8 million have been recognized ratably into income through September 2013. On September 22, 2013, the Company entered into an amendment of the exploration lease (the "Oil Lease Amendment"). Under the Oil Lease Amendment, the net mineral acres under exploration lease was reduced from approximately 136,000 net mineral acres to approximately 82,000 net mineral acres in Hendry County, Florida. The approximately 54,000 net mineral acres removed from the exploration lease were located in Lee County, Florida. In connection with the Oil Lease Amendment, the Company received an approximate \$3.3 million rent payment for the third year of the Company's eight-year oil exploration lease. The payment was recognized ratably over the 12 month lease period ending in September 2014. Also during September 2013, the Company received, and recognized as revenue, a non-refundable penalty payment of \$1.0 million relating to the drilling requirements in the lease. During September 2014, the Company received an approximate \$1.9 million rent payment for the adjusted acreage of 42,000 acres for the fourth year of the Company's eight-year exploration lease, which is being recognized ratably over the 12 month lease period ending in September 2015. Also during September 2014, the Company received, and recognized as revenue, a non-refundable penalty payment of \$600,000 relating to drilling requirements in the lease. The terms of the lease state the Company will receive royalty payments if production occurs and may receive additional annual rental payments if the lease is continued in years four through eight.

Lease income generated by the Oil Lease Amendment is being recognized on a straight-line basis over the guaranteed lease term. For the three months ended September 30, 2014 and 2013, lease income of approximately \$799,000 and \$283,000 was recognized, respectively. For the nine months ended September 30, 2014 and 2013, lease income of approximately \$2.4 million and \$738,000 was recognized, respectively. There can be no assurance that the Oil Lease Amendment will be extended beyond the expiration of the current term of September 2015 or, if renewed, on similar terms or conditions.

In addition, the Company generated revenue of approximately \$139,000 during the nine months ended September 30, 2014 from a fill dirt excavation agreement executed in late 2013.

**NOTE 6. INVESTMENT SECURITIES**

During December 2013, the Company purchased approximately \$730,000 of preferred stock of a publicly traded real estate investment trust with a market capitalization of more than \$1.5 billion. In accordance with ASC Topic 320, *Investments – Debt and Equity Securities*, the preferred stock investments have been determined to be equity securities classified as available-for-sale which are recorded at fair market value in the consolidated balance sheets. The fair value of the Company's investment securities is measured quarterly, on a recurring basis, using Level 1 inputs, or quoted prices for identical, actively traded assets.

Available-for-Sale securities consisted of the following:

	<b>As of and For the Nine Months Ended September 30, 2014</b>			
	<b>Cost</b>	<b>Gains in Accumulated Other Comprehensive Income</b>	<b>Losses in Accumulated Other Comprehensive Income</b>	<b>Estimated Fair Value (Level 1 Inputs)</b>
Preferred Stock	\$729,814	\$ 134,528	\$ —	\$864,342
Total Equity Securities	\$729,814	\$ 134,528	\$ —	\$864,342
Total Available-for-Sale Securities	<u>\$729,814</u>	<u>\$ 134,528</u>	<u>\$ —</u>	<u>\$864,342</u>



[Table of Contents](#)**NOTE 6. INVESTMENT SECURITIES (continued)**

The net gain of approximately \$83,000 during the nine months ended September 30, 2014, net of tax of approximately \$52,000, is included in other comprehensive income. Included in other comprehensive income is the net gain of approximately \$4,000 during the three months ended September 30, 2014, net of tax of approximately \$2,000. As of and for the three and nine months ended September 30, 2013, the Company held no investment securities.

**NOTE 7. FAIR VALUE OF FINANCIAL INSTRUMENTS**

The following table presents the carrying value and estimated fair value of the Company's financial instruments at September 30, 2014 and December 31, 2013:

	September 30, 2014		December 31, 2013	
	Carrying Value	Estimated Fair Value	Carrying Value	Estimated Fair Value
Cash and Cash Equivalents	\$ 2,219,256	\$ 2,219,256	\$ 4,932,512	\$ 4,932,512
Restricted Cash	1,425,507	1,425,507	366,645	366,645
Investment Securities	864,342	864,342	729,814	729,814
Commercial Loan Investments	27,399,082	27,467,675	18,845,053	19,297,110
Long-Term Debt	81,190,011	81,190,011	63,227,032	63,227,032

To determine estimated fair values of the financial instruments listed above, market rates of interest, which include credit assumptions, were used to discount contractual cash flows. The estimated fair values are not necessarily indicative of the amount the Company could realize on disposition of the financial instruments. The use of different market assumptions or estimation methodologies could have a material effect on the estimated fair value amounts.

**NOTE 8. INTANGIBLE ASSETS**

As of September 30, 2014, the in-place lease value totaled approximately \$6.7 million, net of accumulated amortization of approximately \$3.4 million. At December 31, 2013, the in-place lease value totaled approximately \$6.4 million, net of accumulated amortization of approximately \$3.0 million. Amortization expense for the three months ended September 30, 2014 and 2013 was approximately \$196,000 and \$168,000, respectively. Amortization expense for the nine months ended September 30, 2014 and 2013 was approximately \$545,000 and \$500,000, respectively.

The estimated future amortization expense related to intangible assets is as follows:

Year Ending December 31,	Amount
Remainder of 2014	\$ 194,964
2015	779,857
2016	741,768
2017	651,015
2018	643,327
2019	628,492
Thereafter	3,058,450
Total	<u>\$6,697,873</u>

**NOTE 9. IMPAIRMENT OF LONG-LIVED ASSETS**

The Company assesses the impairment of long-lived assets whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. The fair value of long-lived assets required to be assessed for impairment is determined on a non-recurring basis using Level 3 inputs in the fair value hierarchy. These Level 3 inputs may include, but are not limited to, executed purchase and sale agreements on specific properties, third party valuations, discounted cash flow models, and other model-based techniques.

During the three and nine months ended September 30, 2014, an impairment charge of approximately \$421,000 was recognized on the income property held for sale as of September 30, 2014. The total impairment charge represents the loss on the sale of approximately \$228,000 plus estimated closing costs of approximately \$193,000.

**NOTE 9. IMPAIRMENT OF LONG-LIVED ASSETS (continued)**

During the quarter and nine months ended September 30, 2013 the Company recognized an impairment loss of approximately \$616,000 on approximately 6.23 acres which was based on the contract price in a transaction that had been executed during that period for approximately 3.21 acres of the total 6.23 acres assessed for impairment. That transaction was terminated prior to closing, however, on December 20, 2013, the Company sold the approximately 6.23 acres to CarMax Auto Super Stores, Inc. for \$1.05 million, or approximately \$168,500 per acre. The basis in these acres was higher than is typical for the Company's land holdings as this land had been reacquired through foreclosure in 2009.

**NOTE 10. COMMON STOCK AND EARNINGS PER SHARE**

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

	Three Months Ended		Nine Months Ended	
	September 30, 2014	September 30, 2013	September 30, 2014	September 30, 2013
<b>Income Available to Common Shareholders:</b>				
Income from Continuing Operations	\$ 3,478,691	\$ 1,171,464	\$ 5,702,006	\$ 1,196,517
Discontinued Operations	—	70,840	—	634,602
Net Income	\$ 3,478,691	\$ 1,242,304	\$ 5,702,006	\$ 1,831,119
Weighted Average Shares Outstanding	5,773,469	5,750,158	5,754,190	5,735,585
Common Shares Applicable to Stock				
Options Using the Treasury Stock Method	32,930	5,657	21,278	3,598
Total Shares Applicable to Diluted Earnings Per Share	5,806,399	5,755,815	5,775,468	5,739,183
<b>Basic and Diluted Per Share Information:</b>				
Income from Continuing Operations	\$ 0.60	\$ 0.21	\$ 0.99	\$ 0.21
Discontinued Operations	—	0.01	—	0.11
Net Income	\$ 0.60	\$ 0.22	\$ 0.99	\$ 0.32

The effect of 35,400 potentially dilutive securities were not included for the three and nine months ended September 30, 2014 as the effect would be antidilutive. The effect of 38,800 and 58,800 potentially dilutive securities were not included for the three and nine months ended September 30, 2013, respectively, as the effect would be antidilutive.

**NOTE 11. TREASURY STOCK**

On April 26, 2012, the Company announced a voluntary Odd-Lot Buy-Back Program (the "Program"), whereby the Company offered to purchase shares from shareholders who owned less than 100 shares of the Company's common stock as of April 26, 2012, for \$31.00 per share. The Program reflected the Company's interest in reducing the ongoing costs associated with shareholder recordkeeping and communications and to assist shareholders who may be deterred from selling their small lots of stock due to the costs that would be incurred. The Company paid all costs associated with the Program and purchased 14,634 shares under the Program at a total cost of approximately \$454,000. The Program expired September 30, 2012. The Company did not provide any recommendation regarding shareholder participation and the decision was entirely that of each shareholder as to whether to sell shares in this Program.

In November 2008, the Company's Board of Directors authorized the Company to repurchase from time to time up to \$8 million of its common stock. There is no expiration date for the plan. During the nine months ended September 30, 2014, under the stock repurchase program described above, the Company has repurchased and placed in treasury 25,836 shares of its common stock on the open market for a total cost of approximately \$928,000.

**NOTE 12. LONG-TERM DEBT**

*Credit Facility.* The Company has a revolving credit facility, as amended on August 1, 2014 (the “Credit Facility”) which matures on August 1, 2018 with the ability to extend the term for 1 year. The Credit Facility has borrowing capacity of \$75.0 million with the ability to increase that capacity up to \$125.0 million during the term. The indebtedness outstanding under the Credit Facility accrues interest at a rate ranging from the 30-day LIBOR plus 135 basis points to the 30-day LIBOR plus 200 basis points based on the total balance outstanding under the Credit Facility as a percentage of the total asset value of the Company, as defined in the Credit Facility. The Credit Facility also accrues a fee of 20 to 25 basis points for any unused portion of the borrowing capacity based on whether the unused portion is greater or less than 50% of the total borrowing capacity. The Credit Facility is unsecured and is guaranteed by certain wholly-owned subsidiaries of the Company. The Credit Facility bank group is led by Bank of Montreal (“BMO”) and also includes Wells Fargo Bank, N.A. and Branch Banking & Trust Company.

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

*Mortgage Notes Payable.* On February 22, 2013, the Company closed on a \$7.3 million loan originated with UBS Real Estate Securities Inc., secured by its interest in the two-building office complex leased to Hilton Resorts Corporation, which was acquired on January 31, 2013. The mortgage loan matures in February 2018, carries a fixed rate of interest of 3.655% per annum, and requires payments of interest only prior to maturity.

On March 8, 2013, the Company closed on a \$23.1 million loan originated with Bank of America, N.A., secured by its interest in fourteen income properties. The mortgage loan matures in April 2023, carries a fixed rate of 3.67% per annum, and requires payments of interest only prior to maturity.

On September 30, 2014, the Company closed on a \$30.0 million loan originated with Wells Fargo Bank, N.A., secured by its interest in six income properties. The mortgage loan matures in October 2034, and carries a fixed rate of 4.33% per annum, and requires payments of interest only prior to maturity.

Long-term debt consisted of the following:

	September 30, 2014	
	Total	Due Within One Year
Credit Facility	\$20,790,011	\$ —
Mortgage Note Payable (originated with UBS)	7,300,000	—
Mortgage Note Payable (originated with BOA)	23,100,000	—
Mortgage Note Payable (originated with Wells Fargo)	30,000,000	—
Total Long-Term Debt	<u>\$81,190,011</u>	<u>\$ —</u>

[Table of Contents](#)**NOTE 12. LONG-TERM DEBT (continued)**

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

<u>Year Ending December 31,</u>	<u>Amount</u>
Remainder of 2014	\$ —
2015	—
2016	—
2017	—
2018	28,090,011
2019	—
Thereafter	53,100,000
Total Long-Term Debt	<u>\$81,190,011</u>

At September 30, 2014, there was approximately \$54.2 million of available borrowing capacity under the Credit Facility, which has a current commitment level of \$75.0 million, subject to the borrowing base requirements.

For the three months ended September 30, 2014, interest expense was approximately \$505,000 with approximately \$538,000 paid during the period. For the three months ended September 30, 2013, interest expense was approximately \$456,000 with approximately \$455,000 paid during the period. No interest was capitalized during the three months ended September 30, 2014 or 2013.

For the nine months ended September 30, 2014, interest expense was approximately \$1.4 million with approximately \$1.4 million paid during the period. For the nine months ended September 30, 2013, interest expense was approximately \$1.2 million with approximately \$1.1 million paid during the period. Interest of approximately \$11,000 was capitalized during the nine months ended September 30, 2014, while no interest was capitalized during the nine months ended September 30, 2013.

The amortization of loan costs incurred in connection with the Company's long-term debt is included in interest expense in the consolidated financial statements. These loan costs are being amortized over the term of the respective loan agreements using the straight-line method, which approximates the effective interest method. For the three months ended September 30, 2014 and 2013, the amortization of loan costs totaled approximately \$64,000 and \$54,000, respectively. For the nine months ended September 30, 2014 and 2013, the amortization of loan costs totaled approximately \$174,000 and \$148,000, respectively.

The Company was in compliance with all of its debt covenants as of September 30, 2014 and December 31, 2013.

**NOTE 13. ACCRUED LIABILITIES**

Accrued liabilities consisted of the following:

	<u>As of</u>	
	<u>September 30,</u>	<u>December 31,</u>
	<u>2014</u>	<u>2013</u>
Golf Course Lease	\$ 3,066,311	\$ 3,340,389
Deferred Compensation	—	382,599
Accrued Property Taxes	665,842	—
Other Post-Retirement Benefits	146,318	156,881
Reserve for Tenant Improvements	551,250	58,977
Other	1,053,388	787,963
Total Accrued Liabilities	<u>\$ 5,483,109</u>	<u>\$ 4,726,809</u>

In July 2012, the Company entered into an agreement with the City of Daytona Beach, Florida (the "City") to, among other things, amend the lease payments under its golf course lease (the "Lease Amendment"). Under the Amendment, the base rent payment, which was scheduled to increase from \$250,000 to \$500,000 as of September 1, 2012, will remain at \$250,000 for the remainder of the lease term and any extensions would be subject to an annual rate increase of 1.75% beginning September 1, 2013. The Company also agreed to invest \$200,000 prior to September 1, 2015 for certain improvements to the facilities. In addition, pursuant to the Lease Amendment, beginning September 1, 2012, and continuing throughout the initial lease term and any extension option, the Company will pay additional rent to the City equal to 5.0% of gross revenues exceeding \$5,500,000 and 7.0% of gross revenues exceeding \$6,500,000. Since the inception of the lease, the Company has recognized the rent expense on a straight-line basis resulting in an estimated accrual for deferred rent. Upon the effective date of the Lease Amendment, the Company's straight-line rent was revised to

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### **NOTE 13. ACCRUED LIABILITIES (continued)**

reflect the lower rent levels through expiration of the lease. As a result, approximately \$3.0 million of the rent previously deferred will not be due to the City, and will be recognized into income over the remaining lease term, which expires in 2022. As of September 30, 2014, approximately \$2.2 million of the rent, previously deferred that will not be due to the City, remained to be amortized through September 2022.

In connection with the acquisition of the two properties leased to Hilton Resorts Corporation on January 31, 2013, the Company was credited \$773,000 at closing for certain required tenant improvements. The improvements were complete as of December 31, 2013 and the final payment of approximately \$59,000 was made during the three months ended March 31, 2014. In connection with the acquisition of the Lowes on April 22, 2014, the Company was credited approximately \$651,000 at closing for certain required tenant improvements, some of which are not required to be completed until December 2016. As of September 30, 2014, approximately \$100,000 of these tenant improvements had been completed and funded.

On July 24, 2013, the Company's Board of Directors terminated the Deferred Compensation Plan effective August 1, 2013. Accordingly, the Company made the normal required distributions prior to March 1, 2014 with the balance of the accounts to be liquidated after August 1, 2014. The final payments were made during the quarter ended September 30, 2014.

### **NOTE 14. DEFERRED REVENUE**

Deferred revenue consisted of the following:

	As of	
	September 30, 2014	December 31, 2013
Deferred Oil Exploration Lease Revenue	\$ 1,825,245	\$ 2,390,808
Deferred Land Sale Revenue	597,410	—
Prepaid Rent	417,534	698,653
Escrow Reserve, Container Store Loan	252,366	—
Other Deferred Revenue	356,710	254,890
Total Deferred Revenue	<u>\$ 3,449,265</u>	<u>\$ 3,344,351</u>

On September 22, 2013, the Company received an approximate \$3.3 million rent payment for the third year of the Company's eight-year oil exploration lease. This payment has been fully recognized as revenue as of September 30, 2014. On September 19, 2014, the Company received an approximate \$1.9 million rent payment for the fourth year of the Company's eight-year oil exploration lease, which is being recognized ratably over the 12 month lease period ending in September 2015.

In connection with the 75.6 acre land sale, approximately \$597,000 of the \$7.8 million sales price was deferred and will be recognized as revenue on a percentage-of-completion basis as certain road improvements are completed through the estimated completion date of February 2015.

### **NOTE 15. PENSION PLAN**

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

Effective December 31, 2011, the Company amended its Pension Plan to freeze participants' benefits with no future accruals after that date. Any current or future employee who was not a participant of the Pension Plan on December 31, 2011 will not be eligible to enter the Pension Plan. In January 2013, the Company made a cash contribution to the Pension Plan of \$84,600 related to the 2012 Pension Plan year. No contributions were required and the Company did not make any contributions related to the 2013 Pension Plan year during the three or nine months ended September 30, 2014.

On October 23, 2013 the Company's Board of Directors approved the commencement of the steps necessary to terminate the Pension Plan, pursuant to the Pension Plan, and, if necessary, for the Company to make the required level of contribution whereby the Pension Plan would have sufficient funds to pay all benefits owed participants and beneficiaries. On January 22, 2014, the Company's Board of Directors approved the termination of the Pension Plan effective March 31, 2014. Termination of the Pension Plan will be completed through the distribution of the Pension Plan assets to participants and beneficiaries through either the purchase of an annuity from an insurance company or, payment of the benefit owed in a one-time lump sum payment based on a final calculation of benefit as of March 31, 2014. While the Company expects that the aforementioned distribution of the Pension Plan assets will be completed prior to December 31, 2014, there can be no assurance that the Company will complete the termination of the Pension Plan or if completed, the timing within which the termination will occur. Based on the estimate of benefit obligations and Pension Plan assets at the termination date, the Company does not anticipate having to make any further contributions to the Pension Plan.

**NOTE 16. STOCK-BASED COMPENSATION****EQUITY-CLASSIFIED STOCK COMPENSATION****Market Condition Restricted Shares**

Under the Amended and Restated 2010 Equity Incentive Plan (the “2010 Plan”), the Company granted to certain employees non-vested restricted stock, which vests upon the achievement of certain market conditions, including thresholds relating to the Company’s total shareholder return as compared to the total shareholder return of a certain peer group during a five-year performance period.

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

A summary of activity during the nine months ended September 30, 2014, is presented below:

<b>Market Condition Non-Vested Restricted Shares</b>	<b>Shares</b>	<b>Wtd. Avg. Grant Date Fair Value</b>
Outstanding at December 31, 2013	5,067	\$ 23.13
Granted	—	—
Vested	—	—
Forfeited/Expired	—	—
Outstanding at September 30, 2014	<u>5,067</u>	<u>\$ 23.13</u>

As of September 30, 2014, there was approximately \$27,000 of unrecognized compensation cost, adjusted for forfeitures, related to market condition non-vested restricted shares, which will be recognized over a remaining weighted average period of 1.1 years.

**Market Condition Inducement Grant of Restricted Shares**

Inducement grants of 96,000 and 17,000 restricted shares of the Company’s common stock were awarded to Mr. Albright and Mr. Patten in 2011 and 2012, respectively. Mr. Albright’s restricted shares were granted outside of the 2010 Plan while Mr. Patten’s restricted shares were awarded under the 2010 Plan. The Company filed a registration statement with the Securities and Exchange Commission on Form S-8 to register the resale of Mr. Albright’s restricted stock award. The restricted shares will vest in nine increments based upon the price per share of the Company’s common stock during the term of their employment (or within ninety days after termination of employment by the Company without cause), meeting or exceeding the target trailing ninety-day average closing prices ranging from \$36 per share for the first increment to \$65 per share for the final increment. If any increment of the restricted shares fails to satisfy the applicable stock price condition prior to nine years from the grant date, that increment of the restricted shares will be forfeited.

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

During the nine months ended September 30, 2013, the closing price per share of the Company’s common stock on a ninety-day trading average reached \$36.00, and as a result, 16,000 shares and 2,500 shares vested for Mr. Albright and Mr. Patten, respectively. During the nine months ended September 30, 2014, the closing price per share of the Company’s common stock on a ninety-day trading average reached \$40.00 and \$46.00, and as a result, 32,000 shares and 5,500 shares vested for Mr. Albright and Mr. Patten, respectively.

**NOTE 16. STOCK-BASED COMPENSATION (continued).**

A summary of the activity for these awards during the nine months ended September 30, 2014, is presented below:

<u>Market Condition Non-Vested Restricted Shares</u>	<u>Shares</u>	<u>Wtd. Avg. Fair Value</u>
Outstanding at December 31, 2013	94,500	\$ 17.33
Granted	—	—
Vested	(37,500)	20.85
Forfeited/Expired	—	—
Outstanding at September 30, 2014	<u>57,000</u>	<u>\$ 15.02</u>

As of September 30, 2014, there was approximately \$23,000 of unrecognized compensation cost, adjusted for estimated forfeitures, related to market condition non-vested restricted shares, which will be recognized over a remaining weighted average period of 0.1 years.

**Three Year Vest Restricted Shares**

On January 22, 2014, the Company granted to certain employees 14,500 shares of non-vested restricted stock under the 2010 Plan. One-third of the options will vest on each of the first, second, and third anniversaries of the grant date, provided they are an employee of the Company on those dates. In addition, any unvested portion of the options will vest upon a change in control.

The Company's determination of the fair value of the three year vest restricted stock awards was calculated by multiplying the number of shares issued by the Company's stock price at the grant date, less the present value of expected dividends during the vesting period. Compensation cost is recognized on a straight-line basis over the vesting period.

A summary of activity during the nine months ended September 30, 2014, is presented below:

<u>Three Year Vest Non-Vested Restricted Shares</u>	<u>Shares</u>	<u>Wtd. Avg. Fair Value Per Share</u>
Outstanding at December 31, 2013	—	\$ —
Granted	14,500	36.08
Vested	—	—
Forfeited/Expired	—	—
Outstanding at September 30, 2014	<u>14,500</u>	<u>\$ 36.08</u>

As of September 30, 2014, there was approximately \$402,000 of unrecognized compensation cost, adjusted for estimated forfeitures, related to the three year vest non-vested restricted shares, which will be recognized over a remaining weighted average period of 2.3 years.

**Non-Qualified Stock Option Awards**

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

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

The Company used the Black-Scholes valuation pricing model to determine the fair value of its non-qualified stock option awards. The determination of the fair value of the awards is affected by the stock price as well as assumptions regarding a number of other variables. These variables include expected stock price volatility over the term of the awards, annual dividends, and a risk-free interest rate assumption.

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**NOTE 16. STOCK-BASED COMPENSATION (continued)**

A summary of the activity for the awards during the nine months ended September 30, 2014, is presented below:

<b>Non-Qualified Stock Option Awards</b>	<b>Shares</b>	<b>Wtd. Avg. Ex. Price</b>	<b>Wtd. Avg. Remaining Contractual Term (Years)</b>	<b>Aggregate Intrinsic Value</b>
Outstanding at December 31, 2013	94,500	\$ 32.21		
Granted	—	—		
Exercised	(7,755)	34.95		
Expired	—	—		
Outstanding at September 30, 2014	<u>86,745</u>	<u>\$ 31.97</u>	<u>5.16</u>	<u>\$1,483,614</u>
Exercisable at September 30, 2014	<u>49,175</u>	<u>\$ 30.80</u>	<u>6.28</u>	<u>\$ 934,052</u>

A summary of the non-vested options for these awards during the nine months ended September 30, 2014, is presented below:

<b>Non-Qualified Stock Option Awards</b>	<b>Shares</b>	<b>Fair Value of Shares Vested</b>
Non-Vested at December 31, 2013	74,700	
Granted	—	
Vested	(37,130)	\$1,176,331
Non-Vested at September 30, 2014	<u>37,570</u>	

As of September 30, 2014, there was approximately \$166,000 of unrecognized compensation related to non-qualified, non-vested stock option awards, which will be recognized over a remaining weighted average period of 1.2 years. The total intrinsic value of options exercised during the nine months ended September 30, 2014, was approximately \$102,000.

**LIABILITY-CLASSIFIED STOCK COMPENSATION**

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

A summary of share option activity under the 2001 Plan for the nine months ended September 30, 2014 is presented below:

**Stock Options**

<b>Liability-Classified Stock Options</b>	<b>Shares</b>	<b>Wtd. Avg. Ex. Price</b>	<b>Wtd. Avg. Remaining Contractual Term (Years)</b>	<b>Aggregate Intrinsic Value</b>
Outstanding at December 31, 2013	53,800	\$ 53.99		
Granted	—	—		
Exercised	(18,500)	37.80		
Forfeited/Expired	—	—		
Outstanding at September 30, 2014	<u>35,300</u>	<u>\$ 62.47</u>	<u>2.71</u>	<u>\$ 52,503</u>
Exercisable at September 30, 2014	<u>35,300</u>	<u>\$ 62.47</u>	<u>2.71</u>	<u>\$ 52,503</u>

In connection with the grant of non-qualified stock options, a stock appreciation right for each share covered by the option was also granted. The stock appreciation right entitles the optionee to receive a supplemental payment, which may be paid in whole or in part in cash or in shares of common stock, equal to a portion of the spread between the exercise price and the fair market value of the underlying shares at the time of exercise. The total intrinsic value of options exercised during the nine months ended September 30, 2014 was approximately \$232,000. All options had vested as of December 31, 2013.



**NOTE 16. STOCK-BASED COMPENSATION (continued)**

**Stock Appreciation Rights**

<u>Liability-Classified Stock Appreciation Rights</u>	<u>Shares</u>	<u>Wtd. Avg. Fair Value</u>	<u>Wtd. Avg. Remaining Contractual Term (Years)</u>	<u>Aggregate Intrinsic Value</u>
Outstanding at December 31, 2013	53,800	\$ 1.61		
Granted	—	—		
Exercised	(18,500)	8.26		
Expired	—	—		
Outstanding at September 30, 2014	<u>35,300</u>	<u>\$ 4.24</u>	<u>2.71</u>	<u>\$ 28,271</u>
Exercisable at September 30, 2014	<u>35,300</u>	<u>\$ 4.24</u>	<u>2.71</u>	<u>\$ 28,271</u>

The total intrinsic value of stock appreciation rights exercised during the nine months ended September 30, 2014 was approximately \$125,000. All stock appreciation rights had vested as of December 31, 2013.

The fair value of each share option and stock appreciation right is estimated on the measurement date using the Black-Scholes option pricing model based on assumptions noted in the following table. Expected volatility is based on the historical volatility of the Company and other factors. The Company has elected to use the simplified method of estimating the expected term of the options and stock appreciation rights.

Due to the small number of employees included in the 2001 Plan, the Company uses the specific identification method to estimate forfeitures and includes all participants in one group. The risk-free rate for periods within the contractual term of the share option is based on the U.S. Treasury rates in effect at the time of measurement.

The Company issues new, previously unissued, shares as options are exercised.

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

<u>Assumptions at:</u>	<u>September 30, 2014</u>	<u>December 31, 2013</u>
Expected Volatility	35.20%	23.07%
Expected Dividends	0.08%	0.11%
Expected Term	2.6 years	3 years
Risk-Free Rate	0.78%	1.21%

There were no stock options or stock appreciation rights granted under the 2001 Plan in the nine months ended September 30, 2014 or 2013. The liability for stock options and stock appreciation rights, valued at fair value, reflected on the consolidated balance sheets at September 30, 2014 and December 31, 2013, was approximately \$428,000 and \$248,000, respectively. These fair value measurements are based on Level 2 inputs based on Black-Scholes and market implied volatility. The Black-Scholes determination of fair value is affected by variables including stock price, expected stock price volatility over the term of the awards, annual dividends, and a risk-free interest rate assumption.

**NOTE 16. STOCK-BASED COMPENSATION (continued).**

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

	Three Months Ended		Nine Months Ended	
	September 30, 2014	September 30, 2013	September 30, 2014	September 30, 2013
Total Cost of Share-Based Plans Charged				
Against Income Before Tax Effect	\$ 419,836	\$ 251,210	\$ 1,021,955	\$ 852,535
Income Tax Expense				
Recognized in Income	\$ (161,952)	\$ (96,904)	\$ (394,219)	\$ (328,866)

**NOTE 17. INCOME TAXES**

The effective income tax rate for the nine month periods ended September 30, 2014, and 2013, including income taxes attributable to the discontinued operations, was 37.3% and 38.1%, respectively. The provision for income taxes reflects the Company's estimate of the effective rate expected to be applicable for the full fiscal year, adjusted for any discrete events, which are reported in the period that they occur. The Company and its subsidiaries file consolidated income tax returns in the United States Federal jurisdiction and in several states. The Internal Revenue Service has audited the Company's consolidated federal tax returns through the year 2007 and all proposed adjustments have been settled.

**NOTE 18. COMMITMENTS AND CONTINGENCIES****Legal Proceedings**

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

On November 21, 2011, the Company, Indigo Mallard Creek LLC and Indigo Development LLC, as owners of the property leased to Harris Teeter, Inc. ("Harris Teeter") in Charlotte, North Carolina, were served with pleadings filed in the General Court of Justice, Superior Court Division for Mecklenburg County, North Carolina, for a highway condemnation action involving the property. The proposed road modifications would impact access to the Company's property that is leased to Harris Teeter. The Company does not believe the road modifications provided a basis for Harris Teeter to terminate the Lease. Regardless, in January 2013, NCDOT proposed to redesign the road modifications to keep the all access intersection open for ingress with no change to the planned limitation on egress to the right-in/right-out only. Additionally, NCDOT and the City of Charlotte proposed to build and maintain a new access road/point into the property. Both government entities have confirmed that funding is available and the redesigned project is proceeding. Harris Teeter has expressed satisfaction with the redesigned project and indicated that it will not attempt to terminate its lease if this project is built as currently redesigned. Because the redesigned project will not be completed until 2016, the condemnation case has been placed in administrative closure. As a result, the trial and mediation will not likely be scheduled until requested by the parties, most likely in 2016.

In May 2010, the Company filed a lawsuit in the Circuit Court, Seventh Judicial Circuit, in and for Volusia County, Florida, in order to enforce its approximate \$3.8 million claim of lien on real property owned by FM Bayberry Cove Holding, LLC ("FM Bayberry") for its share of the costs for construction of a road. BB&T was included as a defendant as the current mortgage holder of the property subject to the Company's lien. BB&T filed a counterclaim asserting that its mortgage is superior to the Company's claim of lien which the Company denied. BB&T and the Company each filed motions for summary judgment as to the priority of their respective interests in the property which were heard by the court on January 12, 2012. The Circuit Court determined that the Company's interests were superior to the lien imposed by BB&T and all other interests and a final judgment of foreclosure was subsequently entered. However, all further proceedings in the Circuit Court (including the foreclosure sale) were stayed pending BB&T's appeal to the Florida District Court of Appeal, Fifth District (the "Appellate Court"), regarding the Circuit Court's determination in the matter of priority. On October 29, 2013, the Appellate Court ruled in favor of the Company, affirming the Circuit Court's determination that the Company's lien against the approximately 600-acre parcel of residential land (lying west of I-95 near the LPGA International development and adjacent to Bayberry Colony) is superior to the lien imposed by BB&T. The judgment has accrued to over \$4.6 million, including interest. The Company has not included an accrual related to interest in the consolidated financial statements. At this time, the Appellate Court's decision is subject to possible motion for rehearing by BB&T. On December 3, 2013, the Circuit Court entered a Second Amended Final Judgment of Foreclosure in Accordance with the Appellate Court's Mandate, which, among other things, set the date of the Company's foreclosure sale to occur on January 29, 2014. On January 29, 2014, the Company's approximately \$4.7 million claim for unreimbursed costs and accrued interest was satisfied through the successful foreclosure of approximately 600 acres of land.

**NOTE 18. COMMITMENTS AND CONTINGENCIES (continued)**

***Contractual Commitments***

In conjunction with the Company's sale of approximately 3.4 acres of land to RaceTrac Petroleum, Inc. ("RaceTrac") in December 2013, the Company agreed to reimburse RaceTrac for a portion of the costs for road improvements and the other costs associated with bringing multiple ingress/egress points to the entire 23 acre Williamson Crossing site, including the Company's remaining 19.6 acres. The estimated cost for the improvements equals approximately \$1.26 million and the Company's commitment is to reimburse RaceTrac in an amount equal to the lesser of 77.5% of the actual costs or \$976,500, and can be paid over the next five years from sales of the remaining land or at the end of the fifth year. As of September 30, 2014, the Company deposited approximately \$284,000 of cash in escrow related to the improvements which is classified as restricted cash in the consolidated balance sheets. Accordingly, as of September 30, 2014, the remaining maximum commitment is \$693,000.

During the three months ended September 30, 2014, the Company sold approximately 75.6 acres of land, located on the east side of Interstate 95, for the development of a distribution center. In connection with the sale, the Company is obligated to fund approximately \$616,000 of certain road improvements, a portion of which will be reimbursed by the City. The amount of the reimbursement is estimated at approximately \$243,000. As the costs are incurred, the Company will recognize the deferred revenue as described in Note 14 "Deferred Revenue" on a percentage-of-completion basis. The road improvements are expected to be completed in February 2015.

As of September 30, 2014, the Company is committed to fund \$2.8 million of the total \$6.3 million first mortgage commitment for the redevelopment of an existing vacant retail property into a Container Store in Glendale, Arizona, which is expected to open during the first quarter of 2015. As of September 30, 2014, approximately \$3.5 million was funded. The remaining \$2.8 million may be drawn by the borrower as construction costs are incurred.

**NOTE 19. BUSINESS SEGMENT DATA**

The Company primarily operates in four primary business segments: income properties, investments in commercial loans, real estate operations, and golf operations. Our income property operations consist primarily of income-producing properties and our business plan is focused on investing in additional income-producing properties. Our income property operations accounted for 67.8% and 67.1% of our identifiable assets as of September 30, 2014 and December 31, 2013, respectively, and 39.4% and 59.0% of our consolidated revenues for the nine months ended September 30, 2014 and 2013, respectively. Our commercial loan investments consisted of one loan collateralized by a hotel property in Atlanta, Georgia as of December 31, 2013. As of September 30, 2014, our commercial loan investments consisted of a fixed-rate mezzanine commercial mortgage loan collateralized by the borrower's equity interest in a hotel property in Atlanta, Georgia, a fixed-rate first mortgage commitment for the redevelopment of an existing vacant retail property into a Container Store in Glendale, Arizona, which is expected to open during the first quarter of 2015, a variable rate B-Note secured by a retail shopping center in Sarasota, Florida, and a variable-rate mezzanine commercial mortgage loan collateralized by the borrower's equity interest in a hotel property in Dallas, Texas. Our real estate operations primarily consist of revenues generated from land transactions and leasing and royalty income from our interests in subsurface oil, gas and mineral rights. Our golf operations consist of a single property located in the City, with two 18-hole championship golf courses, a practice facility, and clubhouse facilities, including a restaurant and bar operation, fitness facility, and pro-shop with retail merchandise. The majority of the revenues generated by our golf operations are derived from members and public customers playing golf, club memberships, and food and beverage operations.

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

**NOTE 19. BUSINESS SEGMENT DATA (continued)**

Information about the Company's operations in the different segments for the three and nine months ended September 30, 2014 and 2013 is as follows:

	Three Months Ended		Nine Months Ended	
	September 30, 2014	September 30, 2013	September 30, 2014	September 30, 2013
<b>Revenues:</b>				
Income Properties	\$ 3,864,632	\$ 3,298,447	\$10,821,121	\$ 9,445,677
Commercial Loan Investments	382,087	644,198	1,581,746	644,198
Real Estate Operations	8,645,034	1,369,397	10,925,215	2,010,722
Golf Operations	994,651	981,118	3,844,428	3,758,629
Agriculture and Other Income	182,731	20,845	258,052	149,028
Total Revenues	<u>\$14,069,135</u>	<u>\$ 6,314,005</u>	<u>\$27,430,562</u>	<u>\$16,008,254</u>
<b>Operating Income:</b>				
Income Properties	\$ 3,407,763	\$ 2,871,106	\$ 9,539,741	\$ 8,406,755
Commercial Loan Investments	382,087	644,198	1,581,746	644,198
Real Estate Operations	5,209,677	1,194,986	7,166,932	1,530,570
Golf Operations	(315,138)	(340,219)	(310,581)	(395,709)
Agriculture and Other Income	148,573	(12,976)	113,362	28,753
General and Corporate Expense	(2,814,622)	(1,940,020)	(7,488,692)	(6,966,294)
Total Operating Income	<u>\$ 6,018,340</u>	<u>\$ 2,417,075</u>	<u>\$10,602,508</u>	<u>\$ 3,248,273</u>
<b>Depreciation and Amortization:</b>				
Income Properties	\$ 815,673	\$ 674,758	\$ 2,301,316	\$ 1,954,672
Commercial Loan Investments	—	—	—	—
Real Estate Operations	—	—	—	—
Golf Operations	60,369	51,600	174,942	151,593
Agriculture and Other	10,576	6,069	28,749	21,920
Total Depreciation and Amortization	<u>\$ 886,618</u>	<u>\$ 732,427</u>	<u>\$ 2,505,007</u>	<u>\$ 2,128,185</u>
<b>Capital Expenditures:</b>				
Income Properties	\$ 5,329,898	\$11,706,215	\$21,566,004	\$39,516,889
Commercial Loan Investments	10,450,744	17,655,367	27,399,082	17,655,367
Real Estate Operations	—	—	—	—
Golf Operations	138,854	47,747	195,015	133,567
Agriculture and Other	32,508	15,400	123,261	60,863
Total Capital Expenditures	<u>\$15,952,004</u>	<u>\$29,424,729</u>	<u>\$49,283,362</u>	<u>\$57,366,686</u>

	As of	
	September 30, 2014	December 31, 2013
<b>Identifiable Assets:</b>		
Income Properties	\$171,206,992	\$151,682,578
Commercial Loan Investments	27,511,355	18,887,979
Real Estate Operations	28,843,853	29,929,179
Golf Operations	3,301,244	3,269,212
Agriculture and Other	21,473,030	22,414,732
Total Assets	<u>\$252,336,474</u>	<u>\$226,183,680</u>

**NOTE 19. BUSINESS SEGMENT DATA (continued)**

Operating income represents income from continuing operations before loss on early extinguishment of debt, interest expense, interest income, and income taxes. General and corporate expenses are an aggregate of general and administrative expenses, impairment charges, depreciation and amortization expense, and gains (losses) on the disposition of assets. Identifiable assets by segment are those assets that are used in the Company's operations in each segment. Other assets consist primarily of cash, property, plant, and equipment related to the other operations, as well as the general and corporate operations. There were no transactions between segments for any of the periods presented. Certain items in the prior years' consolidated statement of operations have been reclassified to conform to the presentation of the consolidated statements of operations for the nine months ended September 30, 2014. These reclassifications had no effect on the prior year presentation of income from continuing operations before income tax.

**NOTE 20. RECENTLY ISSUED ACCOUNTING POLICIES**

In July 2013, the FASB issued ASU 2013-11, which amends its guidance on the financial statement presentation of an unrecognized tax benefit when a net operating loss carryforward, a similar tax loss, or a tax credit carryforward exists. The amendments in this update are effective for annual reporting periods beginning after December 15, 2013. The adoption of these changes did not have a material impact on the Company's consolidated financial statements.

In April 2014, the FASB issued ASU 2014-08, which amends its guidance on the reporting of discontinued operations and disclosures of disposals of components of an entity. The amendments in this update are effective for annual reporting periods beginning after December 15, 2014. Under ASU 2014-08, the Company has determined that the disposal of an income property from its income property portfolio no longer qualifies as a discontinued operation. Due to the significant impact on the Company's financial reporting, the Company has elected to early adopt ASU 2014-08, as permitted, and accordingly, income properties disposed of will no longer be classified as discontinued operations on a prospective basis.

In May 2014, the FASB issued ASU 2014-09, which amends its guidance on the recognition and reporting of revenue from contracts with customers. The amendments in this update are effective for annual reporting periods beginning after December 15, 2016. The Company is currently evaluating the provisions to determine the potential impact, if any, the adoption will have on its consolidated financial statements.

**NOTE 21. SUBSEQUENT EVENTS**

On October 7, 2014, the Company acquired a Whole Foods Market Centre (the "Property"), an approximately 59,000 square-foot retail center in Sarasota, Florida for a total purchase price of approximately \$19.1 million. The Property is anchored by a 36,000 square foot Whole Foods Market retail grocery store, with approximately 23,000 square-feet of additional retail space including a Starbucks retail store, and a parking garage. The Whole Foods Market portion of the property is under a long-term lease, with approximately 10 years remaining on the term, while the average lease term for the balance of the retail space is approximately 2.5 years. The property is approximately 98% occupied.

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

### **Forward-Looking Statements**

*When the Company uses any of the words "anticipate," "assume," "believe," "estimate," "expect," "intend," or similar expressions, the Company is making forward-looking statements. Although management believes that the expectations reflected in such forward-looking statements are based upon present expectations and reasonable assumptions, the Company's actual results could differ materially from those set forth in the forward-looking statements. Certain factors that could cause actual results or events to differ materially from those the Company anticipates or projects are described in "Item 1A. Risk Factors" of the Company's Annual Report on Form 10-K, for year ended December 31, 2013. Given these uncertainties, readers are cautioned not to place undue reliance on such statements, which speak only as of the date of this Quarterly Report on Form 10-Q or any document incorporated herein by reference. The Company undertakes no obligation to publicly release any revisions to these forward-looking statements that may be made to reflect events or circumstances after the date of this Quarterly Report on Form 10-Q, or the aforementioned risk factors. The terms "us," "we," "our," and "the Company" as used in this report refer to Consolidated-Tomoka Land Co. together with our consolidated subsidiaries.*

### **OVERVIEW**

We are a diversified real estate operating company. We own and manage commercial real estate properties in ten states in the U.S., as well as five self-developed, multi-tenant, flex-office properties, located in Florida. As of September 30, 2014, we owned thirty-seven single-tenant income-producing properties, with more than 924,000 square feet of gross leasable space. We also own and manage a land portfolio of over 10,500 acres. As of September 30, 2014, we had four commercial loan investments including a fixed-rate mezzanine commercial mortgage loan collateralized by the borrower's equity interest in a hotel property in Atlanta, Georgia, a fixed-rate first mortgage commitment for the redevelopment of an existing vacant retail property into a Container Store in Glendale, Arizona, which is expected to open during the first quarter of 2015, a variable-rate B-Note secured by a retail shopping center in Sarasota, Florida, and a variable-rate mezzanine commercial mortgage loan collateralized by the borrower's equity interest in a hotel property in Dallas, Texas. Our golf operations consist of the LPGA International golf club, which is managed by a third party. We also lease property for twenty-one billboards, have agricultural operations that are managed by a third party, which consists of leasing land for hay and sod production, timber harvesting, and hunting leases, and own and manage subsurface interests. The results of our agricultural and subsurface leasing operations are included in Agriculture and Other Income and Real Estate Operations, respectively, in our consolidated statements of operations.

*Income Property Operations.* We have pursued a strategy of investing in income-producing properties, when possible by utilizing the proceeds from real estate transactions qualifying for income tax deferral through like-kind exchange treatment for tax purposes.

During the nine months ended September 30, 2014, the Company acquired two income properties at a total purchase price of approximately \$20.0 million. During the nine months ended September 30, 2013, the Company acquired nine income properties at a total purchase price of approximately \$39.5 million.

Our current portfolio of thirty-seven single-tenant income properties generates approximately \$13.5 million of revenues from lease payments on an annualized basis and had an average remaining lease term of 9.7 years as of September 30, 2014. We expect to continue to focus on acquiring additional income-producing properties during fiscal year 2014, and in the near term thereafter, maintaining our use of the aforementioned tax deferral structure whenever possible.

As part of our overall strategy for investing in income-producing investments, we have self-developed five multi-tenant, flex-office properties in Daytona Beach, Florida. The first self-developed property is the first phase of a twelve-acre commercial site located at the northeast corner of LPGA and Williamson Boulevards in Daytona Beach, Florida. The parcel includes an approximately 22,000 square-foot, two-story, building, known as the Concierge Office Building, which was 100% leased as of September 30, 2014. The second two properties, known as the Mason Commerce Center, consist of two buildings totaling approximately 31,000 square-feet (15,360 each). As of September 30, 2014, the combined occupancy of the two properties which make up the Mason Commerce Center was approximately 94%. During the nine months ended September 30, 2014, construction was completed on two additional properties, known as Williamson Business Park, which are adjacent to the Mason Commerce Center. Williamson Business Park consists of two buildings totaling approximately 31,000 square-feet (15,360 each). As of September 30, 2014, the combined occupancy of the two properties which make up Williamson Business Park was approximately 25%. As of September 30, 2014, on an annualized basis, our self-developed, multi-tenant, flex-office property portfolio generated approximately \$980,000 of revenue from lease payments.

Our focus on acquiring income-producing investments includes a continual review of our existing income property portfolio to identify opportunities to recycle our capital through the sale of non-core income properties based on, among other possible factors, the current or expected performance of the property and favorable market conditions. Pursuant to our ongoing review, five income-producing properties were disposed of during the year ended December 31, 2013; three of which were disposed of during the nine months ended September 30, 2013. All of the proceeds from these disposals were deployed through the like-kind exchange structure, in acquiring certain of the income properties we purchased in 2013.

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

No income-producing properties were disposed of during the nine months ended September 30, 2014. However, the 14,560 square-foot building located in Apopka, Florida, which is leased to Walgreens was presented as assets held for sale on the consolidated balance sheet as of September 30, 2014 as the property is under contract and considered highly probable to close. The Company anticipates that future investments in income-producing assets could include deploying proceeds from selling non-core properties, utilizing the tax-deferred like-kind exchange structure, as circumstances permit.

*Real Estate Operations.* As of September 30, 2014, the Company owned over 10,500 acres of land in Daytona, Beach, Florida, along nine miles of the west and east side of Interstate 95. Until the significant downturn in the U.S. economy in 2008, the Company's land transaction activity was reasonably strong. During 2009, however, land transactions decreased significantly, and in fiscal years 2010 and 2011, there were effectively no land transactions. We believe the trend in Company revenues and income from real estate operations during this period were consistent with the overall trend of the national and local economies and the real estate markets in general. Over the last several years, roads and interstate overpasses have been constructed, extended, or improved in the Daytona Beach area, which we believe will benefit Company owned land and may have a positive impact on future activity and interest in our land assets.

During the nine months ended September 30, 2014, the Company sold approximately 3.1 acres to Halifax Humane Society, Inc. for \$391,500, or approximately \$128,000 per acre, for a gain of approximately \$347,000. This parcel is located on LPGA Boulevard, just west of I-95 in Daytona Beach, Florida and is adjacent to an existing property owned by Halifax Humane Society, Inc. During the three months ended September 30, 2014, the Company sold approximately 75.6 acres of land, located on the east side of Interstate 95, to a distribution center for approximately \$7.8 million, or approximately \$103,000 per acre, for a gain at closing of approximately \$3.9 million with an additional gain of approximately \$324,000 to be recognized on a percentage-of-completion basis as certain road improvements are completed through the estimated completion date of February 2015. In addition, the Company expects to receive payments totaling approximately \$1.1 million in late 2015 from Volusia County, based upon certain milestones being achieved including when the distribution center receives its certificate of occupancy and the dates when specified numbers of jobs have been created at the buyer's operations. Although there can be no assurances that the Company will receive the \$1.1 million, such payments would bring the total gain on the sale to approximately \$5.3 million. During the three and nine months ended September 30, 2013, there were no land transactions.

The Company owns impact fee and mitigation credits which, in aggregate, totaled approximately \$5.6 million and \$6.1 million as of September 30, 2014 and December 31, 2013, respectively. During the nine months ended September 30, 2014 and 2013, the Company received cash payments of approximately \$260,000 and \$181,000 for impact fees with a basis of equal value. Additionally, the Company utilized approximately \$46,000 of impact fees in the construction of the two flex-office buildings known as Williamson Business Park. Cash payments received for the conveyance of impact fee credits are not reflected as revenue in our consolidated statements of operations. In conjunction with the sale of approximately 75.6 acres of land to a distribution center, the Company utilized approximately eight mitigation credits with a basis of approximately \$127,000 which increased the basis of the property sold and reduced the mitigation credit asset as of September 30, 2014.

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

During the nine months ended September 2014, no impairment charges were recognized related to our land holdings. During the nine months ended September 30, 2013 the Company recognized an impairment loss of approximately \$616,000 on approximately 6.23 acres which was based on the contract price in a transaction that had been executed during that period for approximately 3.21 acres of the total 6.23 acres assessed for impairment. That transaction was terminated prior to closing, however, on December 20, 2013, the Company sold the approximately 6.23 acres to CarMax Auto Super Stores, Inc. for \$1.05 million, or approximately \$168,500 per acre. The basis in these acres was higher than is typical for the Company's land holdings as this land had been reacquired through foreclosure in 2009.

*Subsurface Interests.* The Company owns full or fractional subsurface oil, gas, and mineral interests in approximately 490,000 "surface" acres of land owned by others in 20 counties in Florida. The Company leases its interests to mineral exploration firms for exploration and drilling. Our subsurface operations consist of revenue from the leasing of exploration rights and in some instances revenues from royalties generated from oil production from the leased acreage. The Company also received oil royalties from operating oil wells on 800 acres under a separate lease with a separate operator for revenues of approximately \$38,000 and \$86,000, during the three months ended September 30, 2014 and 2013, respectively. Oil royalties received during the nine months ended September 30, 2014 and 2013 totaled approximately \$167,000 and \$231,000, respectively.



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

During 2011, an eight-year oil exploration lease covering approximately 136,000 net mineral acres primarily located in Lee County and Hendry County, Florida was executed and an approximate \$914,000 first year rental payment was received. An additional approximate \$922,000, representing the guaranteed payment for the second year's delay rent, was received in September 2012. The two payments totaling approximately \$1.8 million have been recognized ratably into income through September 2013. On September 22, 2013, the Company entered into an amendment of the exploration lease (the "Oil Lease Amendment"). Under the Oil Lease Amendment, the net mineral acres under exploration lease was reduced from approximately 136,000 net mineral acres to approximately 82,000 net mineral acres in Hendry County, Florida. The approximately 54,000 net mineral acres removed from the exploration lease were located in Lee County, Florida. In connection with the Oil Lease Amendment, the Company received an approximate \$3.3 million rent payment for the third year of the Company's eight-year oil exploration lease. The payment was recognized ratably over the 12 month lease period ending in September 2014. Also during September 2013, the Company received, and recognized as revenue, a non-refundable penalty payment of \$1.0 million relating to the drilling requirements in the lease. During September 2014, the Company received an approximate \$1.9 million rent payment for the adjusted acreage of 42,000 acres for fourth year of the Company's eight-year exploration lease, which is being recognized ratably over the 12 month lease period ending in September 2015. Also during September 2014, the Company received, and recognized as revenue, a non-refundable penalty payment of \$600,000 relating to drilling requirements in the lease. The terms of the lease state the Company will receive royalty payments if production occurs and may receive additional annual rental payments if the lease is continued in years four through eight.

Lease income generated by the Oil Lease Amendment is being recognized on a straight-line basis over the guaranteed lease term. For the three months ended September 30, 2014 and 2013, lease income of approximately \$799,000 and \$283,000 was recognized, respectively. For the nine months ended September 30, 2014 and 2013, lease income of approximately \$2.4 million and \$738,000 was recognized, respectively. There can be no assurance that the Oil Lease Amendment will be extended beyond the expiration of the current term of September 2015 or, if renewed, on similar terms or conditions.

The Company's current policy is to not release any ownership rights with respect to its reserved mineral rights. The Company may release surface entry rights or other rights upon request of a surface owner who requires such a release for a negotiated release fee based on a percentage of the surface value. Such revenue from surface entry rights released totaled approximately \$4,000 and \$42,000 during the nine months ended September 30, 2014 and 2013, respectively, none of which was recognized during the three months ended September 30, 2014 or 2013. Such revenue is included in Revenue from Real Estate Operations in our consolidated statements of operations.

*Golf Operations.* Golf operations consist of the LPGA International golf club, a semi-private golf club consisting of two 18-hole championship golf courses, designed by Rees Jones and Arthur Hills, a three-hole practice facility, also designed by Rees Jones, a clubhouse facility, food and beverage operations, and a fitness facility located within the LPGA International mixed-use residential community on the west side of Interstate 95 in Daytona Beach, Florida. During the 2012 and 2013 fiscal years, we completed approximately \$534,000 of capital expenditures to renovate the clubhouse facilities, including a significant upgrade of the food and beverage operations, to add a fitness facility, and make other renovations to public areas.

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

In July 2012, the Company entered into an agreement with the City to, among other things, amend the lease payments under its golf course lease (the "Lease Amendment"). Under the Amendment, the base rent payment, which was scheduled to increase from \$250,000 to \$500,000 as of September 1, 2012, will remain at \$250,000 for the remainder of the lease term and any extensions would be subject to an annual rate increase of 1.75% beginning September 1, 2013. The Company also agreed to invest \$200,000 prior to September 1, 2015 for certain improvements to the facilities. In addition, pursuant to the Lease Amendment, beginning September 1, 2012, and continuing throughout the initial lease term and any extension option, the Company will pay additional rent to the City equal to 5.0% of gross revenues exceeding \$5,500,000 and 7.0% of gross revenues exceeding \$6,500,000. Since the inception of the lease, the Company has recognized the rent expense on a straight-line basis resulting in an estimated accrual for deferred rent. Upon the effective date of the Lease Amendment, the Company's straight-line rent was revised to reflect the lower rent levels through expiration of the lease. As a result, approximately \$3.0 million of the rent previously deferred will not be due to the City, and will be recognized into income over the remaining lease term, which expires in 2022. As of September 30, 2014, approximately \$2.2 million of the rent, previously deferred that will not be due to the City, remained to be amortized through September 2022.



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

*Commercial Loan Investments.* Our investment in commercial loans or similar structured finance investments, such as mezzanine loans or other subordinated debt, has been and will continue to be secured by commercial real estate or a borrower's pledge of its ownership interest in the entity that owns the real estate. In the future, we may invest in or originate mortgage loans secured by residential real estate developments. The first mortgage loans we have invested in and expect to continue to invest in or originate will typically be for fully constructed commercial real estate, located in the United States and that are current or performing with either a fixed or floating rate. However, we have invested in and may continue to invest in construction loans secured by the commercial or residential real estate being developed and the underlying land. Some of these loans may be syndicated in either a pari-passu or senior/subordinated structure. Commercial first mortgage loans generally provide for a higher recovery rate due to their senior position. Commercial mezzanine loans are typically secured by a pledge of the borrower's equity ownership in the underlying commercial real estate. Unlike a mortgage, these loans do not represent a lien on the property. Investor's rights in a mezzanine loan are usually governed by an intercreditor agreement that provides holders with the rights to cure defaults and exercise control on certain decisions of any senior debt secured by the same commercial property. We may originate mortgage loans or provide other types of financing to the owners of commercial real estate.

On August 7, 2013, the Company acquired a \$19.6 million first mortgage loan secured by a hotel in Atlanta, Georgia, for approximately \$17.5 million, a discount of approximately \$2.05 million. The discount was being accreted into income ratably through the contractual maturity date in March 2014, which was included in Interest Income from Commercial Loan Investments in the consolidated financial statements. On January 6, 2014, the remaining commercial mortgage loan principal of \$19.5 million was paid in full. The total revenue recognized during the nine months ended September 30, 2014, which was recognized entirely during the quarter ended March 31, 2014, was approximately \$844,000 including the remaining accretion of the purchase discount of approximately \$650,000, interest income of approximately \$36,000, and an exit fee of approximately \$195,000, offset by the remaining amortization of fees of approximately \$37,000. The total revenue recognized during the nine months ended September 30, 2013, which was recognized entirely during the quarter ended September 30, 2013, was approximately \$644,000 including accretion of the purchase discount of approximately \$527,000 and interest income of approximately \$137,000, offset by approximately \$20,000 of amortization of loan origination fees.

On January 31, 2014, the Company acquired a mezzanine loan secured by the borrower's equity interest in an upper upscale hotel in Atlanta, Georgia, that was previously subject to the Company's first commercial mortgage loan investment. The Company purchased the \$5.0 million performing loan at par. The loan matures in February 2019 and bears a fixed interest rate of 12.00% per annum. Interest income recognized during the nine months ended September 30, 2014 was approximately \$405,000, with approximately \$153,000 recognized during the three months ended September 30, 2014.

On May 16, 2014, the Company funded approximately \$3.1 million of a \$6.3 million first mortgage commitment for the redevelopment of an existing vacant retail property into a Container Store located in Glendale, Arizona, which is expected to open during the first quarter of 2015. During the three months ended September 30, 2014, approximately \$431,000 in draws were funded by the Company, leaving a remaining commitment of approximately \$2.8 million, which may be drawn by the borrower as construction costs are incurred. The loan matures in November 2015, includes one nine-month extension option, and bears a fixed interest rate of 6.00% per annum. At closing, a loan origination fee of approximately \$79,000 was received by the Company, and is being accreted ratably into income through the contractual maturity date in November 2015. Total interest revenue recognized during the three and nine months ended September 30, 2014 was approximately \$57,000 and \$84,000, respectively.

On May 20, 2014, the Company acquired an approximate \$9.0 million B-Note secured by a retail shopping center located in Sarasota, Florida. The loan matures in June 2015, includes three one-year extension options, and bears a floating interest rate of 30-day Libor plus 725 basis points. The loan is subordinate to an approximately \$48.0 million A-Note collateralized by the same property, for a total debt balance of \$57.0 million. Interest revenue recognized during the three and nine months ended September 30, 2014 was approximately \$170,000 and \$247,000, respectively.

On September 30, 2014, the Company acquired a mezzanine loan secured by the borrower's equity interest in an upper upscale hotel in Dallas, Texas. The Company purchased the \$10.0 million performing loan at par. The loan matures in September 2016 and bears a floating interest rate of 30-day LIBOR plus 725 basis points. The loan is junior to a \$64.0 million first mortgage on the hotel in Dallas, Texas. Interest revenue recognized during the three and nine months ended September 30, 2014 was approximately \$2,000.

*Agriculture and Other Income.* Substantially all of our other income consists of revenues generated by our agricultural operations. The Company's agricultural lands encompass approximately 10,300 acres in Daytona Beach, Florida. Our agricultural operations are managed by a third-party and consist of leasing land for hay production, timber harvesting, as well as hunting leases. During the quarter ended June 30, 2014, the Company executed a timber contract on approximately 403 acres which has generated approximately \$162,000 of revenue during the quarter ended September 30, 2014.

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

**SUMMARY OF OPERATING RESULTS FOR QUARTER ENDED SEPTEMBER 30, 2014 COMPARED TO SEPTEMBER 30, 2013**

Total revenue for the quarter ended September 30, 2014 increased 122.8% to approximately \$14.1 million, compared to approximately \$6.3 million for the quarter ended September 30, 2013. The increase of approximately \$7.8 million included approximately \$566,000 of additional rent revenue generated by our income property portfolio, particularly from our acquisitions in 2013 and 2014, approximately \$7.3 million of increased revenue from our real estate operations and an increase of approximately \$162,000 in revenue from our agriculture operations reflected in agriculture and other income. Net income for the quarter ended September 30, 2014, was approximately \$3.5 million, or \$0.60 per share, versus net income of approximately \$1.2 million, or \$0.22 per share in the same period in 2013. Contributing to the increase in net income of approximately \$2.2 million were the after tax results of the aforementioned increases in our revenues of approximately \$7.8 million net of the increase in direct costs of those revenues of approximately \$3.3 million further offset by increases in our depreciation and amortization of approximately \$154,000 attributable to our larger income property portfolio, increased interest expense of approximately \$59,000, and increased general and administrative expenses. Our general and administrative expenses increased by approximately \$299,000, with such increase primarily reflecting an increase in our stock compensation costs of approximately \$169,000. Our increased net income was also offset by an impairment charge of approximately \$421,000 which related to the expected sale of an income property we had under contract and classified as held for sale as of September 30, 2014.

**INCOME PROPERTIES**

Revenues and operating income from our income property operations totaled approximately \$3.9 million and \$3.4 million, respectively, during the quarter ended September 30, 2014, compared to total revenue and operating income of approximately \$3.3 million and \$2.9 million, respectively, for the quarter ended September 30, 2013. The direct costs of revenues for our income property operations totaled approximately \$457,000 and \$427,000 for the quarter ended September 30, 2014 and 2013, respectively. The 17.2% increase in revenues during the quarter ended September 30, 2014 reflects our expanded portfolio of income properties. Our increased operating income from our income property operations reflects increased rent revenues offset by an increase of approximately \$30,000 in our direct costs of revenues.

**REAL ESTATE OPERATIONS**

During the quarter ended September 30, 2014, operating income from real estate operations was approximately \$5.2 million on revenues totaling approximately \$8.6 million, an increase of approximately \$4.0 million in operating income as compared to the same period in 2013. For the quarter ended September 30, 2013, operating income was approximately \$1.2 million on revenues totaling approximately \$1.4 million. The increase in revenue of approximately \$7.3 million and operating income of approximately \$4.0 million is primarily attributable to a land transaction for approximately 75.6 acres which generated revenues of approximately \$7.2 million and a gain of approximately \$3.9 million. During the quarter ended September 30, 2013, there were no land transactions.

**GOLF OPERATIONS**

Revenues from golf operations totaled approximately \$995,000 and \$981,000 for the quarters ended September 30, 2014 and 2013, respectively. The total direct cost of golf operations revenues totaled approximately \$1.310 million and \$1.321 million for the quarters ended September 30, 2014 and 2013, respectively. The Company's golf operations had a net operating loss of approximately \$315,000 during the quarter ended September 30, 2014, representing a 7.4% improvement over the net operating loss of approximately \$340,000 in the same period of 2013. The approximate \$25,000 improvement in the net operating results from the golf operations was primarily due to increased revenues despite reduced golf rounds played as a result of adverse weather conditions, specifically an increase of nearly 37.4% in rain levels during the quarter ended September 30, 2014, as compared to the same period in 2013. The improved revenues primarily reflected the increase in our memberships, which were impacted favorably by the addition of the fitness facility.

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

**INTEREST INCOME FROM COMMERCIAL LOAN INVESTMENTS**

Interest income from our commercial loan investments totaled approximately \$382,000 during the quarter ended September 30, 2014 compared to approximately \$644,000 in the same period in 2013. The interest income in the quarter ended September 30, 2014 reflected approximately \$153,000 of interest earned from the mezzanine loan acquired in January 2014 at a fixed interest rate of 12% per annum, approximately \$227,000 in interest from our loan investments completed in the second quarter of 2014, and approximately \$2,000 from our loan acquired on September 30, 2014. The interest income in the same period in 2013 was from the Company's investment in a single first mortgage loan on an upper upscale hotel in Atlanta, Georgia including the accretion of the approximate \$2.0 million discount.

**AGRICULTURE AND OTHER INCOME**

For the quarter ended September 30, 2014, revenues from agriculture and other income, primarily our agriculture operations, totaled approximately \$183,000, compared to approximately \$21,000 in the same period in 2013, an increase of approximately \$162,000 or 776.6%. The increased revenues are due to additional timber harvesting during the quarter ended September 30, 2014. For the quarters ended September 30, 2014 and 2013, the direct cost of revenues totaled approximately \$34,000.

**GENERAL AND ADMINISTRATIVE AND OTHER CORPORATE EXPENSES**

General and administrative expenses totaled approximately \$1.5 million and \$1.2 million for the quarters ended September 30, 2014 and 2013, respectively, an increase of approximately \$299,000 or 24.8%. The increase in the quarter ended September 30, 2014 was primarily comprised of an increase in our stock compensation costs of approximately \$169,000.

Interest expense totaled approximately \$569,000 and \$510,000 for the quarters ended September 30, 2014 and 2013, respectively. The increased interest expense during the quarter ended September 30, 2014, as compared to the same quarter in 2013, reflects our increased net borrowings to finance our acquisitions of income properties and investments in commercial loans.

During the twelve month period ending September 30, 2014, our long-term debt increased approximately \$14.5 million. During the nine months ended September 30, 2014, the Company received the principal payoff of the previously held commercial first mortgage loan investment, of which \$18.0 million of the proceeds were used to pay down the outstanding balance of the Company's revolving credit facility (the "Credit Facility"). Also, included in interest expense in the consolidated financial statements is the amortization of loan costs incurred in connection with the Company's long-term debt. For the quarter ended September 30, 2014 and 2013, the amortization of loan costs totaled approximately \$64,000 and \$54,000, respectively.

**SUMMARY OF OPERATING RESULTS FOR NINE MONTHS ENDED SEPTEMBER 30, 2014 COMPARED TO SEPTEMBER 30, 2013**

Total revenue for the nine months ended September 30, 2014 increased 71.4% to approximately \$27.4 million, compared to approximately \$16.0 million for the nine months ended September 30, 2013. The increase of approximately \$11.4 million included an approximate \$1.4 million of additional rent revenue generated by our income property portfolio, particularly from our acquisitions in 2013 and 2014, approximately \$938,000 of income generated by our commercial loan investments, approximately \$8.9 million of increased revenue from our real estate operations, and an increase in revenue from our combined golf operations and agriculture and other income of approximately \$195,000. Net income for the nine months ended September 30, 2014, was approximately \$5.7 million, or \$0.99 per share, versus net income of approximately \$1.8 million, or \$0.32 per share in same period in 2013. Contributing to the increase in net income of approximately \$3.9 million were the after tax results of the aforementioned increases in our revenues of approximately \$11.4 million net of the increase in direct costs of those revenues of approximately \$3.5 million offset further by increases in our depreciation and amortization of approximately \$377,000 attributable to our larger income property portfolio, increased interest expense of approximately \$239,000 and increased general and administrative expenses, which increased by approximately \$341,000, due primarily to an increase in stock compensation expenses of approximately \$169,000. Net income for the nine months ended September 30, 2014 also reflected an impairment charge of approximately \$421,000 relating to an income property classified as held for sale compared to an impairment charge of approximately \$616,000 during the second quarter of 2013, relating to approximately 6.23 acres of land sold in December 2013, a difference of approximately \$195,000.

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

**INCOME PROPERTIES**

Revenues and operating income from our income property operations totaled approximately \$10.8 million and \$9.5 million, respectively, during the nine months ended September 30, 2014, compared to total revenue and operating income of approximately \$9.4 million and \$8.4 million, respectively, for the nine months ended September 30, 2013. The direct costs of revenues for our income property operations totaled approximately \$1.3 million and \$1.0 million for the nine months ended September 30, 2014 and 2013, respectively. The 14.6% increase in revenues during the nine months ended September 30, 2014 reflects our expanded portfolio of income properties. Our increased operating income from our income property operations reflects increased rent revenues offset by an increase of approximately \$242,000 in our direct costs of revenues, which was due primarily to an increase in the transaction costs in connection with our 2014 acquisitions, as compared to our 2013 acquisitions, and the expensing of costs related to acquisitions we are no longer pursuing.

**REAL ESTATE OPERATIONS**

During the nine months ended September 30, 2014, operating income from real estate operations was approximately \$7.2 million on revenues totaling approximately \$10.9 million, an increase of approximately \$5.6 million in operating income, as compared to the same period in 2013. For the nine months ended September 30, 2013, operating income was approximately \$1.5 million on revenues totaling approximately \$2.0 million. The increase in revenue and operating income from our real estate operations was primarily attributable to two land transactions, one closed in August 2014 for approximately 75.6 acres which generated revenues of approximately \$7.2 million and the second closed in February 2014 for approximately 3.06 acres which generated approximately \$392,000 in revenues. During the nine months ended September 30, 2013, there were no land transactions.

**GOLF OPERATIONS**

Revenues from golf operations totaled approximately \$3.844 million and \$3.759 million for the nine months ended September 30, 2014 and 2013, respectively. Total direct cost of golf operations revenues totaled approximately \$4.2 million for the nine months ended September 30, 2014 and 2013. The Company's golf operations operating loss was approximately \$311,000 for the nine months ended September 30, 2014, representing a 21.5% improvement over the net operating loss of approximately \$396,000 in the same period of 2013. The improved operating results reflected increased revenues from our memberships, which were impacted favorably by the addition of the fitness facility and offset by reduced revenues for golf and related food and beverage reflecting reduced golf rounds played as a result of adverse weather conditions, specifically an increase of nearly 40.9% in rain levels during the nine months ended September 30, 2014, as compared to the same period in 2013.

**INTEREST INCOME FROM COMMERCIAL LOAN INVESTMENTS**

Interest income from our commercial loan investments totaled approximately \$1.6 million during the nine months ended September 30, 2014 as compared to approximately \$644,000 for the same period in 2013, an increase of 145.5%. Specifically, interest income on the commercial mortgage loan acquired in August 2013, and paid in full in January 2014, totaled approximately \$844,000 during the nine months ended September 30, 2014, including the remaining accretion of the purchase discount of approximately \$650,000, interest income of approximately \$36,000, and an exit fee of approximately \$195,000, offset by the remaining amortization of fees of approximately \$37,000. The mezzanine loan acquired in January 2014 at a fixed interest rate of 12% per annum contributed interest income of approximately \$405,000 during the nine months ended September 30, 2014, and we recognized approximately \$331,000 in interest from our loan investments completed in the second quarter of 2014. The interest income in the same period in 2013 was entirely from the commercial mortgage loan acquired in August 2013.

**AGRICULTURE AND OTHER INCOME**

For the nine months ended September 30, 2014, revenues from agriculture and other income, primarily our agriculture operations, totaled approximately \$258,000, compared to approximately \$149,000 in the same period in 2013, an increase of 73.2%. The increase in revenues during the nine months ended September 30, 2014, was primarily attributable to revenues realized from additional timber harvesting during the nine months ended September 30, 2014, as compared to the nine months ended September 30, 2013. For the nine months ended September 30, 2014, the direct cost of revenues totaled approximately \$145,000, compared to approximately \$120,000, in the same period in 2013, reflecting an increase of approximately \$25,000.

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

**GENERAL AND ADMINISTRATIVE AND OTHER CORPORATE EXPENSES**

General and administrative expenses totaled approximately \$4.6 million and \$4.2 million for the nine months ended September 30, 2014 and 2013, respectively. The increase is comprised primarily of stock compensation expense which totaled approximately \$1.0 million in the nine months ended September 30, 2014 compared to approximately \$853,000 in the same period in 2013, an increase of approximately 19.9% due to our increased stock price and additional grants during January 2014. In addition, general and administrative expenses for the nine months ended September 30, 2014 reflect an accrual related to environmental monitoring of approximately \$110,000 and service costs related to our information systems.

Interest expense totaled approximately \$1.6 million and \$1.3 million for the nine months ended September 30, 2014 and 2013, respectively. The increased interest expense during the nine months ended September 30, 2014, as compared to the same quarter in 2013, reflects our increased net borrowings to finance our acquisitions of income properties and investments in commercial loans. During the twelve month period ending September 30, 2014, our long-term debt increased approximately \$14.5 million. Also, included in interest expense in the consolidated financial statements is the amortization of loan costs incurred in connection with the Company's long-term debt. For the nine months ended September 30, 2014 and 2013, the amortization of loan costs totaled approximately \$174,000 and \$148,000, respectively.

**DISCONTINUED OPERATIONS**

No income properties were disposed of during the nine months ended September 30, 2014. However, the 14,560 square-foot building located in Apopka, Florida, which is leased to Walgreens was presented as assets held for sale on the consolidated balance sheet as of September 30, 2014 as the property is under contract and considered highly probable to close.

During the nine months ended September 30, 2013, the Company sold its interest in three properties for a combined gain of approximately \$531,000. Upon the sales, the properties' operating results were included in discontinued operations for each period presented.

**LIQUIDITY AND CAPITAL RESOURCES**

Cash and equivalents totaled approximately \$2.2 million at September 30, 2014, excluding restricted cash. Restricted cash totaled approximately \$1.4 million, of which approximately \$550,000 pertains to an escrow for capital improvements of a certain income property in the portfolio of properties that secures our \$30.0 million fixed-rate mortgage loan with Wells Fargo. Approximately \$322,000 is being held in a reserve primarily for property taxes and insurance escrows in connection with our financing of two properties acquired in January 2013, approximately \$284,000 is being held in escrow related to a land transaction which closed in December 2013, and approximately \$270,000 pertains to reserves in connection with our investment in a construction loan. Cash and cash equivalents totaled approximately \$4.9 million at December 31, 2013, excluding restricted cash.

Our total cash balance at September 30, 2014 reflects cash flows provided by our operating activities totaling approximately \$9.9 million, during the nine months then ended, compared to the prior year's cash flows provided by operating activities, in the same period, totaling approximately \$8.4 million. The increase in our cash flows from operations of approximately \$1.5 million during the nine months ended September 30, 2014 is primarily due to the approximate \$3.9 million increase in net income offset primarily by an increase in other assets relating to loan costs on our financings in 2014, transaction deposits, and the decrease in deferred revenue.

Our cash flows used in investing activities totaled approximately \$30.8 million for the nine months ended September 30, 2014, reflecting the use of approximately \$27.4 million to acquire four commercial loan investments and approximately \$21.9 million to acquire two income properties offset by the principal payoff of the previous commercial first mortgage loan investment of approximately \$19.5 million.

Our cash flows provided by financing activities totaled approximately \$18.1 million, for the nine months ended September 30, 2014, primarily related to the \$30.0 million funding received from our fixed-rate mortgage loan of six income properties with Wells Fargo, offset by net payments on our Credit Facility of approximately \$12.0 million, as well as cash used to repurchase our common stock totaling approximately \$928,000, offset by approximately \$870,000 in proceeds from the exercise of stock options by our employees.

Our long-term debt balance totaled approximately \$81.2 million at September 30, 2014, representing an increase of approximately \$18.0 million from the balance of approximately \$63.2 million at December 31, 2013. The increase in the long-term debt was primarily due to additional borrowings to fund the acquisition of two income properties and four commercial loan investments, offset by the payoff of the previously held commercial first mortgage loan investment.

*Dispositions.* No income properties were disposed of during the nine months ended September 30, 2014.

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

*Credit Facility.* On August 1, 2014 the Company executed the third amendment of the Company's unsecured Credit Facility. As amended the Credit Facility has a borrowing capacity to \$75.0 million with the ability to increase that capacity up to \$125.0 million during the term and a maturity date of August 1, 2018. The indebtedness outstanding under the Credit Facility accrues interest at a rate ranging from the 30-day London Interbank Offer Rate ("LIBOR") plus 135 basis points to the 30-day LIBOR plus 200 basis points based on the total balance outstanding under the Credit Facility as a percentage of the total asset value of the Company as defined in the Credit Facility. The third amendment also adjusted a number of the restrictive covenants and maintenance covenants in the Credit Facility, primarily to provide the Company with increased flexibility in its investment activities. The Company paid a fee for increasing the borrowing commitment level pursuant to the credit facility terms. The Credit Facility also accrues a fee of 20 to 25 basis points for any unused portion of the borrowing capacity based on whether the unused portion is greater or less than 50% of the total borrowing capacity. The Credit Facility is unsecured and is guaranteed by certain wholly-owned subsidiaries of the Company. The Credit Facility bank group is led by Bank of Montreal ("BMO") and also includes Wells Fargo Bank, N.A. and Branch Banking & Trust Company. The Credit Facility is subject to customary restrictive covenants, including, but not limited to, limitations on the Company's ability to: (a) incur indebtedness; (b) make certain investments; (c) incur certain liens; (d) engage in certain affiliate transactions; and (e) engage in certain major transactions such as mergers. In addition, the Company is subject to various financial maintenance covenants, including, but not limited to, a maximum indebtedness ratio, a maximum secured indebtedness ratio, and a minimum fixed charge coverage ratio. The Agreement also contains affirmative covenants and events of default, including, but not limited to, a cross default to the Company's other indebtedness and upon the occurrence of a change of control. The Company's failure to comply with these covenants or the occurrence of an event of default could result in acceleration of the Company's debt and other financial obligations under the Agreement.

*Mortgage Notes Payable.* On February 22, 2013, the Company closed on a \$7.3 million loan with UBS Real Estate Securities Inc., secured by its interest in the two-building office complex leased to Hilton Resorts Corporation, which was acquired on January 31, 2013. The new mortgage loan matures in February 2018, carries a fixed rate of interest of 3.655% per annum, and requires payments of interest only prior to maturity.

On March 8, 2013, the Company closed on a \$23.1 million loan with Bank of America, N.A., secured by its interest in fourteen income properties. The new mortgage loan matures in April 2023, carries a fixed rate of 3.67% per annum, and requires payments of interest only prior to maturity.

On September 30, 2014, the Company closed on a \$30.0 million loan originated with Wells Fargo Bank, N.A., secured by its interest in six income properties. The mortgage loan matures in October 2034, and carries a fixed rate of 4.33% per annum during the first ten years of the term, and requires payments of interest only during the first ten years of the loan. After the tenth anniversary of the effective date of the loan the cash flows generated by the underlying six income properties must be used to pay down the principal balance of the loan until paid off or until the loan matures. The loan is fully pre-payable after the tenth anniversary date of the effective date of the loan.

*Acquisitions and Investments.* During the nine months ended September 30, 2014, the Company acquired two income properties at a total purchase price of approximately \$20.0 million and four commercial loan investments for approximately \$30.3 million including a \$6.3 million first mortgage commitment for the redevelopment of an existing vacant retail property into a Container Store located in Glendale, Arizona, which is expected to open during the first quarter of 2015 and for which the Company had funded approximately \$3.5 million as of September 30, 2014. While the aggregate amount of our acquisitions and investments through September 30, 2014 is approximately equal to the level we anticipated for 2014, we may make additional investments in income-producing properties or investments in loans secured by commercial real estate during the remainder of 2014. We would expect to fund these acquisitions and investments utilizing the available capacity under our Credit Facility, other financings, cash from operations, proceeds from the dispositions of non-core income properties or transactions in our land assets, which we expect will qualify under the like-kind exchange deferred-tax structure, and additional funding sources.

We expect to fund these acquisitions and investments utilizing the available capacity under our Credit Facility, other financings, cash from operations, proceeds from the dispositions of non-core income properties or transactions in our land assets, which we expect will qualify under the like-kind exchange deferred-tax structure, and additional funding sources.



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

*Capital Expenditures.* In conjunction with the Company's sale of approximately 3.4 acres of land to RaceTrac in December 2013, the Company agreed to reimburse RaceTrac for a portion of the costs for road improvements and the other costs associated with bringing multiple ingress/egress points to the entire 23 acre Williamson Crossing site, including the Company's remaining 19.6 acres. The estimated cost for the improvements equals approximately \$1.26 million and the Company's commitment is to reimburse RaceTrac in an amount equal to the lesser of 77.5% of the actual costs or \$976,500. The Company's commitment to fund the improvement costs benefiting the remaining acres of Company land can be paid over the next five years from sales of the remaining land or at the end of the fifth year. As of December 31, 2013, the Company deposited \$283,500 of cash in escrow related to the improvements which is classified as restricted cash in the consolidated balance sheets. Accordingly, as of September 30, 2014, the remaining maximum commitment is \$693,000.

In connection with the acquisition of the Lowes on April 22, 2014, the Company was credited approximately \$651,000 at closing for certain required tenant improvements, some of which are not required to be completed until December 2016. As of September 30, 2014, approximately \$100,000 of these tenant improvements had been completed and funded leaving a remaining commitment of approximately \$551,000 at September 30, 2014. As of September 30, 2014, we have no other contractual requirements to make capital expenditures.

During the three months ended September 30, 2014, the Company sold approximately 75.6 acres of land, located on the east side of Interstate 95, for the development of a distribution center. In connection with the sale, the Company is obligated to fund approximately \$616,000 of certain road improvements, a portion of which will be reimbursed by the City. The amount of the reimbursement is estimated at approximately \$243,000. As the costs are incurred, the Company will recognize the deferred revenue as described in Note 14 "Deferred Revenue" on a percentage-of-completion basis. The road improvements are expected to be completed in February 2015.

We believe we will have sufficient liquidity to fund our operations, capital requirements, and debt service requirements over the next twelve months and into the foreseeable future, with cash flow from our operations and approximately \$54.2 million of available capacity on the existing \$75.0 million Credit Facility, subject to the borrowing base requirements, as of September 30, 2014.

On April 26, 2012, the Company announced a voluntary Odd-Lot Buy-Back Program (the "Program"), whereby the Company offered to purchase shares from shareholders who owned less than 100 shares of the Company's common stock as of April 26, 2012 for \$31.00 per share. The Program reflected the Company's interest in reducing the ongoing costs associated with shareholder recordkeeping and communications and to assist shareholders who may be deterred from selling their small lots of stock due to the costs that would be incurred. The Company paid all costs associated with the Program and purchased 14,634 shares under the Program at a total cost of approximately \$454,000. The Program expired September 30, 2012. The Company did not provide any recommendation regarding shareholder participation and the decision was entirely that of each shareholder as to whether to sell shares in this Program.

During the fourth quarter of 2008, our Board of Directors authorized a program to repurchase shares of our common stock having an aggregate value of up to \$8,000,000. The authorization permits us to effect repurchases from time to time through a variety of methods including open market repurchases and privately negotiated transactions. Through September 30, 2014, 30,496 shares had been repurchased at a total cost of approximately \$1.0 million with repurchase of 25,836 shares at a total cost of approximately \$928,000 occurring during the nine months ended September 30, 2014. The shares repurchased in 2014 are being held in treasury, whereas, the 4,660 shares repurchased in 2009 were treated as cancelled shares.

Our Board of Directors and management consistently review the allocation of capital with the goal of providing the best long-term return for our shareholders. These reviews consider various alternatives, including increasing or decreasing regular dividends, repurchasing stock, and retaining funds for reinvestment.

Annually, the Board reviews our business plan and corporate strategies and makes adjustments as circumstances warrant. Management's focus is to continue to execute on our strategy, which is to diversify our portfolio by redeploying proceeds from like-kind exchange transactions and utilizing our credit facility to increase our portfolio of income-producing properties, to provide stabilized cash flows with good risk adjusted returns primarily in larger metropolitan areas.

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

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

- Retail and office double or triple-net leased properties in major metropolitan areas;
- Stabilized multi-tenant office and retail properties in major metropolitan areas;
- Select office, flex-office, industrial, and retail self-developed properties on Company owned land;
- Joint venture development using Company owned land;
- Origination or purchase of 1 to 10 year term loans on favorable risk-adjusted yields with property types to include hotel, office, retail, and industrial;
- Origination or purchase of short-term development loans on favorable risk-adjusted yields with property types to include commercial and residential asset types;
- Real estate related investment securities, including commercial mortgage backed securities, preferred stock, and bonds;
- Select regional area investments using Company market knowledge and expertise to earn good risk adjusted yields; and
- Purchase or origination of ground leases.

**CRITICAL ACCOUNTING POLICIES**

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

Our significant accounting policies are described in the notes to the consolidated financial statements included in our Annual Report on Form 10-K for the year-ended December 31, 2013. Judgments and estimates of uncertainties are required in applying our accounting policies in many areas. During the nine months ended September 30, 2014, there have been no material changes to the critical accounting policies affecting the application of those accounting policies as noted in our Annual Report on Form 10-K for the year ended December 31, 2013.

**ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISKS**

The principal market risk to which we are exposed is interest rates. The objective of our asset management activities is to provide an adequate level of liquidity to fund operations and capital expansion, while minimizing market risk. We do not believe that this interest rate risk related to cash equivalents and short-term investments is material due to the nature of the investments.

We are primarily exposed to interest rate risk on our outstanding debt borrowings, which totaled approximately \$81.2 million at September 30, 2014. Our borrowings include approximately \$20.8 million outstanding on our \$75.0 million revolving credit facility, which bears a variable rate of interest based on the 30-day LIBOR and our level of borrowing as a percentage of our total asset value. Approximately \$60.4 million of our outstanding debt bears interest at a weighted average fixed rate of 4.00%. Management's objective is to limit the impact of interest rate changes on earnings and cash flows and to lower the overall borrowing costs. A hypothetical change in the interest rate of 100 basis points (i.e., 1%) would affect our financial position, results of operations, and cash flows by approximately \$208,000.

**ITEM 4. CONTROLS AND PROCEDURES**

As of the end of the period covered by this report, an evaluation, as required by Rules 13a-15 and 15d-15 under the Securities Exchange Act of 1934 (the "Exchange Act"), was carried out under the supervision and with the participation of the Company's management, including our Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO"), of the effectiveness of the Company's disclosure controls and procedures (as defined in Rules 13a-15(e) or 15d-15(e) under the Exchange Act). Based on that evaluation, our CEO and CFO have concluded that the design and operation of the Company's disclosure controls and procedures were effective as of September 30, 2014, to ensure that information required to be disclosed by the Company in reports that it files or submits under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the Securities and Exchange Commission's rules and forms, and to provide reasonable assurance that information required to be disclosed by the Company in such reports is accumulated and communicated to the Company's management, including our CEO and CFO, as appropriate to allow timely decisions regarding required disclosure. There were no changes in the Company's internal control over financial reporting (as defined in Rules 13a-15(f) or 15d-15(f) under the Exchange Act) during the fiscal quarter ended September 30, 2014, that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.



**PART II - OTHER INFORMATION**

**ITEM 1. LEGAL PROCEEDINGS**

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

On November 21, 2011, the Company, Indigo Mallard Creek LLC and Indigo Development LLC, as owners of the property leased to Harris Teeter, Inc. (“Harris Teeter”) in Charlotte, North Carolina, were served with pleadings filed in the General Court of Justice, Superior Court Division for Mecklenburg County, North Carolina, for a highway condemnation action involving the property. The proposed road modifications would impact access to the Company’s property that is leased to Harris Teeter. The Company does not believe the road modifications provided a basis for Harris Teeter to terminate the Lease. Regardless, in January 2013, NCDOT proposed to redesign the road modifications to keep the all access intersection open for ingress with no change to the planned limitation on egress to the right-in/right-out only. Additionally, NCDOT and the City of Charlotte proposed to build and maintain a new access road/point into the property. Both government entities have confirmed that funding is available and the redesigned project is proceeding. Harris Teeter has expressed satisfaction with the redesigned project and indicated that it will not attempt to terminate its lease if this project is built as currently redesigned. Because the redesigned project will not be completed until 2016, the condemnation case has been placed in administrative closure. As a result, the trial and mediation will not likely be scheduled until requested by the parties, most likely in 2016.

In May 2010, the Company filed a lawsuit in the Circuit Court, Seventh Judicial Circuit, in and for Volusia County, Florida, in order to enforce its approximate \$3.8 million claim of lien on real property owned by FM Bayberry Cove Holding, LLC (“FM Bayberry”) for its share of the costs for construction of a road. BB&T was included as a defendant as the current mortgage holder of the property subject to the Company’s lien. BB&T filed a counterclaim asserting that its mortgage is superior to the Company’s claim of lien which the Company denied. BB&T and the Company each filed motions for summary judgment as to the priority of their respective interests in the property which were heard by the court on January 12, 2012. The Circuit Court determined that the Company’s interests were superior to the lien imposed by BB&T and all other interests and a final judgment of foreclosure was subsequently entered. However, all further proceedings in the Circuit Court (including the foreclosure sale) were stayed pending BB&T’s appeal to the Florida District Court of Appeal, Fifth District (the “Appellate Court”), regarding the Circuit Court’s determination in the matter of priority. On October 29, 2013, the Appellate Court ruled in favor of the Company, affirming the Circuit Court’s determination that the Company’s lien against the approximately 600-acre parcel of residential land (lying west of I-95 near the LPGA International development and adjacent to Bayberry Colony) is superior to the lien imposed by BB&T. The judgment has accrued to over \$4.6 million, including interest. The Company has not included an accrual related to interest in the consolidated financial statements. At this time, the Appellate Court’s decision is subject to possible motion for rehearing by BB&T. On December 3, 2013, the Circuit Court entered a Second Amended Final Judgment of Foreclosure in Accordance with the Appellate Court’s Mandate, which, among other things, set the date of the Company’s foreclosure sale to occur on January 29, 2014. On January 29, 2014, the Company’s approximately \$4.7 million claim for unreimbursed costs and accrued interest was satisfied through the successful foreclosure of approximately 600 acres of land.

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### **ITEM 1A. RISK FACTORS**

Certain statements contained in this report (other than statements of historical fact) are forward-looking statements. The words “believe,” “estimate,” “expect,” “intend,” “anticipate,” “will,” “could,” “may,” “should,” “plan,” “potential,” “predict,” “forecast,” “project,” and similar expressions and variations thereof identify certain of such forward-looking statements, which speak only as of the dates on which they were made. Forward-looking statements are made based upon management’s expectations and beliefs concerning future developments and their potential effect upon the Company.

There can be no assurance that future developments will be in accordance with management’s expectations or that the effect of future developments on the Company will be those anticipated by management.

We wish to caution readers that the assumptions, which form the basis for forward-looking statements with respect to or that may impact earnings for the year-ended December 31, 2014, and thereafter, include many factors that are beyond the Company’s ability to control or estimate precisely. These risks and uncertainties include, but are not limited to, the strength of the real estate market in the City and Volusia County, Florida; the impact of a prolonged recession or further downturn in economic conditions; our ability to successfully execute acquisition or development strategies; any loss of key management personnel; changes in local, regional, and national economic conditions affecting the real estate development business and income properties; the impact of environmental and land use regulations; extreme or severe weather conditions; the impact of competitive real estate activity; variability in quarterly results due to the unpredictable timing of land transactions; the loss of any major income property tenants; and the availability of capital. These risks and uncertainties may cause our actual future results to be materially different than those expressed in our forward-looking statements.

In addition to the other information set forth in this report, you should carefully consider the factors discussed in Part I, “Item 1A. Risk Factors” in the Company’s Annual Report on Form 10-K for the year ended December 31, 2013. There have been no material changes to those risk factors. The risks described in the Annual Report on Form 10-K are not the only risks facing the Company. Additional risks and uncertainties not currently known to the Company or that the Company currently deems to be immaterial also may materially adversely affect the Company.

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

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

There were no unregistered sales of equity securities during the nine months ended September 30, 2014, which were not previously reported.

The following share repurchases were made during the nine months ended September 30, 2014:

	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as a Part of Publicly Announced Plans or Programs	Maximum Number (or Approximate Dollar Value) of Shares that May Yet be Purchased Under the Plans or Programs
1/1/2014 - 1/31/2014	—	\$ —	—	\$ 7441,698 <sup>(1)</sup>
2/1/2014 - 2/28/2014	6,073	\$ 35.20	6,073	\$ 7,227,899
3/1/2014 - 3/31/2014	19,763	\$ 36.13	19,763	\$ 6,513,785
4/1/2014 - 4/30/2014	—	\$ —	—	\$ 6,513,785
5/1/2014 - 5/31/2014	—	\$ —	—	\$ 6,513,785
6/1/2014 - 6/30/2014	—	\$ —	—	\$ 6,513,785
7/1/2014 - 7/31/2014	—	\$ —	—	\$ 6,513,785
8/1/2014 - 8/31/2014	—	\$ —	—	\$ 6,513,785
9/1/2014 - 9/30/2014	—	\$ —	—	\$ 6,513,785
Total	<u>25,836</u>	<u>\$ 35.92</u>	<u>25,836</u>	<u>\$ 6,513,785</u>

- (1) Pursuant to a covenant in our credit facility, which includes the Odd-Lot Buy-Back Program as part of our stock repurchase capacity, the maximum approximate dollar value of shares that may yet be purchased under the plan was \$7,441,698 as of December 31, 2013.

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**ITEM 3. DEFAULTS UPON SENIOR SECURITIES**

Not applicable

**ITEM 4. MINE SAFETY DISCLOSURES**

Not applicable

**ITEM 5. OTHER INFORMATION**

Not applicable

**ITEM 6. EXHIBITS**

(a) Exhibits:

Exhibit 3.1	Amended and Restated Articles of Incorporation of Consolidated-Tomoka Land Co., dated October 26, 2011, filed as Exhibit 3.1 to the registrant's Current Report Form 8-K filed October 28, 2011, and incorporated herein by reference.
Exhibit 3.2	Amended and Restated Bylaws of Consolidated-Tomoka Land Co., dated April 27, 2011, filed as Exhibit 3.2 to the registrant's Current Report on Form 8-K filed April 28, 2011, and incorporated herein by reference.
Exhibit 10.37	Amendment to the Credit Agreement between Consolidated-Tomoka Land Co. and Bank of Montreal dated August 1, 2014, filed as Exhibit 10.37 with this Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2014.
Exhibit 10.38	Loan Agreement between the Company and the affiliates of the Company set forth therein, as borrowers, and Wells Fargo Bank, National Association. dated September 30, 2014, filed as Exhibit 10.38 with this Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2014.
Exhibit 31.1	Certification furnished pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
Exhibit 31.2	Certification furnished pursuant to Section 302 of Sarbanes-Oxley Act of 2002.
Exhibit 32.1	Certification pursuant to 18 U.S.C. Section 1350, as Adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
Exhibit 32.2	Certification pursuant to 18 U.S.C. Section 1350, as Adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
Exhibit 101.INS	XBRL Instance Document
Exhibit 101.SCH	XBRL Taxonomy Extension Schema Document
Exhibit 101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
Exhibit 101.DEF	XBRL Taxonomy Definition Linkbase Document
Exhibit 101.LAB	XBRL Taxonomy Extension Label Linkbase Document
Exhibit 101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document

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Signatures

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

CONSOLIDATED-TOMOKA LAND CO.  
(Registrant)

October 28, 2014

By: /S/ JOHN P. ALBRIGHT

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

October 28, 2014

By: /S/ MARK E. PATTEN

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

**THIRD AMENDMENT TO CREDIT AGREEMENT**

This Third Amendment to Credit Agreement (herein, this "*Amendment*") is entered into as of August 1, 2014, among Consolidated-Tomoka Land Co., a Florida corporation (the "*Borrower*"), the Guarantors party hereto, the Lenders party hereto and Bank of Montreal, as Administrative Agent (the "*Administrative Agent*").

**PRELIMINARY STATEMENTS**

A. The Borrower, the guarantors party thereto (the "*Guarantors*"), the financial institutions party thereto (the "*Lenders*"), and the Administrative Agent entered into that certain Credit Agreement, dated as of February 27, 2012, a First Amendment to Credit Agreement dated as of September 20, 2012, and a Second Amendment to Credit Agreement dated as of March 29, 2013 (such Credit Agreement, as amended, being referred to herein as the "*Credit Agreement*"). All capitalized terms used herein without definition shall have the same meanings herein as such terms have in the Credit Agreement.

B. The Borrower has requested the Administrative Agent and the Lenders agree to, among other things, increase the Revolving Credit Commitment and extend the stated Revolving Credit Termination Date and the Administrative Agent and the Lenders are willing to do so on the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**SECTION 1. AMENDMENTS.**

Subject to the satisfaction of the conditions precedent set forth in Section 2 below, the Credit Agreement shall be and hereby is amended as follows:

1.1. The definition of "*LIBOR01 Page*" contained in Section 1.4(b) of the Credit Agreement is hereby amended and restated in its entirety as follows:

"*LIBOR01 Page*" means the display designated as "*LIBOR01 Page*" on the Reuters Service (or on any successor or substitute page of such service, or any successor to or substitute for such service, providing rate quotations comparable to those currently provided on such page of such service, as determined by the Administrative Agent from time to time for purposes of providing quotations of interest rates applicable to dollar deposits in the London interbank market).

1.2. The reference to "0.25%" in clause (x) of the first sentence of Section 2.1(a) of the Credit Agreement is hereby amended to read "0.20%" and the reference to "0.35%" in clause (y) of the first sentence of Section 2.1(a) of the Credit Agreement is hereby amended to read "0.25%".

1.3. The period at the end of Section 4.1 is hereby deleted and the following is added to the end of that Section:

; *provided, however*, that, with respect to any Guarantor, Hedging Liability guaranteed by such Guarantor shall exclude all Excluded Swap Obligations.

1.4. The schedule set forth in the definition of “*Applicable Margin*” in Section 5.1 is hereby amended and restated in its entirety as follows:

<u>LEVEL</u>	<u>TOTAL INDEBTEDNESS TO TOTAL ASSET VALUE RATIO FOR SUCH PRICING DATE</u>	<u>APPLICABLE MARGIN FOR BASE RATE LOANS AND REIMBURSEMENT OBLIGATIONS SHALL BE:</u>	<u>APPLICABLE MARGIN FOR EURODOLLAR LOANS AND LETTER OF CREDIT FEE SHALL BE:</u>
I	Less than or equal to 0.25 to 1.00	0.35%	1.35%
II	Less than or equal to 0.35 to 1.00, but greater than 0.25 to 1.00	0.50%	1.50%
III	Less than or equal to 0.45 to 1.00, but greater than 0.35 to 1.00	0.75%	1.75%
IV	Greater than 0.45 to 1.00	1.00%	2.00%

1.5. The definition of “*Assets Under Development*” in Section 5.1 is hereby amended and restated in its entirety as follows:

“*Assets Under Development*” means any real property under construction (excluding any completed Property under minor renovation) until such property has received a certificate of occupancy.

1.6. The definition of “*Borrowing Base Requirements*” in Section 5.1 is hereby amended and restated in its entirety as follows:

“*Borrowing Base Requirements*” means with respect to the calculation of the Borrowing Base, collectively that (a) at all times such calculation shall be based on no less than nine (9) Eligible Properties; (b) the Borrowing Base Value shall at all times be equal to or in excess of \$75,000,000; (c) no more than 35% of the Borrowing Base Value may be comprised of Eligible Properties which are not used as retail Properties; (d) no more than 20% of the Borrowing Base Value may

be comprised of any one Eligible Property; (e) no more than 20% of Borrowing Base Value may be from any single Tenant unless such Tenant's Rating is equal to or better than BBB-/Baa3 from S&P or Moody's, respectively, (f) no more than 30% of Borrowing Base Value may be comprised of Permitted Ground Lease Investments and (g) no more than 20% of the Borrowing Base Value may be comprised of Eligible Properties which are hotels, motels or resorts.

1.7. The definition of "*Capitalization Rate*" in Section 5.1 is hereby amended and restated in its entirety as follows:

"*Capitalization Rate*" means (i) 6.5% for retail Properties occupied by tenants operating as banking facility branches of national banks maintaining a A- or A3 Rating or better from S&P's or Moody's, respectively, with a remaining lease term of at least ten (10) years, (ii) 7.5% for single tenant retail Properties occupied by tenants maintaining a BBB- or Baa3 Rating or better from S&P's or Moody's, respectively, with a remaining lease term of at least ten (10) years, (iii) 8.0% for all other retail Properties not covered under the foregoing clauses (i) and (ii), (iv) 8.25% for office Properties, (v) 9.25% for hotels, motels or resorts and (vi) 10% for all other Properties not covered under the foregoing clauses (i), (ii), (iii), (iv) or (v).

1.8. The definition of "*Debt Service Coverage Amount*" in Section 5.1 is hereby amended and restated in its entirety as follows:

"*Debt Service Coverage Amount*" means the principal amount of a loan that would be serviced by the Borrowing Base NOI for the Rolling Period most recently ended for which financial statements have been delivered pursuant to Section 8.5 hereof at a debt service coverage ratio of 1.50 to 1.00 with interest and principal payments (in each case assuming a 30-year amortization) at the greater of (i) 7.0% per annum, (ii) a Eurodollar Loan with an Interest Period of one (1) month (including the Applicable Margin) and (iii) the 10-year treasury rate on the last day of such period plus 2.5%; *provided* that Borrowing Base NOI shall be reduced by excluding any Property NOI attributable to Eligible Properties that exceed the concentration limits in the Borrowing Base Requirements.

1.9 Clause (d) of the definition of "*Fixed Charges*" in Section 5.1 is hereby amended and restated in its entirety as follows:

(d) any repurchases of the Borrower's equity securities by Borrower or an Affiliate in excess of \$2,000,000 in the aggregate during the Rolling Period, plus

1.10. The definition of "*Revolving Credit Commitment*" in Section 5.1 is hereby amended and restated in its entirety to read as follows:

"*Revolving Credit Commitment*" means, as to any Lender, the obligation of such Lender to make Revolving Loans and to participate in Swing Loans and

Letters of Credit issued for the account of the Borrower hereunder in an aggregate principal or face amount at any one time outstanding not to exceed the amount set forth opposite such Lender's name on Schedule 1 attached hereto and made a part hereof, as the same may be reduced or modified at any time or from time to time pursuant to the terms hereof. The Borrower and the Lenders acknowledge and agree that the Revolving Credit Commitments of the Lenders, in the aggregate, is equal to \$75,000,000 on the Third Amendment Effective Date.

1.11. The reference to "March 31, 2016" in clause (i) of the definition of "*Revolving Credit Termination Date*" in Section 5.1 is hereby amended and restated to read "August 1, 2018".

1.12. Section 5.1 is hereby amended to insert the following definitions in proper alphabetical order:

"*Commodity Exchange Act*" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"*Connection Income Taxes*" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profit Taxes.

"*Excluded Swap Obligation*" means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason not to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the guarantee of such Guarantor or the grant of such security interest becomes effective with respect to such related Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guarantee or security interest is or becomes illegal.

"*Excluded Taxes*" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits 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 Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of



such Lender with respect to an applicable interest in a 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 the Borrower under Section 1.13 hereof) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 12.1 amounts with respect to such 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) Taxes attributable to such Recipient's failure to comply with Section 12.1(b) or Section 12.1(d), and (d) any U.S. federal withholding Taxes imposed under FATCA.

"*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 agreements entered into pursuant to Section 1471(b)(1) of the Code.

"*Indemnified Taxes*" means (a) all Taxes other than Excluded Taxes and (b) to the extent not otherwise described in (a), Other Taxes.

"*Other Connection Taxes*" means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such 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, or sold or assigned an interest in any Loan or Loan Document).

"*Other Taxes*" means all present or future stamp, court or documentary, intangible, recording, filing or similar 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 Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 1.13 hereof).

"*Qualified ECP Guarantor*" means, in respect of any Swap Obligation, each Guarantor that has total assets exceeding \$10,000,000 at the time the relevant guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other person as constitutes an "eligible contract participant" under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“*Swap Obligation*” means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

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

“*Third Amendment Effective Date*” means August 1, 2014.

1.13. The reference to “\$1,500,000,000” in clause (ii) of Section 8.8(f) is hereby amended and restated to read “\$750,000,000”.

1.14. The reference to “15%” in Section 8.8(l) is hereby amended and restated to read “25%”.

1.15. The reference to “25%” in Section 8.8(m) is hereby amended and restated to read “20%”.

1.16. Section 8.8(o) is hereby amended and restated in its entirety as follows:

(o) investments in Land Assets and Land Assets contributed to joint ventures and up to \$3,500,000 to be invested in Indigo Community Development District (“*CDD*”) bonds in Indigo CDD series 1999A, 1999C and 2005A in an amount not to exceed in the aggregate at any one time outstanding 20% of Total Asset Value of the Borrower and its Subsidiaries.

1.17. The reference to “25%” in the first sentence in the last paragraph of Section 8.8 is hereby amended and restated to read “30%”.

1.18. Section 10.3 is hereby amended and restated to read as follows:

*Section 10.3. Increased Cost and Reduced Return.* (a) If any Change in Law shall:

(i) subject any Lender (or its Lending Office) or the L/C Issuer to any Tax (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes, and (C) Connection Income Taxes) with respect to its Eurodollar Loans, its Notes, its Letter(s) of Credit, or its participation in any thereof, any Reimbursement Obligations owed to it or its obligation to make Eurodollar Loans, issue a Letter of Credit, or to participate therein, or shall change the basis of taxation of payments to any Lender (or its Lending Office) or the L/C Issuer of the principal of or interest on its Eurodollar Loans, Letter(s) of Credit, or participations therein or any other

amounts due under this Agreement or any other Loan Document in respect of its Eurodollar Loans, Letter(s) of Credit, any participation therein, any Reimbursement Obligations owed to it, or its obligation to make Eurodollar Loans, or issue a Letter of Credit, or acquire participations therein (except for changes in the basis or rate of (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes); or

(ii) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement (including, without limitation, any such requirement imposed by the Board of Governors of the Federal Reserve System, but excluding with respect to any Eurodollar Loans any such requirement included in an applicable Eurodollar Reserve Percentage) against assets of, deposits with or for the account of, or credit extended by, any Lender (or its Lending Office) or the L/C Issuer or shall impose on any Lender (or its Lending Office) or the L/C Issuer or on the interbank market any other condition affecting its Eurodollar Loans, its Notes, its Letter(s) of Credit, or its participation in any thereof, any Reimbursement Obligation owed to it, or its obligation to make Eurodollar Loans, or to issue a Letter of Credit, or to participate therein;

and the result of any of the foregoing is to increase the cost to such Lender (or its Lending Office) or the L/C Issuer of making or maintaining any Eurodollar Loan, issuing or maintaining a Letter of Credit, or participating therein, or to reduce the amount of any sum received or receivable by such Lender (or its Lending Office) or the L/C Issuer under this Agreement or under any other Loan Document with respect thereto, by an amount deemed by such Lender or L/C Issuer to be material, then, within 15 days after demand by such Lender or L/C Issuer (with a copy to the Administrative Agent), the Borrower shall be obligated to pay to such Lender or L/C Issuer such additional amount or amounts as will compensate such Lender or L/C Issuer for such increased cost or reduction.

(b) If any Lender or L/C Issuer determines that any Change in Law affecting such Lender or L/C Issuer or any lending office of such Lender or such Lender's or L/C Issuer's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's or L/C Issuer's capital or on the capital of such Lender's or L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit or Swing Loans held by, such Lender, or the Letters of Credit issued by any L/C Issuer, to a level below that which such Lender or L/C Issuer or such Lender's or L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or L/C Issuer's policies and the policies of such Lender's or L/C Issuer's holding company with respect to capital adequacy), then from time to time, within 15 days after demand by such Lender or

L/C Issuer (with a copy to the Administrative Agent), the Borrower shall pay to such Lender or L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or L/C Issuer or such Lender's or L/C Issuer's holding company for any such reduction suffered.

(c) A certificate of a Lender or L/C Issuer claiming compensation under Sections 1.11, 10.1, 10.3 and 12.1 and setting forth the additional amount or amounts to be paid to it hereunder shall be conclusive if reasonably determined. In determining such amount, such Lender or L/C Issuer may use any reasonable averaging and attribution methods.

(d) Failure or delay on the part of any Lender or L/C Issuer to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or L/C Issuer's right to demand such compensation; *provided* that the Borrower shall not be required to compensate a Lender or L/C Issuer pursuant to this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender or L/C Issuer, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions, and of such Lender's or L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

1.19. Section 12.1 is hereby amended and restated to read as follows:

*Section 12.1. Withholding Taxes.* (a) *Payments Free of Withholding.* Except as otherwise required by law and subject to Section 12.1(b) hereof, each payment by the Borrower and the Guarantors under this Agreement or the other Loan Documents shall be made without withholding for or on account of any present or future Indemnified Taxes. If any such withholding is so required, the Borrower or such Guarantor shall make the withholding, pay the amount withheld to the appropriate governmental authority before penalties attach thereto or interest accrues thereon, and forthwith pay such additional amount as may be necessary to ensure that the net amount actually received by each Lender, the L/C Issuer, and the Administrative Agent free and clear of such taxes (including such taxes on such additional amount) is equal to the amount which that Lender, L/C Issuer, or the Administrative Agent (as the case may be) would have received had such withholding not been made. If the Administrative Agent, the L/C Issuer, or any Lender pays any amount in respect of any such taxes, penalties or interest, the Borrower or such Guarantor shall reimburse the Administrative Agent, the L/C Issuer or such Lender for that payment on demand in the currency in which such payment was made.

(b) *U.S. Withholding Tax Exemptions.* Each Lender or L/C Issuer that is not a United States person (as such term is defined in Section 7701(a)(30) of the Code) shall submit to the Borrower and the Administrative Agent on or before

the date the initial Credit Event is made hereunder or, if later, the date such financial institution becomes a Lender or L/C Issuer hereunder, two duly completed and signed copies of (i) either Form W-8 BEN-E (relating to such Lender or L/C Issuer and entitling it to a complete exemption from withholding under the Code on all amounts to be received by such Lender or L/C Issuer, including fees, pursuant to the Loan Documents and the Obligations) or Form W-8 ECI (relating to all amounts to be received by such Lender or L/C Issuer, including fees, pursuant to the Loan Documents and the Obligations) of the United States Internal Revenue Service or (ii) solely if such Lender is claiming exemption from United States withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of “portfolio interest”, a Form W-8 BEN-E, or any successor form prescribed by the Internal Revenue Service, and a certificate representing that such Lender is not a bank for purposes of Section 881(c) of the Code, is not a 10-percent shareholder (within the meaning of Section 871(h)(3)(B) of the Code) of the Borrower and is not a controlled foreign corporation related to the Borrower (within the meaning of Section 864(d)(4) of the Code). Thereafter and from time to time, each Lender and L/C Issuer shall submit to the Borrower and the Administrative Agent such additional duly completed and signed copies of one or the other of such Forms (or such successor forms as shall be adopted from time to time by the relevant United States taxing authorities) and such other certificates as may be (i) requested by the Borrower in a written notice, directly or through the Administrative Agent, to such Lender or L/C Issuer and (ii) required under then-current United States law or regulations to avoid or reduce United States withholding taxes on payments in respect of all amounts to be received by such Lender or L/C Issuer, including fees, pursuant to the Loan Documents or the Obligations. Upon the request of the Borrower or the Administrative Agent, each Lender and L/C Issuer that is a United States person (as such term is defined in Section 7701(a)(30) of the Code) shall submit to the Borrower and the Administrative Agent a certificate to the effect that it is such a United States person.

(c) *Inability of Lender to Submit Forms.* If any Lender or L/C Issuer determines, as a result of any change in applicable law, regulation or treaty, or in any official application or interpretation thereof, that it is unable to submit to the Borrower or the Administrative Agent any form or certificate that such Lender or L/C Issuer is obligated to submit pursuant to subsection (b) of this Section 12.1 or that such Lender or L/C Issuer is required to withdraw or cancel any such form or certificate previously submitted or any such form or certificate otherwise becomes ineffective or inaccurate, such Lender or L/C Issuer shall promptly notify the Borrower and Administrative Agent of such fact and the Lender or L/C Issuer shall to that extent not be obligated to provide any such form or certificate and will be entitled to withdraw or cancel any affected form or certificate, as applicable.

(d) *Compliance with FATCA.* If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding 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 the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the 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 the Borrower or the Administrative Agent as may be necessary for the Borrower and the 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.

(e) *Indemnification by the Lenders.* Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower or Guarantor has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower or any Guarantor to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 12.11 relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such 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 the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the 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 the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this clause (e).

(f) *Treatment of Certain Refunds.* If any Lender or L/C Issuer determines, in its sole discretion exercised in good faith, that it has received a refund in respect of any taxes as to which indemnification or additional amounts have been paid to it by the Borrower or a Guarantor pursuant to this Section 12.1, 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 taxes giving rise to such refund), net of all out-of-pocket expenses of such Lender or L/C Issuer and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); *provided* that the Borrower or such Guarantor, upon the request of such Lender or L/C Issuer, agrees to promptly repay the amount paid over with respect to such refund (plus any penalties, interest or other charges imposed by the relevant Governmental

Authority) to such Lender or L/C Issuer in the event such Lender or L/C Issuer is required to repay such refund to the relevant Governmental Authority. Nothing herein contained shall interfere with the right of a Lender or L/C Issuer to arrange its tax affairs in whatever manner it thinks fit nor oblige any Lender or L/C Issuer to claim any tax refund or to make available its tax returns or disclose any information relating to its tax affairs or any computations in respect thereof or any other confidential information or require any Lender or L/C Issuer to do anything that would prejudice its ability to benefit from any other refunds, credits, reliefs, remissions or repayments to which it may be entitled.

(g) *Evidence of Payments.* As soon as practicable after any payment of Taxes by the Borrower or a Guarantor to a Governmental Authority pursuant to this Section, the Borrower or such Guarantor shall deliver to the 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 the Administrative Agent.

1.20. The following new Section 12.27 is added to the Credit Agreement:

*Section 12.27. Other Taxes.* The Borrower agrees to pay on demand, and indemnify and hold the Administrative Agent, the Lenders, and the L/C Issuer harmless from, any Other Taxes payable in respect of this Agreement or any other Loan Document, including interest and penalties, in the event any such taxes are assessed, irrespective of when such assessment is made and whether or not any credit is then in use or available hereunder.

1.21. The following new Section 13.10 is added to the Credit Agreement:

*Section 13.10. Keepwell.* Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Guarantor to honor all of its obligations under this Guaranty in respect of Swap Obligations (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section, or otherwise under this Guaranty, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section shall remain in full force and effect until discharged in accordance with Section 13.3. Each Qualified ECP Guarantor intends that this Section constitute, and this Section shall be deemed to constitute, a “keepwell, support, or other agreement” for the benefit of each other Guarantor for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

- 1.22. Exhibit A to the form of Borrowing Base Certificate attached to the Credit Agreement is hereby replaced by Exhibit A attached hereto.
- 1.23. Schedule I to the form of Compliance Certificate attached to the Credit Agreement is hereby replaced by Exhibit B attached hereto.
- 1.24 Schedule I attached to the Credit Agreement is hereby replaced by Exhibit C attached hereto.
- 1.25 Schedules 6.2, 6.11, 6.12, 6.17, 6.23 and 6.26 to the Credit Agreement are hereby replaced by Exhibit D, E, F, G, H and I attached hereto, respectively.

SECTION 2. RELEASE.

The Administrative Agent and the Lenders party hereto hereby agree that the Guaranties (the "*Released Guaranties*") provided by Indigo Clermont LLC and Indigo Group LTD (the "*Released Guarantors*") are hereby terminated as of the Third Amendment Effective Date, that the Released Guarantors shall have no further obligations, duties or liabilities under the Released Guaranties and the Administrative Agent and the Lenders party hereto hereby release, waive and forever discharge the Released Guarantors from all obligations, duties or liabilities of whatever nature arising under or in connection with the Released Guaranties.

SECTION 3. CONDITIONS PRECEDENT.

The effectiveness of this Amendment is subject to the satisfaction of all of the following conditions precedent:

3.1. The Borrower, the Guarantors, all Lenders and the Administrative Agent shall have executed and delivered to the Administrative Agent this Amendment.

3.2 The Administrative Agent shall have received a written opinion of counsel to the Borrower and each Material Subsidiary, in form and substance reasonably satisfactory to the Administrative Agent;

3.3 The Administrative Agent shall have received a written certificate of an Authorized Representative of Borrower that (i) either affirms that there have been no change to Borrower's articles of incorporation and bylaws or attaches any amendments to Borrower's articles of incorporation and/or bylaws and (ii) attaches thereto a copy of the certificate of good standing for the Borrower (dated no earlier than thirty (30) days prior to the date hereof) from the office of the secretary of state of its incorporation and of each state in which it is required to be qualified to do business as a foreign corporation or organization and resolutions of the Borrower's Board of Directors (or similar governing body) authorizing the execution and delivery of this Amendment and performance of this Amendment and the Credit Agreement as amended by this Amendment, together with specimen signatures of the persons authorized to execute such documents on the Borrower's behalf.



3.4 The Administrative Agent shall have received a written certificate of the Secretary, Assistant Secretary or other appropriate representative of each Material Subsidiary that (i) either affirms that there has been no change such Material Subsidiary's articles of incorporation and/or bylaws or attaches any amendments to such Material Subsidiary's articles of incorporation and bylaws and (ii) attaches thereto a copy of the certificate of good standing for the such Material Subsidiary (dated no earlier than thirty (30) days prior to the date hereof) from the office of the secretary of state of its incorporation and of each state in which it is required to be qualified to do business as a foreign corporation or organization.

3.5 The Administrative Agent shall have received an executed Additional Guarantor Supplement from the additional Material Subsidiaries of the Borrower, Bluebird Arrowhead Phoenix LLC, Bluebird Germantown MD, LLC, Bluebird Renton WA LLC and Golden Arrow Daytona ISB LLC.

3.6. Legal matters incident to the execution and delivery of this Amendment shall be reasonably satisfactory to the Administrative Agent and its counsel.

SECTION 4. CONDITIONS SUBSEQUENT.

On or before the date that is five (5) Business Days after the date of this Amendment, Borrower shall deliver to the Administrative Agent a written opinion of corporate counsel to the Borrower and each Material Subsidiary, in form and substance reasonably satisfactory to the Administrative Agent.

SECTION 5. REPRESENTATIONS.

In order to induce the Administrative Agent and the Lenders to execute and deliver this Amendment, the Borrower hereby represents to the Administrative Agent and the Lenders that (a) after giving effect to this Amendment, the representations and warranties set forth in Section 6 of the Credit Agreement are and shall be and remain true and correct in all material respects as of the date hereof (or, if any such representation and warranty is expressly stated to have been made as of a specific date, as of such specific date) and (b) no Default or Event of Default has occurred and is continuing under the Credit Agreement or shall result after giving effect to this Amendment.

SECTION 6. MISCELLANEOUS.

6.1. Except as specifically amended herein, the Credit Agreement shall continue in full force and effect in accordance with its original terms. Reference to this specific Amendment need not be made in the Credit Agreement, the Notes, the other Loan Documents, or any other instrument or document executed in connection therewith, or in any certificate, letter or communication issued or made pursuant to or with respect to the Credit Agreement, any reference in any of such items to the Credit Agreement being sufficient to refer to the Credit Agreement as amended hereby.

6.2. The Borrower agrees to pay on demand all reasonable costs and out-of-pocket expenses of or incurred by the Administrative Agent in connection with the negotiation, preparation, execution and delivery of this Amendment, including the reasonable fees and out-of-pocket expenses of counsel for the Administrative Agent.

6.3. Each Guarantor consents to the amendments and modifications to the Credit Agreement as set forth herein and confirms all of its obligations under its Guaranty remain in full force and effect. Furthermore, each Guarantor acknowledges and agrees that the consent of the Guarantors, or any of them, to any further amendments to the Credit Agreement shall not be required as a result of this consent having been obtained.

6.4. This Amendment is a Loan Document. The modifications to Applicable Margins set forth in Section 1.4 of this Amendment shall be applicable on and after the date all conditions precedent set forth in Section 3 above have been satisfied and the Applicable Margins shall initially be determined utilizing the Compliance Certificate delivered on the Third Amendment Effective Date until the next Pricing Date. This Amendment may be executed in any number of counterparts, and by the different parties on different counterpart signature pages, all of which taken together shall constitute one and the same agreement. Any of the parties hereto may execute this Amendment by signing any such counterpart and each of such counterparts shall for all purposes be deemed to be an original. Delivery of executed counterparts of this Amendment by Adobe portable document format (a "PDF") via e-mail or by facsimile shall be effective as an original. This Amendment shall be governed by the internal laws of the State of New York.

[SIGNATURE PAGES FOLLOW]

This Third Amendment to Credit Agreement is entered into as of the date and year first above written.

“BORROWER”

CONSOLIDATED-TOMOKA LAND CO.,  
a Florida corporation

By /s Mark E. Patten

Name Mark E. Patten

Title Senior Vice President and Chief Financial Officer

“GUARANTORS”

INDIGO DEVELOPMENT LLC,  
a Florida limited liability company

By: Consolidated -Tomoka Land Co.  
a Florida corporation  
Its Managing Member

By /s Mark E. Patten

Name: Mark E. Patten

Title: Senior Vice President and Chief Financial  
Officer

INDIGO SANFORD LLC,  
a Florida limited liability company

By: Indigo Development LLC,  
a Florida limited liability company,  
Its Sole Member,

By: Consolidated -Tomoka Land Co.  
a Florida corporation,  
Its Managing Member

By /s Mark E. Patten

Name: Mark E. Patten

Title: Senior Vice President and Chief  
Financial Officer

[SIGNATURE PAGE TO THIRD AMENDMENT TO CONSOLIDATED-TOMOKA LAND CO. CREDIT AGREEMENT]

INDIGO MELBOURNE LLC,  
a Florida limited liability company

By: Indigo Development LLC,  
a Florida limited liability company  
Its Sole Member,

By: Consolidated -Tomoka Land Co.  
a Florida corporation,  
Its Managing Member

By /s Mark E. Patten

Name: Mark E. Patten

Title: Senior Vice President and Chief Financial  
Officer

BLUEBIRD ARROWHEAD PHOENIX LLC,  
a Delaware limited liability company

By: Consolidated -Tomoka Land Co.  
a Florida corporation  
Its Managing Member

By /s Mark E. Patten

Name: Mark E. Patten

Title: Senior Vice President and Chief Financial  
Officer

[SIGNATURE PAGE TO THIRD AMENDMENT TO CONSOLIDATED-TOMOKA LAND CO. CREDIT AGREEMENT]



BLUEBIRD RENTON WA LLC  
a Delaware limited liability company

By: Consolidated -Tomoka Land Co.  
a Florida corporation  
Its Managing Member

By /s Mark E. Patten

Name: Mark E. Patten

Title: Senior Vice President and Chief Financial  
Officer

GOLDEN ARROW DAYTONA ISB LLC  
a Delaware limited liability company

By: Consolidated -Tomoka Land Co.  
a Florida corporation  
Its Managing Member

By /s Mark E. Patten

Name: Mark E. Patten

Title: Senior Vice President and Chief Financial  
Officer

[SIGNATURE PAGE TO THIRD AMENDMENT TO CONSOLIDATED-TOMOKA LAND CO. CREDIT AGREEMENT]

Accepted and agreed to.

*“ADMINISTRATIVE AGENT” AND “L/C ISSUER”*

BANK OF MONTREAL, as L/C Issuer, Swing Line Lender and  
as Administrative Agent

By /s Aaron Lanski

Name: Aaron Lanski

Title: Managing Director

[SIGNATURE PAGE TO THIRD AMENDMENT TO CONSOLIDATED-TOMOKA LAND CO. CREDIT AGREEMENT]

"LENDERS"

BANK OF MONTREAL

By /s Aaron Lanski

Name: Aaron Lanski

Title: Managing Director

[SIGNATURE PAGE TO THIRD AMENDMENT TO CONSOLIDATED-TOMOKA LAND CO. CREDIT AGREEMENT]



By /s Dawn Dorsey

Name: Dawn Dorsey

Title: Senior Vice President

[SIGNATURE PAGE TO THIRD AMENDMENT TO CONSOLIDATED-TOMOKA LAND CO. CREDIT AGREEMENT]

By /s Steven J. Markowski

Name: Steven J. Markowski

Title: Senior Vice President

[SIGNATURE PAGE TO THIRD AMENDMENT TO CONSOLIDATED-TOMOKA LAND CO. CREDIT AGREEMENT]

EXHIBIT A TO THIRD AMENDMENT TO CREDIT AGREEMENT

EXHIBIT A TO BORROWING BASE CERTIFICATE  
OF CONSOLIDATED-TOMOKA LAND CO.

This Exhibit A is attached to the Borrowing Base Certificate of Consolidated-Tomoka Land Co. for the Borrower Base Determination Date of 20 and delivered to Bank of Montreal, as Administrative Agent, and the Lenders party to the Credit Agreement dated February 27, 2012, as amended, referred to therein. The undersigned hereby certifies that the following is a true, correct and complete calculation of Borrowing Base Value as of the Borrowing Base Determination Date set forth above:

[Insert Calculation or attach Schedule with exclusions for concentration limits]

**BORROWING BASE VALUE OF ALL ELIGIBLE PROPERTIES:** \$

**BORROWING BASE REQUIREMENTS:**

**A. Number of Properties**

1. The number of Eligible Properties
2. Line A1 shall not be less than 9
3. The Borrower is in compliance (circle yes or no) yes/no

**B. Borrowing Base Value**

1. Borrowing Base Value \$
2. Line B1 shall not be less than \$75,000,000
3. The Borrower is in compliance (circle yes or no) yes/no

**C. Non-Retail Properties**

1. Percent of Borrowing Base Value attributable to Non-Retail Properties %
2. Line C1 shall not be greater than 35%
3. The Borrower is in compliance (circle yes or no) yes/no

**D. Individual Eligible Property Value**

1. The Percentage of Borrowing Base Value of each Eligible Property is set forth [above or on the attached Schedule] and the largest Borrowing Base Value or any Eligible Property is \$ for the Eligible Property.
2. No Eligible Property comprises more than 20% of Borrowing Base Value
3. The Borrower is in compliance (circle yes or no) yes/no

**E. Single Tenant Borrowing Base Value**

1. The largest amount of Borrowing Base Value from a single Tenant that does not maintain a Rating of at least BBB-/Baa3 from S&P or Moody's, respectively, is \$            from            .
2. No single Tenant that does not maintain a Rating of at least BBB-/Baa3 from S&P or Moody's, respectively, comprises more than 20% of Borrowing Base Value
3. The Borrower is in compliance (circle yes or no) yes/no

**F. Permitted Ground Lease Investments**

1. Percent of Borrowing Base Value attributable to Permitted Ground Lease Investments %
2. Line F1 shall not be greater than 30%
3. The Borrower is in compliance (circle yes or no) yes/no

**G. Hotels, Motels and Resorts**

1. Percent of Borrowing Base Value attributable to Hotels, Motels or Resorts %
2. Line G1 shall not be greater than 20%
3. The Borrower is in compliance (circle yes or no) yes/no

EXHIBIT B TO THIRD AMENDMENT TO CREDIT AGREEMENT

SCHEDULE I  
TO COMPLIANCE CERTIFICATE

COMPLIANCE CALCULATIONS  
FOR CREDIT AGREEMENT DATED AS OF FEBRUARY 27, 2012, AS AMENDED

CALCULATIONS AS OF \_\_\_\_\_ ,

---

<b>A. <u>Maximum Total Indebtedness to Total Asset Value Ratio (Section 8.20(a))</u></b>		
1.	Total Indebtedness	\$
2.	Total Asset Value as calculated on Exhibit A hereto	
3.	Ratio of Line A1 to A2	:1.0
4.	Line A3 must not exceed	0.55:1.0
5.	The Borrower is in compliance (circle yes or no)	yes/no
<b>B. <u>Maximum Secured Indebtedness to Total Asset Value Ratio (Section 8.20(b))</u></b>		
1.	Secured Indebtedness	\$
2.	Total Asset Value as calculated on Exhibit A hereto	
3.	Ratio of Line B1 to B2	:1.0
4.	Line B3 must not exceed	0.35:1.0
5.	The Borrower is in compliance (circle yes or no)	yes/no
<b>C. <u>Minimum Adjusted EBITDA to Fixed Charges Ratio (Section 8.20(c))</u></b>		
1.	Net Income	\$
2.	Depreciation and amortization expense	
3.	Interest Expense	
4.	Income tax expense	
5.	Extraordinary, unrealized or non-recurring losses	

6.	Extraordinary, unrealized or non-recurring gains	
7.	Income tax benefits	
8.	Annual Capital Expenditure Reserve	
9.	Sum of Lines C2, C3, C4 and C5	
10.	Sum of Lines C6 and C7 and C8	
11.	Line C1 plus Line C9 minus Line C10 ("Adjusted EBITDA")	
12.	Interest Expense	
13.	Principal Amortization Payments	
14.	Dividends	
15.	Stock Repurchases	
16.	Income Taxes Paid	
17.	Sum of Lines C12, C13, C14, C15 and C16 (" <i>Fixed Charges</i> ")	
18.	Ratio of Line C11 to Line C17	:1.0
19.	Line C18 shall not be less than	1.75:1.0
20.	The Borrower is in compliance (circle yes or no)	yes/no
D.	<u>Maximum Secured Recourse Indebtedness to Total Asset Value Ratio (Section 8.20(d))</u>	
1.	Secured Recourse Indebtedness	\$
2.	Total Asset Value as calculated on Exhibit A hereto	
3.	Ratio of Line D1 to Line D2	:1.0
4.	Line D3 shall not exceed	0.05:1.0
5.	The Borrower is in compliance (circle yes or no)	yes/no
E.	<u>Tangible Net Worth (Section 8.20(e))</u>	
1.	Tangible Net Worth	\$
2.	Aggregate net proceeds of Stock and Stock Equivalent offerings	
3.	75% of Line E2	
4.	\$93,243,118 plus Line E3	
5.	Line E1 shall not be less than Line E4	
6.	The Borrower is in compliance (circle yes or no)	yes/no

<b>F. <u>Investments (Joint Ventures) (Section 8.8(j))</u></b>		
1.	Cash Investments in Joint Ventures	\$
2.	Total Asset Value	
3.	Line F1 divided by Line F2	
4.	Line F3 shall not exceed 10% of Total Asset Value	
5.	The Borrower is in compliance (circle yes or no)	yes/no
<b>G. <u>Investments (Assets Under Development) (Section 8.8(k))</u></b>		
1.	Assets Under Development	\$
2.	Total Asset Value	
3.	Line G1 divided by Line G2	
4.	Line G3 shall not exceed 7.5% of Total Asset Value	
5.	The Borrower is in compliance (circle yes or no)	yes/no
<b>H. <u>Investments (Mortgage Loans, Mezzanine Loans and Notes Receivable) (Section 8.8(l))</u></b>		
1.	Mortgage Loans, Mezzanine Loans and Notes Receivable	\$
2.	Total Asset Value	
3.	Line H1 divided by Line H2	
4.	Line H3 shall not exceed 25% of Total Asset Value	
5.	The Borrower is in compliance (circle yes or no)	yes/no
<b>I. <u>Investments (Ground Leases) (Section 8.8(m))</u></b>		
1.	Investments in Ground Leases other than Permitted Ground Lease Investments	\$
2.	Total Asset Value	
3.	Line I1 divided by Line I2	
4.	Line I3 shall not exceed 20% of Total Asset Value	
5.	The Borrower is in compliance (circle yes or no)	yes/no
<b>J. <u>Investments (Stock Repurchases) (Section 8.8(n))</u></b>		
1.	Aggregate amount of Borrower's stock repurchases	\$
2.	Line J1 shall not exceed \$8,000,000	
3.	The Borrower is in compliance (circle yes or no)	yes/no

<b>K. <u>Investments (Land Assets and CDD Bonds) (Section 8.8(q)).</u></b>		
1.	Land Assets	\$
2.	CDD Bonds	
3.	Line K1 plus Line K2	
4.	Total Asset Value	
5.	Line K3 divided by Line K4	
6.	Line K2 shall not exceed \$3,500,000 and Line K5 shall not exceed 20% of Total Asset Value	
7.	The Borrower is in compliance (circle yes or no)	yes/no
<b>L. <u>Aggregate Investment Limitation to Total Asset Value (Section 8.8).</u></b>		
1.	Sum of Lines F1, G1, H1, I1 and J1	\$
2.	Total Asset Value	
3.	Line L1 divided by Line L2	
4.	Line L3 shall not exceed 30% of Total Asset Value	
5.	The Borrower is in compliance (circle yes or no)	yes/no
<b>M. <u>Golf Course Capital Expenditures (Section 8.22).</u></b>		
1.	Aggregate Amount of Capital Expenditures for Golf Courses	\$
2.	Line M1 shall not exceed \$250,000	
3.	The Borrower is in compliance (circle yes or no)	yes/no



**EXHIBIT A TO SCHEDULE I  
TO COMPLIANCE CERTIFICATE  
OF CONSOLIDATED-TOMOKA LAND CO.**

This Exhibit A, with a calculation date of \_\_\_\_\_, \_\_\_\_\_, is attached to Schedule I to the Compliance Certificate of Consolidated-Tomoka Land Co. dated February 27, 2012, as amended, and delivered to Bank of Montreal, as Administrative Agent, and the Lenders party to the Credit Agreement, as amended, referred to therein. The undersigned hereby certifies that the following is a true, correct and complete calculation of Total Asset Value for Rolling Period most recently ended:

**[Insert Calculation]**

CONSOLIDATED-TOMOKA LAND CO.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT B TO SCHEDULE I  
TO COMPLIANCE CERTIFICATE  
OF CONSOLIDATED-TOMOKA LAND CO.**

This Exhibit B, with a calculation date of \_\_\_\_\_, \_\_\_\_\_, is attached to Schedule I to the Compliance Certificate of Consolidated-Tomoka Land Co. dated February 27, 2012, as amended, and delivered to Bank of Montreal, as Administrative Agent, and the Lenders party to the Credit Agreement, as amended, referred to therein. The undersigned hereby certifies that the following is a true, correct and complete calculation of Property NOI for all Properties for Rolling Period most recently ended:

<u>PROPERTY</u>	<u>PROPERTY INCOME</u>	<u>MINUS</u>	<u>PROPERTY EXPENSES (WITHOUT CAP. EX. RESERVE OR MANAGEMENT FEES)</u>	<u>MINUS</u>	<u>ANNUAL CAPITAL EXPENDITURE RESERVE</u>	<u>MINUS</u>	<u>GREATER OF 3% OF RENTS OR ACTUAL MANAGEMENT FEES</u>	<u>EQUALS</u>	<u>PROPERTY NOI</u>
	\$	-	\$					=	\$
	\$	-	\$					=	\$
	\$	-	\$					=	\$
	\$	-	\$					=	\$
<b>TOTAL PROPERTY NOI FOR ALL PROPERTIES:</b>									<b>\$</b>

CONSOLIDATED-TOMOKA LAND CO.

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

EXHIBIT C TO THIRD AMENDMENT TO CREDIT AGREEMENT

SCHEDULE I

COMMITMENTS

NAME OF LENDER	REVOLVING CREDIT COMMITMENT
Bank of Montreal	\$ 34,000,000
Wells Fargo Bank, National Association	\$ 23,000,000
Branch Banking and Trust Company	\$ 18,000,000
TOTAL	<u>\$ 75,000,000</u>

## SCHEDULE 6.2

## SUBSIDIARIES

**BLUEBIRD14 HOLDINGS LLC (a limited liability company)**

Date of Formation: February 12, 2013  
 State of Formation: Delaware  
 Member: Consolidated-Tomoka Land Co. 100%  
 Manager: Michelle A. Dreyer, Independent Manager provided by CT Corporation

**BLUEBIRD ARROWHEAD PHOENIX LLC (a limited liability company)**

Date of Formation: January 14, 2013  
 State of Formation: Delaware  
 Member: Consolidated-Tomoka Land Co. 100%

*NOTE: Also registered with Arizona Secretary of State on January 22, 2013 (File #R181941-6)*

**BLUEBIRD BWV PHOENIX LLC (a limited liability company)**

Date of Formation: February 12, 2013  
 State of Formation: Delaware  
 Member: Bluebird14 Holdings LLC 100%

*NOTE: Also registered with Arizona Secretary of State on March 6, 2013 (File #R1828989-6)*

**BLUEBIRD CAPITAL CIRCLE LLC (a limited liability company)**

*(Name change from Bluebird CVS Tallahassee LLC on March 4, 2013)*

Date of Formation: February 12, 2013  
 State of Formation: Delaware  
 Member: Bluebird14 Holdings LLC 100%

*NOTE: Also registered with Florida Secretary of State on March 4, 2013 (Document #M13000001379)*

**BLUEBIRD CHASE CHICAGO LLC (a limited liability company)**

Date of Formation: February 12, 2013  
 State of Formation: Delaware  
 Member: Bluebird14 Holdings LLC 100%

*NOTE: Also registered with Illinois Secretary of State on February 28, 2013 (File # 04204662)*

**BLUEBIRD GERMANTOWN MD LLC (a limited liability company)**

Date of Formation: August 15, 2013  
 State of Formation: Delaware  
 Member: Consolidated-Tomoka Land Co. 100%  
 (Managing Member)

*NOTE: Also registered with Maryland Secretary of State on August 15, 2013 (ID #Z15410525)*

**BLUEBIRD METROWEST ORLANDO LLC (a limited liability company)**

Date of Formation: January 14, 2013  
State of Formation: Delaware  
Member: Consolidated-Tomoka Land Co. 100%  
(Managing Member)

*NOTE: Also registered with Florida Secretary of State on January 16, 2013 (Document #M13000000354)*

**BLUEBIRD NORTH LA HABRA LLC (a limited liability company)**

Date of Formation: December 17, 2012  
State of Formation: Delaware  
Member: Bluebird14 Holdings LLC 100%  
(Managing Member)

*NOTE: Also registered with California Secretary of State on December 28, 2012 (File #201302910200)*

Registered Agent: Registered Agent Solutions Inc.

**BLUEBIRD NORTH LOS ALAMITOS LLC (a limited liability company)**

Date of Formation: December 17, 2012  
State of Formation: Delaware  
Member: Bluebird14 Holdings LLC 100%  
(Managing Member)

*NOTE: Also registered with California Secretary of State on December 28, 2012 (File #201302910198)*

**BLUEBIRD NORTH WALNUT LLC (a limited liability company)**

Date of Formation: December 17, 2012  
State of Formation: Delaware  
Member: Bluebird14 Holdings LLC 100%  
(Managing Member)

*NOTE: Also registered with California Secretary of State on December 28, 2012 (File #201302910202)*

**BLUEBIRD NORTH YORBA LINDA LLC (a limited liability company)**

Date of Formation: December 17, 2012  
State of Formation: Delaware  
Member: Bluebird14 Holdings LLC 100%  
(Managing Member)

*NOTE: Also registered with California Secretary of State on December 28, 2012 (File #201302910206)*

**BLUEBIRD RENTON WA LLC (a limited liability company)**

Date of Formation: July 11, 2013  
State of Formation: Delaware  
Member: Indigo Development LLC 100%  
(Managing Member)

*NOTE: Also registered with Washington Secretary of State on July 12, 2013 (UBI #603-317-367)*

**BLUEBIRD SOUTH GARDEN GROVE LLC (a limited liability company)**

Date of Formation: November 30, 2012  
State of Formation: Delaware  
Member: Bluebird14 Holdings LLC 100%

*NOTE: Also registered with California Secretary of State on December 11, 2012 (File #201234710105 )*

**BLUEBIRD SOUTH LAGUNA LLC (a limited liability company)**

Date of Formation: November 30, 2012  
State of Formation: Delaware  
Member: Bluebird14 Holdings LLC 100%

*NOTE: Also registered with California Secretary of State on December 11, 2012 (File #201234710112)*

**BLUEBIRD SOUTH PUERTA REAL MISSION VIEJO LLC (a limited liability company)**

Date of Formation: November 30, 2012  
State of Formation: Delaware  
Member: Bluebird14 Holdings LLC 100%

*NOTE: Also registered with California Secretary of State on December 11, 2012 (File #201234710114)*

**BLUEBIRD SOUTH TRABUCO MISSION VIEJO LLC (a limited liability company)**

Date of Formation: November 30, 2012  
State of Formation: Delaware  
Member: Bluebird14 Holdings LLC 100%

*NOTE: Also registered with California Secretary of State on December 11, 2012 (File #201234710110 )*

**BLUEBIRD SOUTH WESTMINSTER LLC (a limited liability company)**

Date of Formation: November 30, 2012  
State of Formation: Delaware  
Member: Bluebird14 Holdings LLC 100%

*NOTE: Also registered with California Secretary of State on December 11, 2012 (File #201234710102)*

**BLUEBIRD WAG BOULDER LLC (a limited liability company)**

Date of Formation: February 12, 2013  
State of Formation: Delaware  
Member: Bluebird14 Holdings LLC 100%

*NOTE: Also registered with Colorado Secretary of State on February 12, 2013 (File #20131134315)*

**BLUEBIRD WAG PALM BAY LLC (a limited liability company)**

Date of Formation: February 12, 2013  
State of Formation: Delaware  
Member: Bluebird14 Holdings LLC 100%

***NOTE: Also registered with Florida Secretary of State on March 4, 2013 (Document #M13000001380)***

**CTLG GOLDEN ARROW KATY LLC (a limited liability company)**

Date of Formation: March 24, 2014  
State of Formation: Delaware  
Member: CDECRE, LLC 100%  
(Managing Member)

***NOTE: Also registered with Texas Secretary of State on April 25, 2014 (File #01977293)***

**GOLDEN ARROW DAYTONA ISB LLC (a limited liability company)**

Date of Formation: May 14, 2014  
State of Formation: Delaware  
Member: Consolidated-Tomoka Land Co. 100%  
(Managing Member)

***NOTE: Also registered with Florida Secretary of State on May 21, 2014 (Document #M14000003412)***

**GOLDEN ARROW GLEN DEVELOPER LLC (a limited liability company)**

Date of Formation: April 8, 2014  
State of Formation: Delaware  
Member: Consolidated-Tomoka Land Co. 100%  
(Managing Member)

***NOTE: Also registered with Arizona Secretary of State on April 18, 2014 (File #8-1919694-0)***

**GOLDEN ARROW GLENN ATLANTA LLC (a limited liability company)**

Date of Formation: January 14, 2014  
State of Formation: Delaware  
Member: Consolidated-Tomoka Land Co. 100%  
(Managing Member)

***NOTE: Also registered with Georgia Secretary of State on January 16, 2014 (Control #14005292)***

**GOLDEN ARROW SARASOTA LLC (a limited liability company)**

Date of Formation: May 12, 2014  
State of Formation: Delaware  
Member: Consolidated-Tomoka Land Co. 100%  
(Managing Member)

***NOTE: Also registered with Florida Secretary of State on May 14, 2014 (Document #M14000003296)***

**GOLDEN ARROW WEST LLC (a limited liability company)**

Date of Formation: February 14, 2014  
State of Formation: Delaware  
Member: Consolidated-Tomoka Land Co. 100%  
(Managing Member)

*NOTE: Also registered with Florida Secretary of State on March 13, 2014 (Document #M14000001655)*

**INDIGO DEVELOPMENT LLC (a limited liability company)**

(Name Changed from Indigo Development Inc.)

Date of Formation: January 13, 2009  
State of Formation: Florida  
Member: Consolidated-Tomoka Land Co 100%  
(Managing Member)

*NOTE: Also registered with the Georgia Secretary of State on November 20, 2007 (Control #07094575).*

*Registered with Colorado Secretary of State on March 29, 2013 (Document #20121190360).*

*Registered with Arizona Secretary of State on 09/27/2012 (File #R17927192)*

**INDIGO GRAND CHAMPIONS ONE LLC (a limited liability company)**

Date of Formation: July 20, 2010  
State of Formation: Florida  
Member: Palms Del Mar Inc. 100%  
(Managing Member)

**INDIGO GRAND CHAMPIONS TWO LLC (a limited liability company)**

Date of Formation: July 20, 2010  
State of Formation: Florida  
Member: Palms Del Mar Inc. 100%  
(Managing Member)

**INDIGO GRAND CHAMPIONS THREE LLC (a limited liability company)**

Date of Formation: July 20, 2010  
State of Formation: Florida  
Member: Palms Del Mar Inc. 100%  
(Managing Member)

**INDIGO GRAND CHAMPIONS FOUR LLC (a limited liability company)**

Date of Formation: July 20, 2010  
State of Formation: Florida  
Member: Palms Del Mar Inc. 100%  
(Managing Member)

**INDIGO GRAND CHAMPIONS FIVE LLC (a limited liability company)**

Date of Formation: July 20, 2010  
State of Formation: Florida  
Member: Palms Del Mar Inc. 100%  
(Managing Member)



**INDIGO GRAND CHAMPIONS SIX LLC (a limited liability company)**

Date of Formation: July 20, 2010  
State of Formation: Florida  
Member: Palms Del Mar Inc. 100%  
(Managing Member)

**INDIGO GRAND CHAMPIONS TEN LLC (a limited liability company)**

Date of Formation: July 20, 2010  
State of Formation: Florida  
Member: Palms Del Mar Inc. 100%  
(Managing Member)

**INDIGO GROUP INC.**

**(Name Change from Indigo Development Inc. April 7, 1987)**

**(Name Change from The Charles Wayne Group Inc. July 23, 1991)**

Date of Incorporation: September 27, 1984  
State of Incorporation: Florida  
Authorized Shares: 7,500 common shares @ \$1.00 par value  
75,000 (increased from 30,000 4/26/85) Series  
preferred shares @ \$100.00 par value

**INDIGO GROUP LTD (a limited partnership)**

**(Name Change from The Charles Wayne Group Ltd. August 1, 1991)**

Date of Formation: April 30, 1987

State of Formation: Florida

Partners:

Indigo Group Inc. 1.460%

(Managing General Partner)

Palms Del Mar Inc. 5.065%

(Limited Partner)

Consolidated-Tomoka Land 93.475%

**INDIGO HENRY LLC (a limited liability company)**

Date of Formation: May 24, 2006  
State of Formation: Florida  
Member: Consolidated-Tomoka Land Co. 100%  
(Managing Member)

*NOTE: Also registered with the Georgia Secretary of State for State on (Control #07094574)*

**INDIGO INTERNATIONAL LLC (a limited liability company)**

**(Name changed from Indigo International Inc.)**

Date of Formation: January 13, 2009  
State of Formation: Florida  
Member: Consolidated-Tomoka Land Co. 100%  
(Managing Member)

**INDIGO MALLARD CREEK LLC (a limited liability company)**

Date of Formation: March 12, 2008  
State of Formation: Florida  
Member: Indigo Development LLC 100%  
(Managing Member)

**INDIGO MELBOURNE LLC (a limited liability company)**

Date of Formation: February 24, 2003  
State of Formation: Florida  
Member: Indigo Development LLC 100%  
(Managing Member)

**INDIGO SANFORD LLC (a limited liability company)**

Date of Formation: October 17, 2001  
State of Formation: Florida  
Member: Indigo Development LLC 100%  
(Managing Member)

**TOMOKA AG INC.**

**(Name changed from W. Hay Inc., effective July 18 2012)**

Date of Incorporation: December 21, 2004  
State of Incorporation: Florida  
Authorized Shares: 1,000 common shares, \$1.00 par value

SCHEDULE 6.11

LITIGATION

This Schedule 6.11 is qualified in its entirety by reference to specific provisions of the Credit Agreement to which it relates, and to the extent such provisions contain representations and warranties, this Schedule 6.11 is intended to only qualify and shall not be deemed to expand in any way the scope or effect of any such representations and warranties. Capitalized terms used herein but not defined herein shall have the meanings ascribed to them in the Credit Agreement. Inclusion of information herein shall not be construed as an admission that such information is material to the Borrower or to any of the Subsidiaries. Matters reflected in this Schedule are not necessarily limited to matters required by the Credit Agreement to be reflected herein. Any such additional matters are included herein for informational purposes and do not necessarily include other matters of similar nature. Headings have been inserted herein for convenience of reference only and shall to no extent have the effect of amending or changing the express description of this Schedule in the Credit Agreement.

On November 21, 2011, the Company, Indigo Mallard Creek LLC and Indigo Development LLC, as owners of the property leased to Harris Teeter, Inc. ("Harris Teeter") in Charlotte, North Carolina, were served with pleadings filed in the General Court of Justice, Superior Court Division for Mecklenburg County, North Carolina, for a highway condemnation action involving the property. The proposed road modifications would impact access to the Company's property that is leased to Harris Teeter. The Company does not believe the road modifications provided a basis for Harris Teeter to terminate the Lease. Regardless, in January 30, 2013, NCDOT proposed to redesign the road modifications to keep the all access intersection open for ingress with no change to the planned limitation on egress to the right-in/right-out only. Additionally, NCDOT and the City of Charlotte proposed to build and maintain a new access road/point into the property. Both government entities have confirmed that funding is available and the redesigned project is proceeding. Harris Teeter has expressed satisfaction with the redesigned project and indicated that it will not attempt to terminate its lease if this project is built as currently redesigned. Because the redesigned project will not be completed until 2016, the condemnation case has been placed in administrative closure. As a result, the trial and mediation will not likely be scheduled until requested by the parties, most likely in 2016.

In May 2010, the Company filed a lawsuit in the Circuit Court, Seventh Judicial Circuit, in and for Volusia County, Florida, in order to enforce its approximate \$3.8 million claim of lien on real property owned by FM Bayberry Cove Holding, LLC ("FM Bayberry") for its share of the costs for construction of a road. BB&T was included as a defendant as the current mortgage holder of the property subject to the Company's lien. BB&T filed a counterclaim asserting that its mortgage is superior to the Company's claim of lien which the Company denied. BB&T and the Company each filed motions for summary judgment as to the priority of their respective interests in the property which were heard by the court on January 12, 2012. The Circuit Court determined that the Company's interests were superior to the lien imposed by BB&T and all

other interests and a final judgment of foreclosure was subsequently entered. However, all further proceedings in the Circuit Court (including the foreclosure sale) were stayed pending BB&T's appeal to the Florida District Court of Appeal, Fifth District (the "Appellate Court"), regarding the Circuit Court's determination in the matter of priority. On October 29, 2013, the Appellate Court ruled in favor of the Company, affirming the Circuit Court's determination that the Company's lien against the approximately 600-acre parcel of residential land (lying west of I-95 near the LPGA International development and adjacent to Bayberry Colony) is superior to the lien imposed by BB&T. The judgment has accrued to over \$4.6 million, including interest. The Company has not included an accrual related to interest in the consolidated financial statements. At this time, the Appellate Court's decision is subject to possible motion for rehearing by BB&T. On December 3, 2013, the Circuit Court entered a Second Amended Final Judgment of Foreclosure in Accordance with the Appellate Court's Mandate, which, among other things, set the date of the Company's foreclosure sale to occur on January 29, 2014. On January 29, 2014, the Company's approximately \$4.7 million claim for unreimbursed costs and accrued interest was satisfied through the successful foreclosure of approximately 600 acres of land.

**Exhibit F to Third Amendment to Credit Agreement**

**Schedule 6.12**

**Tax Returns**

At this time, the following Subsidiaries, none of which is a Material Subsidiary, do not intend to pay taxes, assessments, fees and other governmental charges upon Property owned by each such subsidiary:

Indigo Grand Champions One LLC  
Indigo Grand Champions Two LLC  
Indigo Grand Champions Three LLC  
Indigo Grand Champions Four LLC  
Indigo Grand Champions Five LLC  
Indigo Grand Champions Six LLC

**Exhibit G to Third Amendment to Credit Agreement**

**Schedule 6.17**

**Environmental Issues**

This Schedule 6.17 is qualified in its entirety by reference to specific provisions of the Credit Agreement to which it relates, and to the extent such provisions contain representations and warranties, this Schedule 6.17 is intended to only qualify and shall not be deemed to expand in any way the scope or effect of any such representations and warranties. Capitalized terms used herein but not defined herein shall have the meanings ascribed to them in the Credit Agreement. Inclusion of information herein shall not be construed as an admission that such information is material to the Borrower or to any of the Subsidiaries. Matters reflected in this Schedule are not necessarily limited to matters required by the Credit Agreement to be reflected herein. Any such additional matters are included herein for informational purposes and do not necessarily include other matters of similar nature. Headings have been inserted herein for convenience of reference only and shall to no extent have the effect of amending or changing the express description of this Schedule in the Credit Agreement.

<u>Property</u>	<u>Address</u>	<u>Description of Environmental Issue</u>
CVS 8374	13550 U.S. Hwy 1 Roseland, FL	Underground storage tanks were removed and a clean closure letter was issued approximately 5/2003.
CVS 4525	550 W. First Street Sanford, FL	Monitoring wells were located on the property but a "No Further Action" letter from the Department of Environmental Protection was issued dated 01/12/2004.
CVS 3483	3550 N. U.S. Hwy 27 Sebring, FL	A prior Phase II identified underground storage tanks on the property that were removed. When the Company acquired this property, it be was believed that the previous owner had achieved site closure. It was recently brought to our attention that the proper

<u>Property</u>	<u>Address</u>	<u>Description of Environmental Issue</u>
CVS 3483 (cont.)		paperwork had not been filed correctly with the State thus closure was not achieved. The Company has since received a Site Rehabilitation Completion Order from the State releasing the Company from any obligation to conduct further site rehabilitation unless there is a subsequent change (as described in the Order) on the site.
Indigo Lakes Resort	Daytona Beach, FL	Indigo Lakes is currently in a State-funded program (PCPP) and has been for several years as result of some contamination originating from maintenance of machinery and equipment at golf course area occurring during the time the Company owned the resort. The program consists of monitoring numerous wells on site locations. Following the latest site review in early 2014, the State continues to require monitoring.

<u>Property</u>	<u>Address</u>	<u>Description of Environmental Issue</u>
Little Lake Grassy	Lake Placid, FL	Little Lake Grassy is a small pond located in an extensive orange grove that was formerly operated by the Company. The contamination originated at a maintenance facility used to work on machinery necessary to maintain an orange grove. The Company has engaged in remedial measures and monitoring at this site and is presently seeking a review of its status with the State of Florida.

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**Exhibit H to Third Amendment to Credit Agreement**

**Schedule 6.23**

**Maintenance and Condition**

This Schedule 6.23 is qualified in its entirety by reference to specific provisions of the Credit Agreement to which it relates, and to the extent such provisions contain representations and warranties, this Schedule 6.23 is intended to only qualify and shall not be deemed to expand in any way the scope or effect of any such representations and warranties. Capitalized terms used herein but not defined herein shall have the meanings ascribed to them in the Credit Agreement. Inclusion of information herein shall not be construed as an admission that such information is material to the Borrower or to any of the Subsidiaries. Matters reflected in this Schedule are not necessarily limited to matters required by the Credit Agreement to be reflected herein. Any such additional matters are included herein for informational purposes and do not necessarily include other matters of similar nature.

The Borrower owns approximately 10,500 acres of land in Daytona Beach, Volusia County, Florida and the surrounding area for which no formal flood zone determination has been made.



**Exhibit I to Third Amendment to Credit Agreement**

**Schedule 6.26**

**SIGNIFICANT LEASES  
(All Leases including self development)**

<u>Property</u>	<u>Tenant</u>	<u>Landlord</u>
1924 International Speedway Blvd. Daytona Beach, FL	American Signature #417	Golden Arrow Daytona ISB LLC
200 East La Habra La Habra, CA	Bank of America (CA8-160)	Bluebird North La Habra LLC
200 South Lemon Avenue Walnut, CA	Bank of America (CA7-141)	Bluebird North Walnut LLC
19601 Yorba Linda Boulevard Yorba Linda, CA	Bank of America (CA7-194)	Bluebird North Yorba Linda LLC
11262 Los Alamitos Boulevard Los Alamitos, CA	Bank of America (CA7-150)	Bluebird North Los Alamitos LLC
13952 Brookhurst Street Garden Grove, CA	Bank of America (CA7-147)	Bluebird South Garden Grove LLC
299 Ocean Avenue Laguna Beach, CA	Bank of America (CA6-104)	Bluebird South Laguna LLC
27571 Puerta Real Mission Viejo, CA	Bank of America (CA6-173)	Bluebird South Puerta Real Mission Viejo LLC
26821 Trabuco Road Mission Viejo, CA	Bank of America (CA6-158)	Bluebird South Trabuco Mission Viejo LLC
8850 Bolsa Avenue Westminster, CA	Bank of America (CA7-199)	Bluebird South Westminster LLC

<u>Property</u>	<u>Tenant</u>	<u>Landlord</u>
1900 International Speedway Blvd. Daytona Beach, FL	Barnes & Noble Booksellers, Inc. #2763	Indigo Development LLC
17510 N 75th Avenue Glendale, AZ	PNS Stores, Inc. d/b/a Big Lots	Bluebird Arrowhead Phoenix LLC
20926 Frederick Road Germantown, MD	Big Lots Stores, Inc. d/b/a Big Lots	Bluebird Germantown MD LLC
2700 West North Lane Phoenix, AZ	Blazin Wings, Inc. (Buffalo Wild Wings)	Bluebird BWW Phoenix LLC
4405 S. Hwy. 27 Clermont, FL	Holiday CVS, L.L.C. (Store #8375)	Indigo Development LLC
7970 N. Wickham Rd. Melbourne, FL	Holiday CVS, L.L.C. (Store #5202)	Indigo Melbourne LLC (as to an undivided 58% interest) Indigo Development LLC (as to an undivided 18% interest) Consolidated-Tomoka Land Co. (as to an undivided 24% interest)
13550 U.S. Hwy. 1 Roseland, FL	Holiday CVS, L.L.C. (Store 8374)	Indigo Development LLC
4215 9th St. S.W. Vero Beach, FL	Holiday CVS, L.L.C. (Store #7883)	Indigo Development LLC (as to an undivided 78% interest) Consolidated-Tomoka Land Co. (as to an undivided 22% interest)
4639 W. 1st St. Sanford, FL	Holiday CVS, L.L.C. (Store #5195)	Indigo Sanford LLC (as to an undivided 75% interest) Indigo Development LLC (as to an undivided 25% interest)\

550 W. First Street Sanford, FL	Holiday CVS, L.L.C. (Store #4525)	Consolidated-Tomoka Land Co.
3550 N. U.S. Hwy. 27 Sebring, FL	Holiday CVS, L.L.C. (Store #3483)	Indigo Development LLC
1875 Capital Circle Tallahassee, FL	Holiday CVS, L.L.C. (Store #5025)	Bluebird Capitol Circle LLC
<u>Property</u>	<u>Tenant</u>	<u>Landlord</u>
4400 N. Central Chicago, IL	JPMorgan Chase Bank, N.A.	Bluebird Chase Chicago LLC
1871 Jonesboro Rd. McDonough, GA	Dick's Sporting Goods, Inc.	Consolidated-Tomoka Land Co. (as to an undivided 40.5% interest) Indigo Development LLC (as to an undivided 28.7% interest) Indigo Henry LLC (as to an undivided 30.8% interest)
1871 Jonesboro Rd. McDonough, GA	Best Buy Stores, L.P.	Consolidated-Tomoka Land Co. (as to an undivided 40.5% interest) Indigo Development LLC (as to an undivided 28.7% interest) Indigo Henry LLC (as to an undivided 30.8% interest)
130 Lowe's Blvd. Lexington, NC	Lowe's Home Centers, Inc.	Indigo Development LLC
19935 Katy Freeway Houston (Katy), TX	Lowe's Home Centers, Inc.	CTLC Golden Arrow Katy LLC
2201 West W.T. Harris Blvd. Charlotte, NC	Harris Teeter, Inc.	Indigo Development LLC (as to an undivided 42% interest) Consolidated-Tomoka Land Co. (as to an undivided 37% interest) Indigo Mallard Creek LLC (as to an undivided 21% interest)

6355 Metrowest Blvd, Suite 100 Orlando, FL	Hilton Resorts Corporation	Bluebird Metrowest Orlando LLC
1800 Metrocenter Drive, Suite 100 Orlando, FL	Hilton Resorts Corporation	Bluebird Metrowest Orlando LLC
790 Gateway Dr. Altamonte Springs, FL	RBC Centura Bank	Consolidated-Tomoka Land Co.
4395 Kimball Bridge Rd. Alpharetta, GA	Walgreen Co. (Store #5903)	Indigo Development LLC
1489 S. Orange Blossom Tr. Apopka, FL	Walgreen Co. (Store #7695)	Indigo Development LLC
2590 E. Hwy. 50 Clermont, FL	Walgreen Co. (Store 7273)	Indigo Development LLC (as to an undivided 64% interest) Consolidated-Tomoka Land Co. (as to an undivided 36% interest)
<u>Property</u>	<u>Tenant</u>	<u>Landlord</u>
1160 Malabar Rd., S.E. Palm Bay, FL	Walgreen Co. (Store #4816)	Bluebird WAG Palm Bay LLC
2870 28th Street Boulder, CO	Walgreen Co. (Store #12683)	Bluebird WAG Boulder LLC
<b>MASON COMMERCE CENTER (WILLIAMSON BUSINESS CENTER)</b> 1140 (Building 3) Williamson Blvd. Daytona Beach, FL		
Units 1, 2, 3 and 4	Lamar Advertising	Indigo Development LLC
1160 (Building 1) and 1180 (Building 2) Williamson Blvd. Daytona Beach, FL		

Units 100 and 110, Building 1	Volusia-Flagler Vascular Center, LLC	Indigo Development LLC
Units 150, 160, 170, Building 1	State of Florida Department of Revenue	Indigo Development LLC
Unit 140, Building 1	Walgreen Home Care	Indigo Development LLC
Units 120, 130 Building 1	Walgreen Co.	Indigo Development LLC
Units 110, 120, 130, 140, 150, 160, and 170, Building 2	State of Florida Department of Revenue	Indigo Development LLC
<b><i>LPGA PCD A LOT 2 (CONCIERGE BUILDING)</i></b>		
1616 Concierge Blvd. Daytona Beach, FL		
Suites A, C, and D, First Floor	Eubank, Hassell & Associates d/b/a Hassell, Moorhead & Carrol	Indigo Development LLC
Suites F, G and H, Second Floor	Merrell Lynch Pierce Fenner & Smith	Indigo Development LLC
Suite 103, First Floor	KB Home Gold Coast LLC	Indigo Development LLC
Suite 200, Second Floor	Accelerated Claims, Inc.	Indigo Development LLC

**LOAN AGREEMENT**

Dated as of September 30, 2014

Between

**THE ENTITIES SET FORTH ON SCHEDULE VI**, collectively  
as Borrower

and

**WELLS FARGO BANK, NATIONAL ASSOCIATION**,  
as Lender

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## LOAN AGREEMENT

**THIS LOAN AGREEMENT**, dated as of September 30, 2014 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this "**Agreement**"), between **WELLS FARGO BANK, NATIONAL ASSOCIATION**, having an address at Wells Fargo Center, 1901 Harrison Street, 2nd Floor, Oakland, California 94612 (together with its successors and/or assigns, "**Lender**") and **THE ENTITIES SET FORTH ON SCHEDULE VI**, each having an address at c/o Consolidated-Tomoka Land Co., 1530 Cornerstone Blvd., Suite 100, Daytona Beach, Florida 32117 (individually or collectively, as the context may require, together with their successors and/or assigns, "**Borrower**").

### RECITALS:

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

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

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

### ARTICLE 1.

#### DEFINITIONS; PRINCIPLES OF CONSTRUCTION

##### Section 1.1 Definitions.

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

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

"**Acceptable LLC**" shall mean a limited liability company formed under Delaware or Maryland law which (i) has at least one springing member, which, upon the dissolution of all of the members or the withdrawal or the disassociation of all of the members from such limited liability company, shall immediately become the sole member of such limited liability company, (ii) otherwise meets the Rating Agency criteria then applicable to such entities and (iii) satisfies the requirements of Section 5.2 hereof with respect to an Independent Director.

"**Accounts**" shall mean the Tax Reserve Account, the Insurance Reserve Account, the Replacement Reserve Account, the Leasing Reserve Account, the Existing TI/LC Reserve Account, and any other account established by this Agreement or the other Loan Documents.

"**Accrued Interest**" shall have the meaning set forth in Section 2.6(b) hereof.

"**Act**" shall have the meaning set forth in Section 5.1(c) hereof.

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

“**Adjusted Interest Rate**” shall mean a rate per annum equal to the greater of (a) the Initial Interest Rate plus 3.0 percent (3.0%) and (b) the sum of (i) the greater of (x) the offer side on the Anticipated Repayment Date of the Ten Year Swap Yield as displayed electronically on Telerate Page 19901 on Dow Jones Telerate, Inc., Bloomberg Financial Markets, or another recognized source of financial market information selected by Lender and (y) the Treasury Rate as of the Anticipated Repayment Date, and (ii) four hundred seventy-two points (472 bps).

“**Affiliate**” shall mean, as to any Person, any other Person that, directly or indirectly, owns more than forty-nine percent (49%) of, is in Control of, is Controlled by or is under common ownership or Control with such Person or is a director or officer of such Person or of an Affiliate of such Person.

“**Affiliated Manager**” shall mean any managing agent of the Property in which Borrower, Guarantor, any SPE Component Entity (if any) or any Affiliate of such entities has, directly or indirectly, any legal, beneficial or economic interest.

“**Allocated Loan Amount**” shall mean, for each Property, the amount set forth on Schedule V annexed hereto. The Allocated Loan Amount with respect to any Substitute Property shall, immediately following the applicable substitution pursuant to Section 6.6, be equal to the Allocated Loan Amount with respect to the corresponding Substituted Property.

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

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

“**Annual Budget**” shall have the meaning set forth in Section 4.12(a)(v).

“**Anticipated Repayment Date**” shall mean October 11, 2024.

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

“**Applicable Interest Rate**” shall mean (i) prior to the Anticipated Repayment Date, the Initial Interest Rate and (ii) on and after the Anticipated Repayment Date, the Adjusted Interest Rate.

**“Approved ID Provider”** shall mean each of CT Corporation, Corporation Service Company, National Registered Agents, Inc., Wilmington Trust Company, Stewart Management Company and Lord Securities Corporation; provided, that, additional national providers of independent directors may be deemed added to the foregoing hereunder to the extent approved in writing by Lender and the Rating Agencies.

**“Assignment of Management Agreement”** shall mean any Conditional Assignment of Management Agreement entered into after the date hereof among Lender, Borrower and Manager, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

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

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

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

**“Borrower Party”** shall mean any Person acting on behalf of or at the direction of Borrower, SPE Component Entity and/or Guarantor.

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

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

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

**“Cash Trap Event Period”** shall have the meaning set forth in the Cash Management Agreement.

**“Casualty”** shall have the meaning set forth in Section 7.2.

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

**“Closing Date”** shall mean the date of the funding of the Loan.

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

“**Constituent Members**” shall have the meaning set forth in Section 5.2(b) hereof.

“**Control**” shall mean the power to direct the management and policies of an entity, directly or indirectly, whether through the ownership of voting securities or other beneficial interests, by contract or otherwise.

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

“**DBRS**” shall mean DBRS, Inc.

“**Debt**” shall mean the outstanding principal amount set forth in, and evidenced by, this Agreement and the Note together with all interest accrued and unpaid thereon and all other sums due to Lender in respect of the Loan under the Note, this Agreement or the other Loan Documents, including, without limitation, the payment of all sums advanced and costs and expenses incurred (including unpaid or unreimbursed servicing and special servicing fees) by Lender in connection with the enforcement and/or collection of the Debt or any part thereof.

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

“**Debt Service Coverage Ratio**” shall have the meaning set forth on Exhibit A attached hereto and made a part hereof. All capitalized terms in such definition are also set forth on Exhibit A.

“**Debt Yield**” shall have the meaning set forth on Exhibit A attached hereto and made a part hereof. All capitalized terms in such definition are also set forth on Exhibit A.

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

“**Defaulting Borrower**” shall have the meaning set forth in Section 17.16 hereof.

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

“**Defeasance Approval Item**” shall have the meaning set forth in Section 2.8 hereof.

“**Defeasance Collateral**” shall mean either (i) with respect to a Total Defeasance Event, the Total Defeasance Collateral or (ii) with respect to a Partial Defeasance Event, the Partial Defeasance Collateral.

“**Defeasance Collateral Account**” shall have the meaning set forth in Section 2.8 hereof.

**“Defeasance Date”** shall have the meaning set forth in Section 2.8 hereof.

**“Defeasance Event”** shall mean a Total Defeasance Event or a Partial Defeasance Event, as applicable.

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

**“Defeased Note”** shall have the meaning set forth in Section 2.8 hereof.

**“Defined Benefit Plan”** shall mean a plan, document, agreement, or arrangement currently or previously maintained or sponsored by the Borrower or by any ERISA Affiliate or to which either the Borrower or any ERISA Affiliate currently makes, or previously made, contributions and (i) that provides or is expected to provide retirement benefits to employees or other workers and (ii) under which the Borrower could reasonably be expected to have any liability (including liability attributable from an ERISA Affiliate). A Defined Benefit Plan shall include any plan that if it were terminated at any time, would result in Borrower or any ERISA Affiliate being deemed to be a “contributing sponsor” (as defined in Section 4001(a)(13) of ERISA) of the terminated plan pursuant to ERISA Section 4069. A Defined Benefit Plan does not include a Multiemployer Plan.

**“Deposit Account”** shall have the meaning set forth in the Cash Management Agreement.

**“Disclosure Document”** shall have the meaning set forth in Section 11.2 hereof.

**“Eligible Account”** shall mean a separate and identifiable account from all other funds held by the holding institution that is either (a) an account or accounts maintained with a federal or state-chartered depository institution or trust company which complies with the definition of Eligible Institution or (b) a segregated trust account or accounts maintained with a federal or state chartered depository institution or trust company acting in its fiduciary capacity which, in the case of a state chartered depository institution or trust company, is subject to regulations substantially similar to 12 C.F.R. §9.10(b), having in either case a combined capital and surplus of at least \$50,000,000 and subject to supervision or examination by federal and state authority. An Eligible Account will not be evidenced by a certificate of deposit, passbook or other instrument.

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



**“Embargoed Person”** shall have the meaning set forth in Section 3.28 hereof.

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

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

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

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

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

**“Event of Default”** shall have the meaning set forth in Section 10.1 hereof.

**“Exchange Act”** shall have the meaning set forth in Section 11.2 hereof.

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

**“Exculpated Parties”** shall have the meaning set forth in Section 13.1 hereof.

**“Existing Leases”** shall mean those Leases as in effect as of the date hereof.

**“Existing TI/LC Reserve Account”** shall have the meaning set forth in Section 8.9 hereof.

**“Existing TI/LC Reserve Funds”** shall have the meaning set forth in Section 8.9 hereof.

**“Fitch”** shall mean Fitch, Inc.

**“Flood Insurance Acts”** shall have the meaning set forth in Section 7.1 hereof.

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

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

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

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

**“Harris Teeter”** shall mean Harris Teeter, LLC, and any permitted successor thereto with respect to the Harris Teeter Lease.

**“Harris Teeter Condemnation Requirements”** shall have the meaning set forth in Section 2.7 hereof.

**“Harris Teeter Lease”** shall mean that certain Lease dated as of April 17, 2008, by and between Harris Teeter, Inc., predecessor-in-interest to Harris Teeter as tenant, and Harris Teeter Properties, LLC, predecessor-in-interest to Golden Arrow Charlotte NC LLC, as landlord, as the same may be amended, modified or restated in accordance with the terms of this Agreement.

**“Harris Teeter Property”** shall mean that certain Individual Property located in Charlotte, North Carolina.

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

**“Immediate Repairs”** shall have the meaning set forth in Section 4.24 hereof.

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

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

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

**“Independent Director”** shall have the meaning set forth in Section 5.2 hereof.

**“Individual Property”** shall mean each “Property” as such term is defined in each Security Instrument.

**“Initial Interest Rate”** shall mean a rate per annum equal to four and thirty-three hundredths percent (4.33%).

**“Insurance Premiums”** shall have the meaning set forth in Section 7.1 hereof.

**“Insurance Reserve Account”** shall have the meaning set forth in Section 8.2 hereof.

**“Insurance Reserve Funds”** shall have the meaning set forth in Section 8.2 hereof.

**“Interest Accrual Period”** shall mean the period beginning on the eleventh (11th) day of each calendar month during the term of the Loan and ending on (but including) the tenth (10th) day of the following calendar month.

**“Interest Shortfall”** shall have the meaning set forth in Section 2.7 hereof.

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

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

**“Kroll”** shall mean Kroll Bond Rating Agency, Inc.

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

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

**“Leasing Reserve Account”** shall have the meaning set forth in Section 8.5 hereof.

**“Leasing Reserve Funds”** shall have the meaning set forth in Section 8.5 hereof.

**“Leasing Reserve Monthly Deposit”** shall have the meaning set forth in Section 8.5 hereof.

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

“**Liabilities**” shall have the meaning set forth in Section 11.2 hereof.

“**Licenses**” shall have the meaning set forth in Section 3.11(a) hereof.

“**Lien**” shall mean any mortgage, deed of trust, lien (statutory or otherwise), pledge, hypothecation, easement, restrictive covenant, preference, assignment, security interest, or any other encumbrance, charge or transfer of, or any agreement to enter into or create any of the foregoing, on or affecting all or any portion of the Property or any interest therein, or any direct or indirect interest in Borrower or any SPE Component Entity, including any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and mechanic’s, materialmen’s and other similar liens and encumbrances.

“**LLC Agreement**” shall have the meaning set forth in Section 5.1(c) hereof.

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

“**Loan Bifurcation**” shall have the meaning set forth in Section 11.1 hereof.

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

“**Loan-To-Value Ratio**” shall mean a percentage calculated by multiplying (i) a fraction, the numerator of which is the outstanding principal balance of the Loan and the denominator of which is the value of the Property based on a current appraisal thereof, by (ii) one hundred (100).

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

“**Lowe’s**” shall mean Lowe’s Home Centers, LLC, and any permitted successor thereto with respect to the Harris Teeter Lease.

“**Lowe’s Casualty Requirements**” shall have the meaning set forth in Section 2.7 hereof.

“**Lowe’s Lease**” shall mean that certain Lease dated as of May 21, 1996, by and between Lowe’s Home Centers, Inc., predecessor-in-interest to Lowe’s as tenant, and Earlon C. McWhorter, predecessor-in-interest to CTLC Golden Arrow Katy LLC, as landlord, as amended by that certain First Amendment to Lease dated as of June 18, 1997, as amended by that certain Second Amendment to Lease dated as of March 11, 2014, as the same may be further amended, modified or restated in accordance with the terms of this Agreement.

“**Lowe’s Property**” shall mean that certain Individual Property located in Katy, Texas.

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

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

**“Manager”** shall mean any entity selected as the manager of the Property in accordance with the terms of this Agreement or the other Loan Documents.

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

**“Material Agreements”** shall mean each contract and agreement relating to the ownership, management, development, use, operation, leasing, maintenance, repair or improvement of the Property, other than the Management Agreement and the Leases, as to which either (i) there is an obligation of Borrower to pay more than \$100,000.00 per annum; or (ii) the term thereof extends beyond one year (unless cancelable on thirty (30) days or less notice without requiring the payment of termination fees or payments of any kind).

**“Maturity Date”** shall mean October 11, 2034 or such other date on which the final payment of principal of the Note becomes due and payable as therein or herein provided, whether at such stated maturity date, by declaration of acceleration, or otherwise.

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

**“Member”** shall have the meaning set forth in Section 5.1(c) hereof.

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

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

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

**“Monthly Debt Service Payment Amount”** shall mean a payment equal to the amount of interest which has accrued during the preceding Interest Accrual Period computed at the Applicable Interest Rate.

**“Monthly Insurance Deposit”** shall have the meaning set forth in Section 8.2 hereof.

**“Monthly Payment Date”** shall mean the eleventh (11th) day of every calendar month occurring during the term of the Loan.

**“Monthly Tax Deposit”** shall have the meaning set forth in Section 8.1 hereof.

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

**“Morningstar”** shall mean Morningstar Credit Ratings, LLC.

**“Multiemployer Plan”** shall mean a “multiemployer plan” as defined in Section 3(37)(A) of ERISA or Section 4001(a)(3) of ERISA, and to which Borrower or any ERISA Affiliate is making, is obligated to make or has made or been obligated to make during the last six years, contributions on behalf of participants who are or were employed by any of them.

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

**“Net Proceeds Deficiency”** shall have the meaning set forth in Section 7.4 hereof.

**“New Manager”** shall have the meaning set forth in Section 4.15 hereof.

**“New Non-Consolidation Opinion”** shall mean a substantive non-consolidation opinion provided by outside counsel acceptable to Lender and the Rating Agencies and otherwise in form and substance acceptable to Lender and the Rating Agencies.

**“Non-Conforming Policy”** shall have the meaning set forth in Section 7.1 hereof.

**“Non-Consolidation Opinion”** shall mean that certain substantive non-consolidation opinion delivered to Lender by Brownstein Hyatt Farber Schreck, LLP in connection with the closing of the Loan.

**“Note”** shall mean that certain Promissory Note of even date herewith in the principal amount of \$30,000,000, made by Borrower in favor of Lender, as the same may be amended, restated, replaced, extended, renewed, supplemented, severed, split, or otherwise modified from time to time.

**“OFAC”** shall have the meaning set forth in Section 3.28 hereof.

**“Officer’s Certificate”** shall mean a certificate delivered to Lender by Borrower which is signed by Responsible Officer of Borrower.

**“Open Period Start Date”** shall have the meaning set forth in Section 2.7(a) hereof.

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

**“Overpaying Borrower”** shall have the meaning set forth in Section 17.16 hereof.

**“Partial Defeasance Collateral”** shall mean U.S. Obligations, which provide payments (i) on or prior to, but as close as possible to, the Business Day immediately preceding all Monthly Payment Dates under the Defeased Note and other scheduled payment dates, if any, under the Defeased Note after the Defeasance Date and up to and including the Open Period Start Date of the Defeased Note, and (ii) in amounts equal to or greater than the Partial Defeasance Scheduled Defeasance Payments relating to such Monthly Payment Dates under the Defeased Note and other scheduled payment dates under the Defeased Note.

**“Partial Defeasance Event”** shall have the meaning set forth in Section 2.8 hereof.

**“Partial Defeasance Scheduled Defeasance Payments”** shall mean scheduled payments of interest and principal under the Defeased Note for all Monthly Payment Dates occurring after the Defeasance Date and up to and including the Open Period Start Date with respect to the Defeased Note, and all payments required after the Defeasance Date, if any, under the Loan Documents for servicing fees, rating surveillance charges (to the extent applicable) and other similar charges.

**“Patriot Act”** shall have the meaning set forth in Section 3.29 hereof.

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

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

**“Permitted Equity Transfer”** shall have the meaning set forth in Section 6.3 hereof.

**“Permitted Property Transfer”** shall have the meaning set forth in Section 6.4 hereof.

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

**“Person”** shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

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

**“Policies”** shall have the meaning specified in Section 7.1 hereof.

**“Prohibited Transfer”** shall have the meaning set forth in Section 6.2 hereof.

**“Property”** shall, individually or collectively, as the context may require, each Individual Property.

**“Provided Information”** shall have the meaning set forth in Section 11.2(b) hereof.

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

**“Qualified Insurer”** shall have the meaning set forth in Section 7.1 hereof.

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

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



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

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

**“REA”** shall mean, individually and/or collectively (as the context may require), each reciprocal easement, covenant, condition and restriction agreement or similar agreement affecting the Property as more particularly described on Schedule III hereto and any future reciprocal easement or similar agreement affecting the Property entered into in accordance with the applicable terms and conditions hereof.

**“Registrar”** shall have the meaning set forth in Section 11.7 hereof.

**“Registration Statement”** shall have the meaning set forth in Section 11.2 hereof.

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

**“Related Loan”** shall mean a loan made to an Affiliate of Borrower, or secured by a Related Property, that is included with the Loan (or a portion of the Loan) in a Securitization.

**“Related Party”** shall have the meaning set forth in Section 5.1(e)(xi) hereof.

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

**“Release Amount”** shall mean an amount equal to the greater of (i) 100% of the net proceeds of the sale of such Individual Property, as reasonably determined by Lender, (ii) 125% of the Allocated Loan Amount with respect to each Individual Property being released from the Security Instrument pursuant to the terms and conditions hereof or (iii) such greater amount as may be required to maintain compliance with REMIC Requirements.

**“Release Property”** shall have the meaning set forth in Section 2.9 hereof.

**“Release Security Instrument”** shall have the meaning set forth in Section 2.9 hereof.

**“Remaining Property”** shall have the meaning set forth in Section 2.9.

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

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

**“Rent Loss Proceeds”** shall have the meaning set forth in Section 7.1 hereof.

**“Rent Roll”** shall have the meaning set forth in Section 3.17 hereof.

**“Rents”** shall have the meaning set forth in the Security Instrument.

**“Replacement Reserve Account”** shall have the meaning set forth in Section 8.4 hereof.

**“Replacement Reserve Funds”** shall have the meaning set forth in Section 8.4 hereof.

**“Replacement Reserve Monthly Deposit”** shall have the meaning set forth in Section 8.4 hereof.

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

**“Reporting Failure”** shall have the meaning set forth in Section 4.12 hereof.

**“Required Financial Item”** shall have the meaning set forth in Section 4.12 hereof.

**“Reserve Funds”** shall mean the Tax Reserve Funds, the Insurance Reserve Funds, the Replacement Reserve Funds, the Leasing Reserve Funds, the Existing TI/LC Reserve Funds, and any other escrow funds established by this Agreement or the other Loan Documents.

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

**“Restoration”** shall have the meaning set forth in Section 7.2 hereof.

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

**“Restoration Threshold”** shall mean an amount equal to 2% of the outstanding principal balance of the Loan.

**“Restricted Party”** shall have the meaning set forth in Section 6.1 hereof.

**“Sale or Pledge”** shall have the meaning set forth in Section 6.1 hereof.

**“Scheduled Defeasance Payments”** shall mean scheduled payments of interest and principal under the Note for all Monthly Payment Dates occurring after the Defeasance Date and up to and including the Open Period Start Date (including the outstanding principal balance on the Note as of the Open Period Start Date), and all payments required after the Defeasance Date, if any, under the Loan Documents for servicing fees, rating surveillance charges (to the extent applicable) and other similar charges.

**“Secondary Market Transaction”** shall have the meaning set forth in Section 11.1 hereof.

**“Securities”** shall have the meaning set forth in Section 11.1 hereof.

**“Securities Act”** shall have the meaning set forth in Section 11.2 hereof.

**“Securitization”** shall have the meaning set forth in Section 11.1 hereof.

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

**“Security Instrument”** shall mean, individually or collectively, as the context may require, each of the first priority (i) Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated the date hereof with respect to the Individual Property located in Houston, Texas; (ii) Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated the date hereof with respect to the Individual Property

located in Charlotte, North Carolina; (iii) Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated the date hereof with respect to the Individual Property located in Renton, Washington; (iv) Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated the date hereof with respect to the Individual Property located in Glendale, Arizona; (v) Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated the date hereof with respect to the Individual Property located in Germantown, Maryland; and (vi) Multistate Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated the date hereof with respect to the Individual Property located in Clermont, Florida, each as executed and delivered by the respective Borrower as security for the Loan and encumbering the Property, each as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Self-Insurance Requirements**” shall have the meaning set forth in Section 7.1 hereof.

“**Servicer**” shall have the meaning set forth in Section 11.4 hereof.

“**Severed Loan Documents**” shall have the meaning set forth in Article 10.

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

“**Single Purpose Entity**” shall mean an entity which satisfies all of the requirements of Section 5.1 hereof and whose structure and organizational and governing documents are otherwise in form and substance acceptable to Lender and the Rating Agencies.

“**SPE Component Entity**” shall have the meaning set forth in Section 5.1(b) hereof.

“**Special Member**” shall have the meaning set forth in Section 5.1(c) hereof.

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

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

“**Substitute Property**” shall have the meaning set forth in Section 6.6 hereof.

“**Substituted Property**” shall have the meaning set forth in Section 6.6 hereof.

“**Substitution**” shall have the meaning set forth in Section 6.6 hereof.

“**Successor Borrower**” shall have the meaning set forth in Section 2.8 hereof.

“**Tax Waiver Conditions Precedent**” shall mean the following conditions precedent: (i) no Event of Default exists; and (ii) no more than thirty (30) days after the same have been paid, and in no event prior to the applicable Taxes having become delinquent, Borrower delivers to Lender evidence in form and substance satisfactory to Lender that the applicable Taxes have been paid for the corresponding period.

“**Tax Reserve Account**” shall have the meaning set forth in Section 8.1 hereof.

“**Tax Reserve Funds**” shall have the meaning set forth in Section 8.1 hereof.

“**Taxes**” shall mean all taxes, assessments, water rates, sewer rents, business improvement district or other similar assessments and other governmental impositions, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Land, now or hereafter levied or assessed or imposed against the Property or any part thereof.

“**Tenant**” shall mean any Person leasing, subleasing or otherwise occupying any portion of the Property under a Lease or other occupancy agreement with Borrower.

“**Title Insurance Policy**” shall mean that certain ALTA mortgagee title insurance policy issued with respect to the Property and insuring the lien of the Security Instrument.

“**Total Defeasance Collateral**” shall mean U.S. Obligations, which provide payments (i) on or prior to, but as close as possible to, the Business Day immediately preceding all Monthly Payment Dates and other scheduled payment dates, if any, under the Note after the Defeasance Date and up to and including the Open Period Start Date, and (ii) in amounts equal to or greater than the Scheduled Defeasance Payments relating to such Monthly Payment Dates and other scheduled payment dates.

“**Total Defeasance Event**” shall have the meaning set forth in Section 2.8 hereof.

“**Treasury Rate**” shall mean, as of the date of determination, the yield, calculated by Lender by linear interpolation (rounded to the nearest one-thousandth of one percent (i.e., 0.001%)) of the yields of non-inflation adjusted non-callable United States Treasury obligations with terms (one longer and one shorter) most nearly approximating the period from such date of determination to the Maturity Date, as determined by Lender on the basis of Federal Reserve Statistical Release H.15-Selected Interest Rates under the heading U.S. Governmental Security/Treasury Constant Maturities, or another recognized source of financial market information selected by Lender. Lender’s determination of the Treasury Rate shall be final absent manifest error.

“**UCC**” or “**Uniform Commercial Code**” shall mean the Uniform Commercial Code as in effect in the State.

“**Undeclared Note**” shall have the meaning set forth in Section 2.8 hereof.

“**Underwriter Group**” shall have the meaning set forth in Section 11.2 hereof.

“**Updated Information**” shall have the meaning set forth in Section 11.1 hereof.

“**U.S. Obligations**” shall mean “government securities” as defined in Section 2(a)(16) of the Investment Company Act of 1940 and within the meaning of Treasury Regulation Section 1.860G-2(a)(8); provided, that, (i) such “government securities” are not subject to prepayment, call or early redemption, (ii) to the extent that any REMIC Requirements require a

revised and/or alternate definition of “government securities” in connection with any defeasance hereunder, the foregoing shall be deemed amended in a manner commensurate therewith and (iii) the aforesaid laws and regulations shall be deemed to refer to the same as may be and/or may hereafter be amended, restated, replaced or otherwise modified.

“**Wells Fargo**” shall mean Wells Fargo Bank, National Association.

“**Wells Group**” shall have the meaning set forth in Section 11.2 hereof.

“**Walgreen Lease**” shall have the meaning set forth in Section 7.1 hereof.

“**Walgreen Property**” shall have the meaning set forth in Section 7.1 hereof.

“**Walgreen Tenant**” shall have the meaning set forth in Section 7.1 hereof.

“**Work Charge**” shall have the meaning set forth in Section 4.16(a) hereof.

“**Yield Maintenance Premium**” shall mean an amount equal to the greater of the following two amounts: (a) an amount equal to 3% of the amount prepaid; or (b) an amount equal to (i) the amount, if any, by which the sum of the present values as of the prepayment date of all unpaid principal and interest payments required hereunder, calculated by discounting such payments from the respective dates each such payment was due hereunder (or, with respect to the payment required on the Open Period Start Date (assuming the outstanding principal balance of the Loan is due on the Open Period Start Date), from the Open Period Start Date) back to the prepayment date at a discount rate equal to the Periodic Treasury Yield (defined below) exceeds the outstanding principal balance of the Loan as of the prepayment date, *multiplied* by (ii) a fraction whose numerator is the amount prepaid and whose denominator is the outstanding principal balance of the Loan as of the prepayment date. For purposes of the foregoing, “**Periodic Treasury Yield**” shall mean (y) the annual yield to maturity of the actively traded non-callable United States Treasury fixed interest rate security (other than any such security which can be surrendered at the option of the holder at face value in payment of federal estate tax or which was issued at a substantial discount) that has a maturity closest to (whether before, on or after) the Open Period Start Date (or if two or more such securities have maturity dates equally close to the Open Period Start Date, the average annual yield to maturity of all such securities), as reported in *The Wall Street Journal* or other authoritative publication or news retrieval service on the fifth Business Day preceding the prepayment date, *divided by* (z) 12. Lender’s calculation of the Yield Maintenance Premium, and all component calculations, shall be conclusive and binding on Borrower absent manifest error.

## **Section 1.2 Principles of Construction.**

All references to sections, exhibits and schedules are to sections, exhibits and schedules in or to this Agreement unless otherwise specified. All uses of the word “including” shall mean “including, without limitation” unless the context shall indicate otherwise. Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined.

**ARTICLE 2.**

**GENERAL TERMS**

**Section 2.1        The Loan.**

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

**Section 2.2        Disbursement to Borrower.**

Borrower may request and receive only one borrowing hereunder in respect of the Loan and any amount borrowed and repaid hereunder in respect of the Loan may not be re-borrowed.

**Section 2.3        The Note and the Other Loan Documents.**

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

**Section 2.4        Use of Proceeds.**

Borrower shall use the proceeds of the Loan to (i) pay and discharge any existing loans relating to the Property, (ii) pay all past-due Taxes, Insurance Premiums and Other Charges, if any, in respect of the Property, (iii) make initial deposits of the Reserve Funds, (iv) pay costs and expenses incurred in connection with the closing of the Loan, and (v) to the extent any proceeds remain after satisfying clauses (i) through (iv) above, for such lawful purpose as Borrower shall designate.

**Section 2.5        Interest Rate.**

(a) Initial Interest Rate. Generally, interest on the outstanding principal balance of the Loan shall accrue from the Closing Date (i) up to but excluding the Anticipated Repayment Date at the Initial Interest Rate if the Loan is not repaid in full on or before the Anticipated Repayment Date, or (ii) up to and including the Anticipated Repayment Date at the Initial Interest Rate if the Loan is repaid in full on or before the Anticipated Repayment Date.

(b) Adjusted Interest Rate. Unless the Loan is repaid in full on or before the Anticipated Repayment Date, interest on the outstanding principal balance of the Loan, including without limitation Accrued Interest, shall accrue from and including the Anticipated Repayment Date to and including the Maturity Date at the Adjusted Interest Rate.

(c) Default Rate. In the event that, and for so long as, any Event of Default shall have occurred and be continuing, the outstanding principal balance of the Loan and, to the extent permitted by Applicable Law, overdue interest in respect of the Loan, shall accrue interest at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained herein.

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

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

## **Section 2.6      Loan Payments.**

(a) Payment Before Anticipated Repayment Date. Borrower shall make a payment to Lender of interest only on the Closing Date for the period from the Closing Date through (but excluding) the eleventh (11<sup>th</sup>) day of either (i) the month in which the Closing Date occurs (if such Closing Date is on or after the first (1<sup>st</sup>) day of such month, but prior to the eleventh (11<sup>th</sup>) day of such month) or (ii) if the Closing Date is after the eleventh (11<sup>th</sup>) day of the then current calendar month, the calendar month following the calendar month in which the Closing Date occurs (unless the Closing Date is the eleventh (11<sup>th</sup>) day of a calendar month, in which case no such separate payment of interest shall be due). Borrower shall make a payment to Lender of interest in the amount of the Monthly Debt Service Payment Amount on the Monthly Payment Date occurring in November, 2014 and on each Monthly Payment Date thereafter to and including the Anticipated Repayment Date. Each payment shall be applied first to accrued and unpaid interest and the balance, if any, to principal.

(b) Payment After Anticipated Repayment Date. On each Monthly Payment Date occurring after the Anticipated Repayment Date, Borrower shall (i) make a payment to Lender of interest in the amount of the Monthly Debt Service Payment Amount, such payment to be applied to interest in an amount equal to interest that would have accrued on the outstanding principal balance of the Loan at the Initial Interest Rate, and (ii) pay to Lender amounts as set forth in Section 5(b)(ix) of the Cash Management Agreement. Interest accrued at the Adjusted Interest Rate and not paid pursuant to the preceding sentence (such interest, "**Accrued Interest**") shall be paid in accordance with Section 5(b)(ix) of the Cash Management Agreement.



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

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

(e) Method and Place of Payment.

(i) Except as otherwise specifically provided herein, all payments and prepayments under this Agreement and the Note shall be made to Lender not later than Noon, California time, on the date when due and shall be made in lawful money of the United States of America in immediately available funds at Lender's office, and any funds received by Lender after such time shall, for all purposes hereof, be deemed to have been paid on the next succeeding Business Day.

(ii) Whenever any payment to be made hereunder or under any other Loan Document shall be stated to be due on a day which is not a Business Day, the due date thereof shall be deemed to be the immediately succeeding Business Day.

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

## **Section 2.7        Prepayments.**

(a) Except as otherwise provided herein, Borrower shall not have the right to prepay the Loan in whole or in part. On and after the Monthly Payment Date occurring three (3) months prior to the Anticipated Repayment Date (the "**Open Period Start Date**"), Borrower may, provided no Event of Default has occurred and is continuing, at its option and upon thirty (30) days prior notice to Lender (or such shorter period of time as may be permitted by Lender in its sole discretion), prepay the Debt in whole on any date without payment of the Yield Maintenance Premium in which case the lien of the Security Instrument shall be released at Borrower's cost. Any prepayment received by Lender on a date other than a Monthly Payment Date shall include interest which would have accrued thereon to the next Monthly Payment Date (such amounts, the "**Interest Shortfall**").

(b) Mandatory Prepayments. On each date on which Lender actually receives a distribution of Net Proceeds, and if such Net Proceeds are not made available to Borrower for Restoration pursuant to the terms of this Agreement, Lender shall apply one hundred percent (100%) of such Net Proceeds against the outstanding principal balance of the Note) and, if such Net Proceeds exceed the Restoration Threshold, Borrower may within ninety (90) days of such prepayment, prepay the entire outstanding balance of the Loan together with any applicable Interest Shortfall upon ten (10) days prior written notice to Lender. Within one hundred eighty (180) days of Borrower's receipt of notice of Harris Teeter's termination of the Harris Teeter Lease as a result of a Condemnation at the Harris Teeter Property, Borrower shall either (i) prepay the Debt in an amount equal to the then outstanding Allocated Loan Amount of the Harris Teeter Property (after deducting the Net Proceeds payable and paid to Lender relating to such Condemnation), together with any Interest Shortfall (and following such payment, subject to the terms of Section 11.3 hereof to the extent applicable with respect to any Casualty or Condemnation, Lender shall release the Harris Teeter Property from the Lien of its Security Instrument), or (ii) effect a Substitution of the Harris Teeter Property in accordance with Section 6.6 hereof (clauses (i) and (ii), each a "**Harris Teeter Condemnation Requirement**"). Within one hundred eighty (180) days of Borrower's receipt of notice of Lowe's termination of the Lowe's Lease as a result of a Casualty at the Lowe's Property, Borrower shall either (i) prepay the Debt in an amount equal to the then outstanding Allocated Loan Amount of the Lowe's Property (after deducting the Net Proceeds payable and paid to Lender relating to such Casualty) together with any Interest Shortfall (and following such payment, subject to the terms of Section 11.3 hereof to the extent applicable with respect to any Casualty or Condemnation, Lender shall release the Lowe's Property from the Lien of its Security Instrument), or (ii) effect a Substitution of the Lowe's Property in accordance with Section 6.6 hereof (clauses (i) and (ii), each a "**Lowe's Casualty Requirement**"). No Yield Maintenance Premium shall be due in connection with any prepayment made pursuant to this Section 2.7(b).

(c) Prepayments After Default. If concurrently with or during the continuance of an Event of Default, payment of all or any part of the principal of the Loan is tendered by Borrower, a purchaser at foreclosure or any other Person, such tender shall be deemed an attempt to circumvent the prohibition against prepayment prior to the Open Period Start Date as set forth herein and Borrower, such purchaser at foreclosure or other Person shall pay (i) the Yield Maintenance Premium and (ii) Interest Shortfall, in addition to the outstanding principal balance, all accrued and unpaid interest and other amounts payable under the Loan Documents. Borrower acknowledges that (i) a prepayment will cause damage to Lender; (ii) the Yield Maintenance Premium is intended to compensate Lender for the loss of its investment and the expense incurred and time and effort associated with making the Loan, which will not be fully repaid if the Loan is prepaid; (iii) it will be extremely difficult and impractical to ascertain the extent of Lender's damages caused by a prepayment after an acceleration or any other prepayment not permitted by the Loan Documents; and (iv) the Yield Maintenance Premium represents Lender's and Borrower's reasonable estimate of Lender's damages from the prepayment and is not a penalty.

(d) Intentionally Omitted.

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

## **Section 2.8          Defeasance.**

(a) Provided no Event of Default shall have occurred and remain uncured, following the Defeasance Lockout Release Date and prior to the Open Period Start Date (i) Borrower shall have the right to voluntarily defease the entire Loan and obtain a release of the lien of the Security Instrument by providing Lender with the Total Defeasance Collateral (hereinafter, a “**Total Defeasance Event**”) or (ii) Borrower shall have the right to defease a portion of the Loan subject to, and in accordance with, this Section 2.8 and Section 2.9 hereof (hereinafter, a “**Partial Defeasance Event**”), in each case, subject to the satisfaction of the following conditions precedent:

(i) Borrower shall provide Lender not less than thirty (30) days’ notice (or such shorter period of time if permitted by Lender in its sole discretion) but not more than ninety (90) days’ notice specifying (A) a date (the “**Defeasance Date**”) on which the Defeasance Event is to occur and (B) the principal amount of the Loan to be defeased (which shall be in the amount of the Release Amount in connection of a Partial Defeasance Event);

(ii) Borrower shall pay to Lender (A) all payments of principal and interest due and payable on the Loan to and including the Defeasance Date; (B) all other sums, if any, then due and payable under the Note, this Agreement, the Security Instrument and the other Loan Documents through and including the Defeasance Date; (C) all escrow, closing, recording, legal, appraisal, Rating Agency and other actual, reasonable fees, costs and expenses paid or incurred by Lender or its agents in connection with the Defeasance Event, the release of the lien of Security Instrument on the Property in connection with a Total Defeasance Event (or the Release Property in connection with a Partial Defeasance Event), the review of the proposed Defeasance Collateral and the preparation of the Security Agreement and related documentation; and (D) any revenue, documentary stamp, intangible or other taxes, charges or fees due in connection with the transfer or assumption of the Note and/or the Defeasance Event;

(iii) In the case of a Partial Defeasance Event, Lender, at Borrower’s expense, shall prepare all necessary documents to sever the indebtedness evidenced by the Note into two substitute notes, one (the “**Defeased Note**”) having a principal balance equal to the defeased portion of the original Note, which Defeased Note shall be in an amount exactly equal to the Release Amount, and the other (the “**Undefeased Note**”) having a principal balance equal to the undefeased portion of the original Note as of the Defeasance Date. The Defeased Note and the Undefeased Note shall have identical terms as the original Note, except for the principal balance, and provided that the Monthly Debt Service Payment Amount shall be apportioned ratably amongst the Defeased Note and the Undefeased Note, and the Defeased Note or Defeased Notes and the Undefeased Note or Undefeased Notes shall be cross-defaulted with each other. A Defeased Note cannot be the subject of any further Defeasance Event. An Undefeased Note may be the subject of a further Defeasance Event in accordance with the terms of this Section 2.8;

(iv) Borrower shall deposit the Defeasance Collateral into the Defeasance Collateral Account and otherwise comply with the provisions of Section 2.8(d) hereof;

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

(vi) Borrower shall deliver to Lender an opinion of counsel for Borrower that is standard in commercial lending transactions and subject only to customary qualifications, assumptions and exceptions opining, among other things, that (A) Lender has a legal and valid perfected first priority security interest in the Defeasance Collateral Account and the Total Defeasance Collateral; (B) if a Securitization has occurred (1) the REMIC Trust formed pursuant to such Securitization and/or any subsequent or prior Securitization of the Loan or any portion thereof or interest therein will each not fail to maintain their respective status as a "real estate mortgage investment conduit" within the meaning of Section 860D of the IRS Code as a result of a Total Defeasance Event pursuant to this Section 2.8 and (2) the Total Defeasance Event would neither (I) constitute a "significant modification" of the Loan within the meaning of Treasury Regulation Section 1.860G02(b)(2) nor (II) cause the Loan to fail to be a "qualified mortgage" within the meaning of Section 860G(a)(3)(A) of the IRS Code; and (C) a New Non-Consolidation Opinion with respect to the Successor Borrower;

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

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

(ix) Borrower shall deliver a certificate of a "big four" or other public accounting firm reasonably acceptable to Lender certifying that the Defeasance Collateral will generate monthly amounts equal to or greater than the Scheduled Defeasance Payments (or with respect to a Partial Defeasance Event, the Partial Defeasance Scheduled Defeasance Payments);

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

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

(b) If Borrower has elected to defease the entire Note and the requirements of this Section 2.8 have been satisfied, the Property shall be released from the lien of the Security Instrument, the Total Defeasance Collateral pledged pursuant to the Security Agreement shall be the sole source of collateral securing the Note, and Lender shall return to Borrower all unapplied

Reserve Funds. If Borrower has elected to defease a portion of the Note and the requirements of this Section 2.8 and Section 2.9 have been satisfied, the Property (other than any applicable Release Property) and the Partial Defeasance Collateral pledged pursuant to the Security Agreement shall be the source of collateral securing the Defeased Note and the applicable Release Property, if any, shall be released from the lien of the Security Instrument by a Release Security Instrument. In connection with the release (or partial release, as applicable) of the lien, Borrower shall submit to Lender, not less than ten (10) Business Days prior to the Defeasance Date (or such shorter time as is acceptable to Lender in its sole discretion), a release (or partial release, as applicable) of lien (and related Loan Documents) for execution by Lender. Such release shall be in a form appropriate in the jurisdiction in which the Property is located and shall contain standard provisions protecting the rights of the releasing lender. In addition, Borrower shall provide all other documentation Lender reasonably requires to be delivered by Borrower in connection with such release, together with an Officer's Certificate certifying that such documentation (i) is in compliance with all Applicable Law, and (ii) will affect such release in accordance with the terms of this Agreement. Borrower shall pay all costs, taxes and expenses associated with the release (or partial release, as applicable) of the lien of the Security Instrument, including Lender's reasonable attorneys' fees.

(c) Intentionally Omitted.

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

(e) In connection with a Defeasance Event under this Section 2.8, Borrower shall transfer and assign all obligations, rights and duties under and to (i) in connection with a Total Defeasance Event, the Note and the Security Agreement, together with the Defeasance Collateral, or (ii) in connection with a Partial Defeasance Event, the Defeased Note and the Security Agreement, together with the Partial Defeasance Collateral, to a newly-created

successor entity, which entity shall be a Single Purpose Entity and which entity shall be designated or established by Borrower, and reasonably satisfactory to Lender (the “**Successor Borrower**”). Borrower shall have the right to purchase, or cause to be purchased on behalf of Borrower, the pledged Defeasance Collateral. Such Successor Borrower shall assume the obligations under the Note (or the Defeased Note, in the case of a Partial Defeasance Event) and the Security Agreement, and, in connection with a Total Defeasance Event only, Borrower and Guarantor shall be relieved of its obligations under the Loan Documents (other than those obligations which by their terms survive a repayment, defeasance or other satisfaction of the Loan and/or a transfer of the Property in connection with Lender’s exercise of its remedies under the Loan Documents). Borrower shall pay a minimum of \$1,000 to any such Successor Borrower as consideration for assuming the obligations under the Note (or the Defeased Note, in the case of a Partial Defeasance Event) and the Security Agreement. Borrower shall pay all actual, reasonable costs and expenses incurred by Lender, including Lender’s attorney’s fees and expenses, incurred in connection therewith.

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

### **Section 2.9 Partial Release.**

Borrower shall have the right to cause no more than three (3) Individual Properties (each a “**Release Property**”) to be released from the lien of the related Security Instrument (the “**Release Security Instrument**”) and the Loan Documents upon a Partial Defeasance Event in connection with a bona-fide sale to a non-affiliated third-party, provided:

(a) no Event of Default under any Loan Documents shall have occurred and be continuing;

(b) the Debt Yield of the Remaining Property shall be no less than the greater of (i) 11.0% or (ii) the Debt Yield of all Properties, including the Release Property, prior to the release;

(c) the weighted average remaining lease term of the Leases of the Remaining Property must not be less than the weighted average remaining lease term of the Leases of all Individual Properties, including the Release Property, prior to such release;

(d) the weighted average credit rating of the Tenants of the Remaining Property must not be less than the weighted average credit rating of the Tenants of all Individual Properties, including the Release Property, prior to such release;

(e) Borrower shall cause to be delivered to Lender, at Borrower’s sole cost and expense, a Rating Agency Confirmation in connection with the release of the Release Loan;

(f) Borrower shall procure from the title company which issued the title insurance policy to Lender an endorsement to Lender's title insurance policy reasonably acceptable to Lender which shall provide, *inter alia*, that the lien and priority of the Security Instrument, other than the Release Security Instrument, as to the Property, other than the Release Property (the "**Remaining Property**") shall be unaffected as a result of the release of the Release Property and that such Security Instruments shall continue to constitute a valid first lien, and Borrower shall further cause such title company to issue such further endorsements as Lender shall reasonably require;

(g) Borrower shall deliver to Lender an opinion of counsel for Release Borrower that is standard in commercial lending transactions and subject only to customary qualifications, assumptions and exceptions opining, that the Securitization of the Loan will not fail to maintain its status as a REMIC Trust as a result of the release;

(h) Borrower shall pay to Lender all costs and expenses (including without limitation, all third-party reports, Rating Agency costs, title charges and reasonable attorneys' fees and disbursements) paid or incurred by Lender in connection with Borrower's rights arising under this Section 2.9;

(i) Notwithstanding the foregoing provisions of this Section 2.9 or anything herein to the contrary, this Section 2.9 is subject to the terms of Section 11.3 hereof; and

(j) Borrower shall simultaneously with the release of the Release Property transfer title to the Release Property to a person(s), party(ies) or entity(ies) other than Borrower or any person, party or entity owned or controlled by Borrower or any Affiliate of Borrower and the SPE Component Entity shall transfer all ownership interests in the applicable Borrower of such Release Party to a person(s), party(ies) or entity(ies) other than Borrower or SPE Component Entity. In the event the applicable Borrower is Golden Arrow Clermont FL LLC, the Deposit Account and the Cash Management Account shall be transferred to another Borrower.

### ARTICLE 3.

#### REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants as of the Closing Date that:

##### **Section 3.1      Legal Status and Authority.**

Borrower (a) is duly organized, validly existing and in good standing under the laws of its state of formation; (b) is duly qualified to transact business and is in good standing in the State; and (c) has all necessary approvals, governmental and otherwise, and full power and authority to own, operate and lease the Property. Borrower has full power, authority and legal right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the Property pursuant to the terms hereof and to keep and observe all of the terms of this Agreement, the Note, the Security Instrument and the other Loan Documents on Borrower's part to be performed.

### **Section 3.2      Validity of Documents.**

(a) The execution, delivery and performance of this Agreement, the Note, the Security Instrument and the other Loan Documents by Borrower and its applicable Affiliates and the borrowing evidenced by the Note and this Agreement (i) are within the power and authority of such parties; (ii) have been authorized by all requisite organizational action of such parties; (iii) have received all necessary approvals and consents, corporate, governmental or otherwise; (iv) to the best of Borrower's knowledge, will not violate, conflict with, result in a breach of or constitute (with notice or lapse of time, or both) a material default under any provision of law, any order or judgment of any court or Governmental Authority, any license, certificate or other approval required to operate the Property, Borrower's organizational documents, or any indenture, agreement or other instrument to which Borrower is a party or by which it or any of its assets or the Property is or may be bound or affected, including, without limitation, the Management Agreement; (v) will not result in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of its assets, except the lien and security interest created hereby and by the other Loan Documents; and (vi) will not require any authorization or license from, or any filing with, any Governmental Authority (except for the recordation of the Security Instrument in appropriate land records in the State and except for Uniform Commercial Code filings relating to the security interest created hereby), (b) this Agreement, the Note, the Security Instrument and the other Loan Documents have been duly executed and delivered by Borrower through the undersigned authorized representative of Borrower and (c) this Agreement, the Note, the Security Instrument and the other Loan Documents constitute the legal, valid and binding obligations of Borrower and are enforceable against Borrower in accordance with their respective terms (except as such enforcement may be limited by bankruptcy, insolvency, fraudulent transfers, reorganization, moratorium or other similar Creditors Rights Laws, and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law)). The Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense by Borrower, including the defense of usury, nor would the operation of any of the terms of the Loan Documents, or the exercise of any right thereunder, render the Loan Documents unenforceable (except as such enforcement may be limited by bankruptcy, insolvency, fraudulent transfers, reorganization, moratorium or other similar Creditors Rights Laws, and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law)), and Borrower has not asserted any right of rescission, set-off, counterclaim or defense with respect thereto.

### **Section 3.3      Litigation.**

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



**Section 3.4      Agreements.**

Borrower is not a party to any agreement or instrument or subject to any restriction which would have a Material Adverse Effect. Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party or by which Borrower or the Property is bound. Borrower has no material financial obligation under any agreement or instrument to which Borrower is a party or by which Borrower or the Property is otherwise bound, other than (a) obligations incurred in the ordinary course of the operation of the Property, (b) obligations under this Agreement, the Security Instrument, the Note and the other Loan Documents and (c) obligations disclosed in the financial statements delivered to Lender prior to the date hereof. There is no agreement or instrument to which Borrower is a party or by which Borrower is bound that would require the subordination in right of payment of any of Borrower's obligations hereunder or under the Note to an obligation owed to another party.

**Section 3.5      Financial Condition.**

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

(b) Neither the Property nor any portion thereof is the subject of any proceeding under any Creditors Rights Laws.

(c) No petition in bankruptcy has been filed by or against Borrower, Guarantor or, to the best of Borrower's knowledge, any Affiliate thereof, in the last ten (10) years, and neither Borrower, Guarantor nor any Affiliate thereof, in the last ten (10) years has ever made any assignment for the benefit of creditors or taken advantage of any Creditors Rights Laws.

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

**Section 3.6      Disclosure.**

To the best of Borrower's knowledge, Borrower has disclosed to Lender all material facts and has not failed to disclose any material fact that could cause any representation or warranty made herein to be materially misleading.

**Section 3.7      No Plan Assets.**

As of the date hereof and throughout the term of the Loan (a) Borrower is not and will not be an "employee benefit plan," as defined in Section 3(3) of ERISA, subject to Title I of ERISA, (b) Borrower is not and will not be a "governmental plan" within the meaning of Section 3(32) of ERISA, (c) transactions by or with Borrower are not and will not be subject to

any state statute, regulation or ruling regulating investments of, or fiduciary obligations with respect to, governmental plans, and (d) none of the assets of Borrower constitutes or will constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101, as modified by Section 3(42) of ERISA. As of the date hereof, neither Borrower nor any ERISA Affiliate maintains, sponsors or contributes to a Defined Benefit Plan or a Multiemployer Plan. Neither the Borrower nor any ERISA Affiliate sponsors, contributes to or maintains, either currently or in the past, a plan, document, agreement, or arrangement subject to ERISA.

**Section 3.8 Not a Foreign Person.**

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

**Section 3.9 Business Purposes.**

The Loan is solely for the business purpose of Borrower, and is not for personal, family, household, or agricultural purposes.

**Section 3.10 Borrower Information.**

Borrower's principal place of business and its chief executive office as of the date hereof is c/o Consolidated-Tomoka Land Co., 1530 Cornerstone Blvd., Suite 100, Daytona Beach, Florida 32117. Borrower's mailing address, as set forth in the opening paragraph hereof or as changed in accordance with the provisions hereof, is true and correct. Borrower is not subject to back-up withholding taxes.

**Section 3.11 Status of Property.**

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

(b) To the best of Borrower's knowledge and except as disclosed in the property zoning report(s) delivered to Lender on or prior to the date hereof, the Property and the present and contemplated use and occupancy thereof are in material compliance with all applicable zoning ordinances, building codes, land use laws, Environmental Laws and other similar Applicable Law.

(c) The Property is served by all utilities necessary for the current or contemplated use thereof. All utility service is provided by public utilities and the Property has accepted or is equipped to accept such utility service. The Property is served by public water and sewer systems. All utilities and public water and sewer systems serving the Property are adequate for the current or contemplated use thereof.

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

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

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

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

(h) To the best of Borrower's knowledge, all liquid and solid waste disposal, septic and sewer systems located on the Property are in a good and safe condition and repair and in compliance with all Applicable Law.

(i) No portion of the Improvements is located in an area identified by the Federal Emergency Management Agency or any successor thereto as an area having special flood hazards pursuant to the Flood Insurance Acts or, if any portion of the Improvements is located within such area, Borrower has obtained and will maintain the insurance prescribed in Section 7.1(a) hereof. No part of the Property consists of or is classified as wetlands, tidelands or swamp and overflow lands.

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

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

**Section 3.12 Financial Information.**

All financial data, including, without limitation, the balance sheets, statements of cash flow, statements of income and operating expense and rent rolls, that have been delivered to Lender in respect of Borrower, Guarantor and/or the Property (a) are true, complete and correct in all material respects, (b) accurately represent the financial condition of Borrower, Guarantor or the Property, as applicable, in all material respects, as of the date of such reports, and (c) to the extent prepared or audited by an independent certified public accounting firm, have been prepared in accordance with GAAP throughout the periods covered, except as disclosed therein. Borrower does not have any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and reasonably likely to have a Material Adverse Effect, except as referred to or reflected in said financial statements. Since the date of such financial statements, there has been no materially adverse change in the financial condition, operations or business of Borrower or Guarantor from that set forth in said financial statements.

**Section 3.13 Condemnation.**

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

**Section 3.14 Separate Lots.**

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

**Section 3.15 Insurance.**

Borrower has obtained and has delivered to Lender certified copies of all Policies with respect to coverage maintained by Borrower reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. There are no present claims of any material nature under any of the Policies, and to Borrower's knowledge, no Person, including Borrower, has done, by act or omission, anything which would impair the coverage of any of the Policies.

**Section 3.16 Use of Property.**

The Property is used exclusively as retail centers and other appurtenant and related uses.

### **Section 3.17 Leases and Rent Roll.**

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

### **Section 3.18 Filing and Recording Taxes.**

All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid by any Person under Applicable Law currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of this Agreement, the Security Instrument, the Note and the other Loan Documents, including, without limitation, the Security Instrument, have been paid or will be paid, and, under current Applicable Law, the Security Instrument is enforceable in accordance with its terms by Lender (or any subsequent holder thereof), except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Creditors Rights Laws, and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

**Section 3.19 Management Agreement.**

Borrower is not a party to any management agreement and is not obligated to pay any party any management fees pursuant to a written agreement or otherwise.

**Section 3.20 Illegal Activity/Forfeiture.**

(a) No portion of the Property has been or will be purchased, improved, equipped or furnished with proceeds of any illegal activity and to the best of Borrower's knowledge, there are no illegal activities or activities relating to controlled substances at the Property (including, without limitation, any growing, distributing and/or dispensing of medical marijuana).

(b) There has not been and shall never 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 this Agreement, the Note, the Security Instrument or the other Loan Documents. Borrower hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right of forfeiture. Borrower also hereby covenants and agrees that it shall not commit, permit or suffer to exist any illegal activities or activities relating to controlled substances at the Property (including, without limitation, any growing, distributing and/or dispensing of medical marijuana).

**Section 3.21 Taxes.**

Borrower has filed all federal, state, county, municipal, and city income, personal property and other tax returns required to have been filed by it and has paid all taxes and related liabilities which have become due pursuant to such returns or pursuant to any assessments received by it. Borrower knows of no basis for any additional assessment in respect of any such taxes and related liabilities for prior years.

**Section 3.22 Permitted Encumbrances.**

To the best of Borrower's knowledge, none of the Permitted Encumbrances, individually or in the aggregate, materially interferes with the benefits of the security intended to be provided by this Agreement, the Security Instrument, the Note and the other Loan Documents, materially and adversely affects the value or marketability of the Property, impairs the use or the operation of the Property or impairs Borrower's ability to pay its obligations in a timely manner.

**Section 3.23 Material Agreements.**

With respect to each Material Agreement, to the best of Borrower's knowledge, (a) each Material Agreement is in full force and effect and has not been amended, restated, replaced or otherwise modified (except, in each case, as expressly set forth herein), (b) there are no defaults under any Material Agreement by any party thereto, which remains uncured after the expiration of any applicable notice and cure period, (c) all payments and other sums due and payable under the Material Agreements have been paid in full, (d) no party to any Material Agreement has commenced any action or given or received any notice for the purpose of terminating any

Material Agreement, and (e) the representations made in any estoppel or similar document delivered by Borrower with respect to any Material Agreement in connection with the Loan are true, complete and correct and are hereby incorporated by reference as if fully set forth herein.

**Section 3.24 Non-Consolidation Opinion Assumptions.**

All of the assumptions made in the Non-Consolidation Opinion, including, but not limited to, any exhibits attached thereto, are true, complete and correct.

**Section 3.25 Federal Reserve Regulations.**

No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any “margin stock” within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulation U or any other Regulations of such Board of Governors, or for any purposes prohibited by Applicable Law or by the terms and conditions of this Agreement, the Security Instrument, the Note or the other Loan Documents.

**Section 3.26 Investment Company Act.**

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

**Section 3.27 Fraudulent Conveyance.**

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

### **Section 3.28 Embargoed Person.**

As of the date hereof and at all times throughout the term of the Loan, including after giving effect to any transfers of interests permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower or Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any person, entity or country which is a sanctioned person, entity or country under U.S. law, including but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder (including regulations administered by the Office of Foreign Assets Control (“**OFAC**”) of the U.S. Department of the Treasury and the Specially Designated Nationals List maintained by OFAC) with the result that the investment in Borrower and/or Guarantor, as applicable (whether directly or indirectly), is prohibited by Applicable Law or the Loan made by Lender is in violation of Applicable Law (“**Embargoed Person**”); (b) unless expressly waived in writing by Lender, no Embargoed Person has any interest of any nature whatsoever in Borrower or Guarantor, as applicable, with the result that the investment in Borrower and/or Guarantor, as applicable (whether directly or indirectly), is prohibited by Applicable Law or the Loan is in violation of Applicable Law; and (c) to the best knowledge of Borrower, none of the funds of Borrower or Guarantor, as applicable, have been derived from any unlawful activity with the result that the investment in Borrower and/or Guarantor, as applicable (whether directly or indirectly), is prohibited by Applicable Law or the Loan is in violation of Applicable Law. Borrower covenants and agrees that in the event Borrower receives any notice that Borrower or Guarantor (or any of their respective beneficial owners, affiliates or participants) or any Person that has an interest in the Property is designated as an Embargoed Person, Borrower shall immediately notify Lender in writing. At Lender’s option, it shall be an Event of Default hereunder if Borrower, Guarantor or any other party to the Loan (other than Lender) is designated as an Embargoed Person.

### **Section 3.29 Patriot Act.**

All capitalized words and phrases and all defined terms used in the USA Patriot Act of 2001, 107 Public Law 56 (October 26, 2001) and in other statutes and all orders, rules and regulations of the United States government and its various executive departments, agencies and offices related to the subject matter of the Patriot Act (collectively referred to in this Section only as the “**Patriot Act**”) are incorporated into this Section. Borrower hereby represents and warrants that Borrower and Guarantor and each and every Person affiliated with Borrower and/or Guarantor or that to Borrower’s knowledge has an economic interest in Borrower, or, to Borrower’s knowledge, that has or will have an interest in the transaction contemplated by this Agreement or in the Property or will participate, in any manner whatsoever, in the Loan, is: (i) in full compliance with all applicable requirements of the Patriot Act and any regulations issued thereunder; (ii) operated under policies, procedures and practices, if applicable, that are in compliance with the Patriot Act and available to Lender for Lender’s review and inspection during normal business hours and upon reasonable prior notice; (iii) not in receipt of any notice from the Secretary of State or the Attorney General of the United States or any other department, agency or office of the United States claiming a violation or possible violation of the Patriot Act; (iv) not a person who has been determined by competent authority to be subject to any of the prohibitions contained in the Patriot Act; and (v) not owned or controlled by or now acting



and/or will in the future act for or on behalf of any person who has been determined to be subject to the prohibitions contained in the Patriot Act. Borrower covenants and agrees that in the event Borrower receives any notice that Borrower or Guarantor (or any of their respective beneficial owners, affiliates or participants) or any Person that has an interest in the Property is indicted, arraigned, or custodially detained on charges involving money laundering or predicate crimes to money laundering, Borrower shall immediately notify Lender. At Lender's option, it shall be an Event of Default hereunder if Borrower, Guarantor or any other party to the Loan (other than Lender) is indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering.

**Section 3.30 Organizational Chart.**

The organizational chart attached as Schedule II hereto, relating to Borrower and certain Affiliates and other parties, is true, complete and correct on and as of the date hereof.

**Section 3.31 Bank Holding Company.**

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

**Section 3.32 Intentionally Omitted.**

**Section 3.33 REA Representations.**

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

**Section 3.34 No Change in Facts or Circumstances.**

All information submitted by Borrower, Guarantor to Lender and in all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan or in satisfaction of the terms thereof and all statements of fact made by Borrower and/or Guarantor in this Agreement or in the other Loan Documents, are accurate, complete and correct in all material respects. There has been no material adverse change in any condition, fact, circumstance or event that would make any such information inaccurate, incomplete or otherwise misleading in any material respect or that would otherwise have a Material Adverse Effect.

**Section 3.35 Perfection of Accounts.**

Borrower hereby represents and warrants to Lender that:

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

(b) The Accounts constitute “deposit accounts” or “securities accounts” within the meaning of the Uniform Commercial Code, as set forth in the Cash Management Agreement.

**Section 3.36 Intentionally Omitted.**

**Section 3.37 Guarantor Representations.**

Borrower hereby represents and warrants that, as of the date hereof, the representations and warranties set forth in Sections 3.1, 3.2 through 3.8, 3.12, 3.18, 3.21, 3.27, 3.28, 3.29, 3.32, and 3.34 above are true and correct with respect to Guarantor, as the same are applicable to Guarantor. Wherever the term “Borrower” is used in each of the foregoing Sections it shall be deemed to be “Guarantor” with respect to Guarantor.

Borrower agrees that, unless expressly provided otherwise, all of the representations and warranties of Borrower set forth in this Article 3 and elsewhere in this Agreement and the other Loan Documents shall survive for so long as any portion of the Debt remains owing to Lender. All representations, warranties, covenants and agreements made in this Agreement and in the other Loan Documents shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

**ARTICLE 4.**

**BORROWER COVENANTS**

From the date hereof and until payment and performance in full of all obligations of Borrower under this Agreement, the Security Instrument, the Note and the other Loan Documents or the earlier release of the lien of the Security Instrument (and all related obligations) in accordance with the terms of this Agreement, the Security Instrument, the Note and the other Loan Documents, Borrower hereby covenants and agrees with Lender that:

**Section 4.1 Existence.**

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

#### **Section 4.2          Applicable Law.**

(a) Borrower shall promptly comply and shall cause the Property to comply in all material respects with all Applicable Law affecting the Borrower and the Property, or the use thereof, including, without limitation, all Environmental Laws and Applicable Law relating to OFAC, Embargoed Persons and the Patriot Act. Borrower shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, Licenses, permits, trade names (if any), and franchises. Borrower shall give prompt notice to Lender of the receipt by Borrower of any notice related to a violation of any Applicable Law and of the commencement of any proceedings or investigations which relate to compliance with Applicable Law, in each case affecting the Borrower or the Property.

(b) Any Tenant, in accordance with the terms of its Lease and provided Borrower delivers notice to Lender promptly following Borrower's receipt of notice or upon Borrower's actual knowledge of a contest, or Borrower, after prior written notice to Lender, at Tenant's or Borrower's own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the validity of any Applicable Law, the applicability of any Applicable Law to Borrower or the Property or any alleged violation of any Applicable Law, provided that (i) no Event of Default has occurred and remains uncured; (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be permitted by and conducted in accordance with all Applicable Law; (iii) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (iv) Borrower shall promptly upon final determination thereof comply with any such Applicable Law determined to be valid or applicable or cure any violation of any Applicable Law; (v) such proceeding shall suspend the enforcement of the contested Applicable Law against Borrower or the Property; and (vi) Borrower shall furnish such security as may be reasonably required in the proceeding, or as may be requested by Lender, to insure compliance with such Applicable Law, together with all interest and penalties payable in connection therewith. Lender may apply any such security or part thereof, as necessary to cause compliance with such Applicable Law at any time when, in the reasonable judgment of Lender, the validity, applicability or violation of such Applicable Law is finally established or the Property (or any part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost.

#### **Section 4.3          Maintenance and Use of Property.**

Borrower shall cause the Property to be maintained in a good and safe condition and repair in all material respects. The Improvements and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of the Personal Property) without the consent of Lender or as otherwise permitted pursuant to Section 4.21 hereof. Borrower shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any casualty, or become damaged, worn or dilapidated or which may be affected by any proceeding of the character referred to in Section 3.13 hereof and shall complete and pay for any structure at any time in the process of construction or repair on the Land. Borrower shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the

Property or any part thereof, without the prior written consent of Lender, which shall not be unreasonably withheld, conditioned or delayed. If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, Borrower will not cause or permit the nonconforming use to be discontinued or the nonconforming Improvement to be abandoned without the express written consent of Lender. Borrower's rights and obligations are subject to the applicable provisions of the applicable Lease and Tenant's rights thereunder. To the extent the obligations set forth in this Section 4.3 are the responsibility of Tenant pursuant to the applicable Lease, Borrower shall be deemed to be in compliance with this Section 4.3 so long as Tenant is not in default under the applicable Lease or, if the Tenant is in default under the applicable Lease after any applicable notice and cure period, for the obligations above, Borrower is asserting its rights and is using commercially reasonable efforts to enforce Tenant's obligations under the applicable Lease; provided, however, that the foregoing shall in no way limit Borrower's obligations under this Section 4.3 and the Loan Documents.

**Section 4.4 Waste.**

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

**Section 4.5 Taxes and Other Charges.**

(a) Borrower shall pay all Taxes and Other Charges now or hereafter levied or assessed or imposed against the Property or any part thereof as the same become due and payable; provided, however, Borrower's obligation to directly pay Taxes and Other Charges shall be suspended for so long as Borrower complies with the terms and provisions of Section 8.1 hereof. Borrower shall furnish to Lender receipts for the payment of the Taxes and the Other Charges prior to the date the same shall become delinquent (provided, however, that Borrower is not required to furnish such receipts for payment of Taxes and Other Charges in the event that such Taxes and Other Charges are payable by Lender pursuant to Section 8.1 hereof). Borrower shall not suffer and shall promptly cause to be paid and discharged any lien or charge whatsoever which may be or become a lien or charge against the Property, and shall promptly pay for, or cause to be paid for by the applicable Tenant, all utility services provided to the Property.

(b) Any Tenant, in accordance with the terms of its Lease and provided Borrower delivers notice to Lender promptly following Borrower's receipt of notice or upon Borrower's actual knowledge of a contest, or Borrower, after prior written notice to Lender, at Tenant's or Borrower's own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Taxes or Other Charges, provided that (i) no Event of Default has occurred and

remains uncured; (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be permitted by and conducted in accordance with all Applicable Law; (iii) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost; (iv) Borrower shall promptly upon final determination thereof pay the amount of any such Taxes or Other Charges, together with all costs, interest and penalties which may be payable in connection therewith; (v) such proceeding shall suspend the collection of such contested Taxes or Other Charges from the Property; and (vi) Borrower shall furnish such security as may be required in the proceeding, or deliver to Lender such reserve deposits as may be reasonably requested by Lender, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon. Lender may pay over any such cash deposit or part thereof held by Lender to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established or the Property (or part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, canceled or lost or there shall be any danger of the lien of the Security Instrument being primed by any related lien.

**Section 4.6        Litigation.**

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

**Section 4.7        Access to Property.**

Subject to the rights of Tenants as set forth in the Leases, Borrower shall permit agents, representatives and employees of Lender to inspect the Property or any part thereof at reasonable hours upon reasonable advance notice.

**Section 4.8        Notice of Default.**

Borrower shall promptly advise Lender of any material adverse change in Borrower's and/or Guarantor's condition (financial or otherwise) or of the occurrence of any Default or Event of Default of which Borrower has knowledge.

**Section 4.9        Cooperate in Legal Proceedings.**

Borrower shall cooperate fully with Lender with respect to any proceedings before any court, board or other Governmental Authority which may adversely affect the rights of Lender hereunder or any rights obtained by Lender under any of the Note, the Security Instrument or the other Loan Documents and, in connection therewith, permit Lender, at Lender's election, to participate in any such proceedings.

**Section 4.10       Performance by Borrower.**

Borrower shall in a timely manner observe, perform and fulfill each and every covenant, term and provision to be observed and performed by Borrower under this Agreement, the Security Instrument, the Note and the other Loan Documents and, subject to the notice and cure periods contained therein, any Material Agreement pertaining to the Property and any amendments, modifications or changes thereto.

**Section 4.11 Awards.**

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

**Section 4.12 Books and Records.**

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

(i) quarterly (and prior to a Securitization if requested by Lender, monthly) certified rent rolls (in the form approved by Lender in connection with the closing of the Loan) and tenant sales reports (if applicable), each signed and dated by a Responsible Officer of Borrower, within thirty (30) days after the end of each calendar month or forty-five (45) days after the end of each calendar quarter, as applicable;

(ii) quarterly (and prior to a Securitization if requested by Lender, monthly) operating statements of the Property, prepared and certified by a Responsible Officer of Borrower in the form reasonably required by Lender, detailing the revenues received, the expenses incurred and major capital expenditures for the period of calculation and containing appropriate year-to-date information, within thirty (30) days after the end of each calendar month or forty-five (45) days after the end of each calendar quarter, as applicable;

(iii) an annual balance sheet, profit and loss statement, statement of cash flow, and statement of change in financial position of Borrower audited by a "Big Four" accounting firm or other independent certified public accountant reasonably acceptable to Lender, within one hundred twenty (120) days after the close of each fiscal year of Borrower;

(iv) an annual operating statement of the Property audited by a "Big Four" accounting firm or other independent certified public accountant reasonably acceptable to Lender, detailing the revenues received, the expenses incurred and major capital improvements for the period of calculation and containing appropriate year-to-date information, within one hundred twenty (120) days after the close of each fiscal year of Borrower;

(v) by no later than December 15 of each calendar year, an annual operating budget for the next succeeding calendar year presented on a monthly basis consistent with the annual operating statement described above for the Property, including cash flow

projections for the upcoming year and all proposed capital replacements and improvements (the “**Annual Budget**”). Upon the occurrence and during the continuance of any Cash Trap Event Period, Lender shall have the right to approve each Annual Budget and no Annual Budget shall take effect unless and until the same has been approved by Lender (provided that during any period in which Lender has failed to approve an Annual Budget for the applicable calendar year, Borrower shall be permitted to operate pursuant to the Annual Budget for the immediately preceding calendar year). Within thirty (30) days after receipt of written request from Lender during any Cash Trap Event Period, Borrower shall deliver to Lender the Annual Budget for approval by Lender; and

(vi) by no later than thirty (30) days after and as of the end of each calendar month during the period prior to Securitization, and thereafter by no later than thirty (30) days after and as of the end of each calendar quarter, a summary report containing each of the following with respect to the Property for the most recently completed calendar month or quarter (as applicable): (A) to the extent available to Borrower, aggregate sales by tenants under Leases or other occupants of the Property, both on an actual (or to the extent such information is not provided by such tenants or occupants, Borrower’s best estimate) and on a comparable store basis, (B) rent per square foot payable by each such tenant or occupant, (C) aggregate occupancy of the Property by anchor space and in-line store space and (D) a tenant aging and receivables report.

(b) Upon request from Lender, Borrower shall furnish in a timely manner to Lender an accounting of all security deposits held in connection with any Lease of any part of the Property, including the name and identification number of the accounts in which such security deposits are held, the name and address of the financial institutions in which such security deposits are held and the name of the person to contact at such financial institution, along with any authority or release necessary for Lender to obtain information regarding such accounts directly from such financial institutions.

(c) Within twenty (20) days of Lender’s request, Borrower shall furnish Lender (and shall cause Guarantor to furnish to Lender) with such other additional financial or management information (including State and Federal tax returns) as may, from time to time, be reasonably required by Lender in form and substance reasonably satisfactory to Lender. Borrower shall furnish to Lender and its agents convenient facilities at Borrower’s address identified in this Agreement for the examination and audit of any such books and records at any reasonable time from time to time during business hours upon reasonable advance notice at Borrower’s principal place of business.

(d) Borrower agrees that all financial statements and other items required to be delivered to Lender pursuant to this Section 4.12 (each a “**Required Financial Item**” and, collectively, the “**Required Financial Items**”) shall: (i) be complete and correct in all material respects; (ii) present fairly the financial condition of the party; (iii) disclose all liabilities that are required to be reflected or reserved against; and (iv) be prepared (A) in hardcopy and electronic formats and (B) to the extent applicable, in accordance with GAAP or in accordance with other methods acceptable to Lender in its sole discretion (consistently applied). Borrower shall be deemed to warrant and represent that, as of the date of delivery of any such financial statement,

there has been no material adverse change in financial condition, nor have any assets or properties been sold, transferred, assigned, mortgaged, pledged or encumbered since the date of such financial statement except as disclosed by Borrower in a writing delivered to Lender. Borrower agrees that all Required Financial Items shall not contain any misrepresentation or omission of a material fact.

(e) If any Required Financial Item is not timely delivered (“**Reporting Failure**”), following ten (10) Business Days’ written notice from Lender, Borrower shall promptly pay to Lender, as a late charge, the sum of Five Hundred and No/100 Dollars (\$500.00) per Required Financial Item. In addition, Borrower shall promptly pay to Lender an additional late charge of Five Hundred and No/100 Dollars (\$500.00) per Required Financial Item for each full month during which such Reporting Failure continues following written notice from Lender. Borrower acknowledges that Lender will incur additional expenses as a result of any such Reporting Failure, which expenses would be impracticable to quantify, and that Borrower’s payments under this Section 4.12 are a reasonable estimate of such expenses. Borrower acknowledges further that the payment by Borrower of this late charge does not in any manner affect or otherwise impair or waive any rights and remedies Lender may have hereunder, under the Loan Documents or under applicable law for any Event of Default.

(f) Notwithstanding anything to the contrary contained herein or in the other Loan Documents, except as set forth in Section 11 of the Guaranty, (i) Guarantor’s reporting requirements hereunder, including any requirements with respect to the form or the preparation and audit thereof, shall be satisfied so long as Guarantor remains a publicly listed company and makes required Exchange Act Filings and (ii) Borrower’s reporting requirements hereunder, with respect to the audit thereof, shall be satisfied so long as Guarantor remains a publicly listed company and makes required Exchange Act Filings.

#### **Section 4.13 Estoppel Certificates.**

(a) After request by Lender, Borrower, within ten (10) Business Days of such request, shall furnish Lender or any proposed assignee with a statement, duly acknowledged and certified, setting forth (i) the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the rate of interest of the Note, (iv) the terms of payment and maturity date of the Note, (v) the date installments of interest and/or principal were last paid, (vi) that, except as provided in such statement, no Event of Default exists, (vii) that this Agreement, the Note, the Security Instrument and the other Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification, (viii) whether any offsets or defenses exist against the obligations secured hereby and, if any are alleged to exist, a detailed description thereof, (ix) that all Leases are in full force and effect and have not been modified (or if modified, setting forth all modifications), (x) the date to which the Rents thereunder have been paid pursuant to the Leases, (xi) whether or not, to the best knowledge of Borrower, any of the Tenants are in default under the Leases, and, if any of the Tenants are in default, setting forth the specific nature of all such defaults, (xii) the amount of security deposits held by Borrower under each Lease and that such amounts are consistent with the amounts required under each Lease, and (xiii) as to any other matters reasonably requested by Lender and reasonably related to the Leases, the obligations created and evidenced hereby and by the Security Instrument or the Property.



(b) Borrower shall use commercially reasonable efforts (without any obligation to commence any legal proceeding) to deliver to Lender, promptly upon request, duly executed estoppel certificates from any one or more Tenants as required by Lender attesting to such facts regarding the Lease as Lender may require, including, but not limited to, attestations that each Lease covered thereby is in full force and effect with no defaults thereunder on the part of any party, that none of the Rents have been paid more than one month in advance, except as security, and that the lessee claims no defense or offset against the full and timely performance of its obligations under the Lease, provided that Borrower shall not be required to deliver such certificates more frequently than twice (2) during any calendar year.

(c) In connection with the Securitization of the Loan (or any portion thereof or interest therein), at Lender's request, Borrower shall provide an estoppel certificate to any Investor or any prospective Investor in such form, substance and detail as Lender, such Investor or prospective Investor may reasonably require, provided that Borrower shall not be required to deliver such certificates more frequently than twice (2) during the term of the Loan, and not more frequently than once per calendar year (or twice during any calendar year in which a Securitization occurs).

(d) Borrower shall use commercially reasonable efforts to deliver to Lender, upon request, estoppel certificates from each party under each REA and each Material Agreement in form and substance reasonably acceptable to Lender.

#### **Section 4.14 Leases and Rents.**

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

(b) Any Lease and any renewals, amendments or modification of a Lease (provided such Lease or Lease renewal, amendment or modification is not a Major Lease (or a renewal, amendment or modification to a Major Lease)) that meets the following requirements may be entered into by Borrower without Lender's prior consent: such Lease (i) provides for rental rates comparable to existing local market rates for similar properties and is otherwise on commercially reasonable terms, (ii) unless a subordination, non-disturbance and attornment agreement is delivered pursuant to this Section 4.14, provides that such Lease is subordinate to the Security Instrument and that the lessee will attorn to Lender and any purchaser at a foreclosure sale, (iii) is written substantially in accordance with the standard form of Lease which shall have been approved by Lender (subject to any commercially-reasonable changes made in the course of negotiations with the applicable Tenant), (iv) is not with an Affiliate of Borrower or any Guarantor, and (v) does not contain any option to purchase, any right of first refusal to purchase, any right to terminate (except in the event of the destruction or condemnation of substantially all of the Property) or any other terms which would cause a Material Adverse Effect. All other Leases (including Major Leases) and all renewals, amendments and modifications thereof

(including, without limitation, any subletting or assignment thereunder not contemplated by the express terms of such Lease (other than any subletting or assignment that does not require Borrower's consent under such Lease)) executed after the date hereof shall be subject to Lender's prior approval, which approval shall not be unreasonably withheld or delayed.

(c) Lender shall execute and deliver a Subordination, Non-Disturbance and Attornment Agreement on Lender's then current standard form to Tenants under future Major Leases approved by Lender promptly upon request with such commercially reasonable changes as may be requested by Tenants, from time to time, as are reasonably acceptable to Lender. Lender's execution of a Subordination, Non-Disturbance and Attornment Agreement which is not in compliance with the foregoing sentence shall be at Lender's sole discretion and subject to such additional conditions as Lender shall reasonably determine.

(d) Borrower (i) shall observe and perform the obligations imposed upon the lessor under the Leases in all material respects in a commercially reasonable manner, including, without limitation, any repainting obligations of Borrower pursuant to the Lowe's Lease; (ii) shall enforce the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed in a commercially reasonable manner, provided, however, Borrower shall not terminate or accept a surrender of a Major Lease (except pursuant to an express termination right granted to the Tenant under the Lease as of the date hereof) without Lender's prior approval; (iii) shall not collect any of the Rents more than one (1) month in advance (other than security deposits); (iv) shall not execute any assignment of lessor's interest in the Leases or the Rents (except as contemplated by the Loan Documents); (v) shall not, without Lender's consent, alter, modify or change any Lease so as to change the amount of or payment date for rent, change the expiration date, grant any option for additional space or term, materially reduce the obligations of the lessee or increase the obligations of lessor; and (vi) shall hold all security deposits under all Leases in accordance with Applicable Law.

(e) Notwithstanding anything contained herein to the contrary, Borrower shall not willfully withhold from Lender any information regarding renewal, extension, amendment, modification, waiver of provisions of, termination, rental reduction of, surrender of space of, or shortening of the term of, any Lease during the term of the Loan. Borrower further agrees to provide Lender with written notice of a Tenant "going dark" under such Tenant's Lease within thirty (30) days after Borrower becomes aware that such Tenant "goes dark" and Borrower's failure to provide such notice for the second such Tenant "going dark" (which would constitute a Cash Trap Event Period) shall constitute an Event of Default. Borrower's delivery of the certified rent roll required pursuant to Section 4.12 hereof shall not, in and of itself, satisfy the requirement of the preceding sentence.

(f) Borrower shall notify Lender in writing, within two (2) Business Days following receipt thereof, of Borrower's receipt of any termination fee or payment ("**Lease Event Payment**") paid by any Tenant under any Lease in consideration of any termination, modification or amendment or settlement of any Lease or any release or discharge of any Tenant under any Lease from any obligation thereunder (a "**Lease Event**"). Borrower further covenants and agrees that (i) Borrower shall hold any such Lease Event Payment in trust for the benefit of Lender and (ii) (A) in the event such Lease Event Payment is less than \$150,000 and such Lease Event does not have a Material Adverse Effect and provided there is no Event of Default or Cash

Trap Event Period, such Lease Event Payment shall be payable to Borrower or (B) in the event such Lease Event Payment equals or exceeds \$150,000 or such Lease Event has a Material Adverse Effect, such Lease Event Payment shall be placed by Borrower in reserve with Lender, to be disbursed by Lender for tenant improvement and leasing commission costs with respect to the Property and/or for payment of the Debt or otherwise in connection with the Loan and/or the Property, as so determined by Lender, in its sole discretion.

(g) Notwithstanding anything to the contrary contained herein, to the extent Lender's prior approval is required for any leasing matters set forth in this Section 4.14, Lender shall have ten (10) Business Days from receipt of written request and all information and documentation reasonably required to evaluate the applicable Tenant and Lease in which to approve or disapprove such matter, provided that such request to Lender is marked in bold lettering with the following language: "LENDER'S RESPONSE IS REQUIRED WITHIN TEN (10) BUSINESS DAYS OF RECEIPT OF THIS NOTICE PURSUANT TO THE TERMS OF A LOAN AGREEMENT BETWEEN THE UNDERSIGNED AND LENDER" and the envelope containing the request must be marked "PRIORITY". In the event that Lender fails to respond to the leasing matter in question within such time, Lender's approval shall be deemed given for all purposes. Borrower shall provide Lender with such information and documentation as may be reasonably required by Lender, including, without limitation, lease comparables and other market information as reasonably required by Lender. For purposes of clarification, Lender's requesting additional and/or clarified information, in addition to approving or denying any request (in whole or in part), shall be deemed a response by Lender for purposes of the foregoing.

#### **Section 4.15 Management Agreement.**

(a) If Borrower shall engage a Manager to manage the Property, Borrower shall (i) diligently perform, observe and enforce all of the terms, covenants and conditions of any Management Agreement, if any, on the part of Borrower to be performed, observed and enforced to the end that all things shall be done which are necessary to keep unimpaired the rights of Borrower under any such Management Agreement and (ii) promptly notify Lender of the giving of any notice to Borrower of any default by Borrower in the performance or observance of any of the terms, covenants or conditions of any such Management Agreement on the part of Borrower to be performed and observed and deliver to Lender a true copy of each such notice. Without Lender's prior written consent, Borrower shall not surrender any Management Agreement, consent to the assignment by Manager of its interest under any Management Agreement, or terminate or cancel any Management Agreement or modify, change, supplement, alter or amend any Management Agreement, in any material respect, either orally or in writing, and Borrower hereby assigns to Lender as further security for the payment of the Debt and for the performance and observance of the terms, covenants and conditions of this Agreement, all the rights, privileges and prerogatives of Borrower to surrender any Management Agreement or to terminate, cancel, modify, change, supplement, alter or amend any Management Agreement in any respect, and any such surrender of any Management Agreement or termination, cancellation, modification, change, supplement, alteration or amendment of any Management Agreement without the prior consent of Lender shall be void and of no force and effect.

(b) If Borrower shall default in the performance or observance of any material term, covenant or condition of any Management Agreement on the part of Borrower to be performed or observed and fails to remedy such default within any applicable cure period set forth in the Management Agreement, then, without limiting the generality of the other provisions of this Agreement, and without waiving or releasing Borrower from any of its obligations hereunder, Lender shall have the right, but shall be under no obligation, to pay any sums and to perform any act or take any action as may be appropriate to cause all the terms, covenants and conditions of any Management Agreement on the part of Borrower to be performed or observed to be promptly performed or observed on behalf of Borrower, to the end that the rights of Borrower in, to and under any Management Agreement shall be kept unimpaired and free from default. Lender and any person designated by Lender shall have, and are hereby granted, the right to enter upon the Property at any time and from time to time for the purpose of taking any such action. If any Manager shall deliver to Lender a copy of any notice sent to Borrower of default under any Management Agreement, such notice shall constitute full protection to Lender for any action taken or omitted to be taken by Lender in good faith, in reliance thereon.

(c) Borrower shall notify Lender if any Manager sub-contracts to a third party or an affiliate any or all of its management responsibilities under any Management Agreement. Borrower shall, from time to time, use commercially reasonable efforts to obtain from any Manager under any Management Agreement such certificates of estoppel with respect to compliance by Borrower with the terms of such Management Agreement as may be requested by Lender. Borrower shall exercise each individual option, if any, to extend or renew the term of any Management Agreement upon demand by Lender made at any time within one (1) year of the last day upon which any such option may be exercised, and Borrower hereby expressly authorizes and appoints Lender its attorney-in-fact to exercise any such option in the name of and upon behalf of Borrower, which power of attorney shall be irrevocable and shall be deemed to be coupled with an interest. Any sums expended by Lender pursuant to this paragraph shall bear interest at the Default Rate from the date such cost is incurred to the date of payment to Lender, shall be deemed to constitute a portion of the Debt, shall be secured by the lien of the Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

(d) If (a) any Manager shall become insolvent or a debtor in (i) any involuntary bankruptcy or insolvency proceeding that is not dismissed within ninety (90) days of the filing thereof, or (ii) any voluntary bankruptcy or insolvency proceeding; (b) there exists an Event of Default which remains uncured and is continuing; (c) the Debt Service Coverage Ratio shall be less than 1.10 to 1.00; (d) there exists a default by any Manager beyond all applicable notice and cure periods under any Management Agreement; (e) there occurs any fraud, gross negligence, willful misconduct or misappropriation of funds relating to the Property by any Manager; or (f) there occurs any change in Control of Manager, then Lender, at its option, may require Borrower to engage a manager or replace any existing Manager with a new manager (the "**New Manager**") to manage the Property, which such New Manager shall be a Qualified Manager. New Manager shall be engaged by Borrower pursuant to a written management agreement and is otherwise satisfactory to Lender in all respects. New Manager and Borrower shall execute an Assignment of Management Agreement in the form then used by Lender. Without limitation of the foregoing, if required by Lender, Borrower shall, as a condition precedent to Borrower's engagement of such New Manager, obtain a Rating Agency Confirmation with respect to such New Manager and management agreement.

(e) In the event that the Borrower should ever elect to employ an affiliate or third party management company for the management of the Property, the Borrower agrees (A) that such management company must be a Qualified Manager, and the Management Agreement shall be subject to the prior written approval of the Lender, which approval may be granted or denied in Lender's reasonable discretion, (B) that such management company shall receive a management fee reasonably acceptable to Lender, and (C) to execute (and to cause such management company to execute) an Assignment of Management Agreement.

(f) To the extent that any Manager is an Affiliated Manager, Borrower's engagement of a Manager shall be subject to Borrower's delivery to Lender of a New Non-Consolidation Opinion with respect to such New Manager and new management agreement.

**Section 4.16 Payment for Labor and Materials.**

(a) Subject to Section 4.16(b), Borrower will promptly pay or cause to be paid when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property (any such bills and costs, a "**Work Charge**") and, subject to Section 4.16(b), never permit to exist in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests created hereby and by the Security Instrument, except for the Permitted Encumbrances.

(b) Any Tenant, in accordance with the terms of its Lease and provided Borrower delivers notice to Lender promptly following Borrower's receipt of notice or upon Borrower's actual knowledge of a contest, or Borrower, after prior written notice to Lender, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the validity of any Work Charge, the applicability of any Work Charge to Borrower or to the Property or any alleged non-payment of any Work Charge and defer paying the same, provided that (i) no Event of Default has occurred and is continuing; (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all Applicable Law; (iii) neither the Property nor any part thereof or interest therein will be in imminent danger of being sold, forfeited, terminated, cancelled or lost; (iv) Borrower shall promptly upon final determination thereof pay (or cause to be paid) any such contested Work Charge determined to be valid, applicable or unpaid; (v) such proceeding shall suspend the collection of such contested Work Charge from the Property or Borrower shall have paid the same (or shall have caused the same to be paid) under protest; and (vi) Borrower shall furnish (or cause to be furnished) such security as may be required in the proceeding, or as may be reasonably requested by Lender, to insure payment of such Work Charge, together with all interest and penalties payable in connection therewith. Lender may apply any such security or part thereof, as necessary to pay for such Work Charge at any time when, in the judgment of Lender, the validity, applicability or non-payment of such Work Charge is finally established or the Property (or any part thereof or interest therein) shall be in present danger of being sold, forfeited, terminated, cancelled or lost.

**Section 4.17 Performance of Other Agreements.**

Borrower shall observe and perform each and every term to be observed or performed by Borrower pursuant to the terms of any Material Agreement affecting or pertaining to the Property, or given by Borrower to Lender for the purpose of further securing the Debt and any amendments, modifications or changes thereto.

**Section 4.18 Debt Cancellation.**

Borrower shall not cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to Borrower by any Person if such cancellation or forgiveness has a Material Adverse Effect with respect to Borrower or the current and/or intended operation of the Property, except for adequate consideration or in the ordinary course of Borrower's business (including Borrower's determination that any account receivable is uncollectable).

**Section 4.19 ERISA.**

(a) Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Note, this Agreement or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA or constitute a violation of any state statute, regulation or ruling impacting a Defined Benefit Plan or a governmental plan.

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

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

(ii) Less than twenty-five percent (25%) of each outstanding class of equity interests in Borrower is held by "benefit plan investors" within the meaning of 29 C.F.R. §2510.3-101(f)(2), as modified by ERISA Section 3(42), disregarding the value of any equity interests in Borrower held by (I) a person (other than a benefit plan investor) who has discretionary authority or control with respect to the assets of Borrower, (II) any person who provides investment advice for a fee (direct or indirect) with respect to the assets of Borrower, or (III) any affiliate of a person described in the immediately preceding clause (I) or (II);

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

(iv) The assets of Borrower are not otherwise “plan assets” of one or more “employee benefit plans” (as defined in Section 3(3) of ERISA) subject to Title I of ERISA, within the meaning of 29 C.F.R. §2510.3-101, as modified by ERISA Section 3(42); or

(v) If a state statute, regulation or ruling does apply to transactions by or with Borrower regulating investments of, or fiduciary obligations with respect to, governmental plans, no transactions contemplated by the Loan Documents will violate such statute, regulation or ruling.

(c) Borrower shall not maintain, sponsor, contribute to or become obligated to contribute to, or suffer or permit any ERISA Affiliate of Borrower to, maintain, sponsor, contribute to or become obligated to contribute to, any Defined Benefit Plan or Multiemployer Plan, or permit the assets of Borrower to (i) become “plan assets”, whether by operation of law or under regulations promulgated under ERISA or (ii) become subject to any state statute, regulation or ruling regulating investments of, or fiduciary obligations with respect to, governmental plans.

**Section 4.20 No Joint Assessment.**

Borrower shall not suffer, permit or initiate the joint assessment of the Property with (a) any other real property constituting a tax lot separate from the Property, or (b) any portion of the Property which may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to the Property.

**Section 4.21 Alterations.**

Lender’s prior approval (which approval shall not be unreasonably withheld or delayed) shall be required in connection with any alterations to any Improvements (a) that may have a Material Adverse Effect, (b) the cost of which (including any related alteration, improvement or replacement) is reasonably anticipated to exceed the Alteration Threshold, or (c) that are structural in nature, except for (x) any alterations performed as a part of a Restoration in accordance with Section 7.4 hereof, (y) any alterations or tenant improvements being made expressly pursuant to existing Leases that have been delivered to Lender and (z) any Immediate Repairs. If the total unpaid amounts incurred and to be incurred with respect to any alterations to the Improvements shall at any time exceed the Alteration Threshold, Borrower shall, if required by Lender, promptly deliver to Lender as security for the payment of such amounts and as additional security for Borrower’s obligations under the Loan Documents any of the following: (i) cash, (ii) U.S. Obligations, (iii) other securities acceptable to Lender (provided that Lender shall have received a Rating Agency Confirmation as to the form and issuer of same), or (iv) a completion bond (provided that Lender shall have received a Rating Agency Confirmation as to the form and issuer of same). Such security shall be in an amount equal to the excess of the total unpaid amounts incurred and to be incurred with respect to such alterations to the Improvements over the Alteration Threshold. All alterations to any Improvements shall be made lien-free and in a good and workmanlike manner in accordance with all Applicable Laws.

**Section 4.22 REA Covenants.**

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

**Section 4.23 Material Agreements.**

Borrower shall (a) promptly perform and/or observe, in all material respects, all of the covenants and agreements required to be performed and observed by it under the Material Agreements and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (b) promptly notify Lender of any material default under the Material Agreements of which it is aware; (c) promptly deliver to Lender a copy of each financial statement, business plan, capital expenditures plan, notice, report and estimate received by it under the Material Agreements; (d) enforce the performance and observance of all of the covenants and agreements required to be performed and/or observed under the Material Agreements in a commercially reasonable manner; (e) cause the Property to be operated, in all material respects, in accordance with the Material Agreements; and (f) not, without the prior written consent of Lender, (i) enter into any new Material Agreement or execute modifications to any existing Material Agreements, (ii) surrender, terminate or cancel the Material Agreements, (iii) reduce or consent to the reduction of the term of the Material Agreements, (iv) increase or consent to the increase of the amount of any charges under the Material Agreements, (v) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under, the Material Agreements in any material respect, or (vi) following the occurrence and during the continuance of an Event of Default, exercise any rights, make any decisions, grant any approvals or otherwise take any action under the Material Agreements. Notwithstanding anything to the contrary contained herein, to the extent Lender's prior approval is required for any matters set forth in this Section 4.23, Lender shall have ten (10) Business Days from receipt of written request and all information and documentation reasonably required to evaluate the applicable Material Agreement in which to approve or disapprove such matter, provided that such request to Lender



is marked in bold lettering with the following language: "LENDER'S RESPONSE IS REQUIRED WITHIN TEN (10) BUSINESS DAYS OF RECEIPT OF THIS NOTICE PURSUANT TO THE TERMS OF A LOAN AGREEMENT BETWEEN THE UNDERSIGNED AND LENDER" and the envelope containing the request must be marked "PRIORITY". In the event that Lender fails to respond to the matter in question within such time, Lender's approval shall be deemed given for all purposes. Borrower shall provide Lender with such information and documentation as may be reasonably required by Lender. For purposes of clarification, Lender's requesting additional and/or clarified information, in addition to approving or denying any request (in whole or in part), shall be deemed a response by Lender for purposes of the foregoing.

**Section 4.24 Immediate Repairs.**

Borrower shall perform, or shall cause the applicable Tenant to perform, the repairs at the Property as set forth on Schedule I hereto (such repairs hereinafter referred to as "**Immediate Repairs**") in good and workmanlike manner and in accordance with Applicable Laws on or prior to the date occurring six (6) months after the date hereof; provided that, Lender may, in its sole discretion, extend the respective deadlines for performance of such Immediate Repairs by written notice to Borrower.

**ARTICLE 5.**

**ENTITY COVENANTS**

**Section 5.1 Single Purpose Entity/Separateness.**

(a) Borrower has not and will not:

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

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

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

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

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

(vi) commingle its assets with the assets of any other Person; however, distributions made by Borrower that are not in violation of the Loan Documents shall not be considered assets of Borrower for the purpose of this Subsection (vi);

(vii) incur any Indebtedness, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than (A) the Debt, (B) trade and operational indebtedness incurred in the ordinary course of business with trade creditors, provided such indebtedness is (1) unsecured, (2) not evidenced by a note, (3) on commercially reasonable terms and conditions, and (4) due not more than sixty (60) days past the date incurred and paid on or prior to such date, and/or (C) Permitted Equipment Leases; provided however, the aggregate amount of the indebtedness described in (B) and (C) shall not exceed at any time two percent (2%) of the outstanding principal amount of the Debt. No Indebtedness other than the Debt may be secured (subordinate or pari passu) by the Property;

(viii) fail to maintain all of its books, records, financial statements and bank accounts separate from those of its affiliates and any constituent party. Borrower's assets have not and will not be listed as assets on the financial statement of any other Person; provided, however, 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 books, records, resolutions and agreements as official records;

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

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

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

(xii) make any loans or advances to any Person (this limitation shall not include distributions to the members of Borrower);

(xiii) fail to file its own tax returns unless prohibited by Applicable Law from doing so (except that Borrower may file or may include its filing as part of a consolidated federal tax return, to the extent required and/or permitted by Applicable Law, provided that there shall be an appropriate notation indicating the separate existence of Borrower and its assets and liabilities);

(xiv) fail either to hold itself out to the public as a legal entity separate and distinct from any other Person and not as a division or part of any other Person or to conduct its business solely in its own name or fail to correct any known misunderstanding regarding its separate identity;

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

(xvi) without the unanimous written consent of all of its partners or members, as applicable, and the consent of each Independent Director (regardless of whether such Independent Director is engaged at the Borrower or SPE Component Entity level), (a) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any Creditors Rights Laws, (b) seek or consent to the appointment of a receiver, liquidator or any similar official, (c) take any action that might cause such entity to become insolvent, or (d) make an assignment for the benefit of creditors;

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

(xviii) fail to remain solvent, to pay its own liabilities (including, without limitation, salaries of its own employees) from its own funds or fail to maintain a sufficient number of employees in light of its contemplated business operations (in each case, to the extent there exists sufficient cash flow from the Property to do so and shall not require any equity owner to make additional capital contributions to Borrower);

(xix) acquire obligations or securities of its partners, members, shareholders or other affiliates, as applicable, or identify its partners, members or shareholders or other Affiliates, as applicable, as a division or part of it; or

(xx) violate or cause to be violated the assumptions made with respect to Borrower and its principals in the Non-Consolidation Opinion or in any New Non-Consolidation Opinion.

(b) If Borrower is a limited partnership or a limited liability company (other than an Acceptable LLC), each general partner or managing member (each, an “**SPE Component Entity**”) shall be a corporation or an Acceptable LLC (I) whose sole asset is its interest in Borrower, (II) which has not been and shall not be permitted to engage in any business or activity other than owning an interest in Borrower; (III) which has not been and shall not be permitted to incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation); and (IV) which has and will at all times own at least a 0.5% direct equity ownership interest in Borrower. Each such SPE Component Entity will at all times comply, and will cause Borrower to comply, with each of the representations, warranties, and covenants contained in this Article 5 (to the extent applicable) as if such representation, warranty or covenant was made directly by such SPE Component Entity. Upon the withdrawal or the

disassociation of an SPE Component Entity from Borrower, Borrower shall immediately appoint a new SPE Component Entity whose articles of incorporation or organization are substantially similar to those of such SPE Component Entity and deliver a New Non-Consolidation Opinion to Lender with respect to the new SPE Component Entity and its equity owners.

(c) In the event Borrower or the SPE Component Entity is an Acceptable LLC, the limited liability company agreement of Borrower or the SPE Component Entity (as applicable) (the “**LLC Agreement**”) shall provide that (i) upon the occurrence of any event that causes the last remaining member of Borrower or the SPE Component Entity (as applicable) (“**Member**”) to cease to be the member of Borrower or the SPE Component Entity (as applicable) (other than (A) upon an assignment by Member of all of its limited liability company interest in Borrower or the SPE Component Entity (as applicable) and the admission of the transferee in accordance with the Loan Documents and the LLC Agreement, or (B) the resignation of Member and the admission of an additional member of Borrower or the SPE Component Entity (as applicable) in accordance with the terms of the Loan Documents and the LLC Agreement), any person acting as the designated special member or Independent Director, as applicable, of Borrower or the SPE Component Entity (as applicable) shall, without any action of any other Person and simultaneously with the Member ceasing to be the member of Borrower or the SPE Component Entity (as applicable) automatically be admitted to Borrower or the SPE Component Entity (as applicable) as a member with a 0% economic interest (“**Special Member**”) and shall continue Borrower or the SPE Component Entity (as applicable) without dissolution and (ii) Special Member may not resign from Borrower or the SPE Component Entity (as applicable) or transfer its rights as Special Member unless (A) a successor Special Member has been admitted to Borrower or the SPE Component Entity (as applicable) as a Special Member in accordance with requirements of Delaware or Maryland law (as applicable) and (B) after giving effect to such resignation or transfer, there remains at least one (1) Independent Director of the SPE Component Entity or Borrower (as applicable) in accordance with Section 5.2 below. The LLC Agreement shall further provide that (i) Special Member shall automatically cease to be a member of Borrower or the SPE Component Entity (as applicable) upon the admission to Borrower or the SPE Component Entity (as applicable) of the first substitute member, (ii) Special Member shall be a member of Borrower or the SPE Component Entity (as applicable) that has no interest in the profits, losses and capital of Borrower or the SPE Component Entity (as applicable) and has no right to receive any distributions of the assets of Borrower or the SPE Component Entity (as applicable), (iii) pursuant to the applicable provisions of the limited liability company act of the State of Delaware or Maryland (as applicable, the “**Act**”), Special Member shall not be required to make any capital contributions to Borrower or the SPE Component Entity (as applicable) and shall not receive a limited liability company interest in Borrower or the SPE Component Entity (as applicable), (iv) Special Member, in its capacity as Special Member, may not bind Borrower or the SPE Component Entity (as applicable) and (v) except as required by any mandatory provision of the Act, Special Member, in its capacity as Special Member, shall have no right to vote on, approve or otherwise consent to any action by, or matter relating to, Borrower or the SPE Component Entity (as applicable) including, without limitation, the merger, consolidation or conversion of Borrower or the SPE Component Entity (as applicable); provided, however, such prohibition shall not limit the obligations of Special Member, in its capacity as Independent Director, to vote on such matters required by the Loan Documents or the LLC Agreement. In order to implement the admission to Borrower or the SPE Component Entity (as applicable) of Special Member, Special

Member shall execute a counterpart to the LLC Agreement. Prior to its admission to Borrower or the SPE Component Entity (as applicable) as Special Member, Special Member shall not be a member of Borrower or the SPE Component Entity (as applicable), but Special Member may serve as an Independent Director of Borrower or the SPE Component Entity (as applicable).

(d) The LLC Agreement shall further provide that, (i) upon the occurrence of any event that causes the Member to cease to be a member of Borrower or the SPE Component Entity (as applicable) to the fullest extent permitted by law, the personal representative of Member shall, within ninety (90) days after the occurrence of the event that terminated the continued membership of Member in Borrower or the SPE Component Entity (as applicable) agree in writing (A) to continue Borrower or the SPE Component Entity (as applicable) and (B) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of Borrower or the SPE Component Entity (as applicable) effective as of the occurrence of the event that terminated the continued membership of Member in Borrower or the SPE Component Entity (as applicable), (ii) any action initiated by or brought against Member or Special Member under any Creditors Rights Laws shall not cause Member or Special Member to cease to be a member of Borrower or the SPE Component Entity (as applicable) and upon the occurrence of such an event, the business of Borrower or the SPE Component Entity (as applicable) shall continue without dissolution, and (iii) each of Member and Special Member waives any right it might have to agree in writing to dissolve Borrower or the SPE Component Entity (as applicable) upon the occurrence of any action initiated by or brought against Member or Special Member under any Creditors Rights Laws, or the occurrence of an event that causes Member or Special Member to cease to be a member of Borrower or the SPE Component Entity (as applicable).

(e) Borrower hereby represents that, from the date of its formation to the date of this Agreement, Borrower:

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

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

(iii) is in compliance with all laws, regulations, and orders applicable to it and, except as otherwise disclosed in this Agreement, has received all permits necessary for it to operate;

(iv) is not involved in any dispute with any taxing authority (excluding tax appeals in accordance with the requirements of the Loan Documents);

(v) has paid all taxes which it owes;

(vi) has never owned any real property other than the Property and personal property necessary or incidental to its ownership or operation of the Property and has never engaged in any business other than the ownership and operation of the Property;

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

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

(ix) has passed a Phase One environmental audit for the Property;

(x) has no material contingent or actual obligations not related to the Property;

(xi) has not entered into any contract or agreement with any of its Affiliates, constituents, or owners, or any guarantors of any of its obligations or any Affiliate of any of the foregoing (each, a "**Related Party**"), except upon terms and conditions that are commercially reasonable and substantially similar to those available in an arm's-length transaction with an unrelated party;

(xii) has paid all of its debts and liabilities from its assets;

(xiii) has done or caused to be done all things necessary to observe all organizational formalities applicable to it and to preserve its existence;

(xiv) has maintained all of its books, records, financial statements and bank accounts separate from those of any other Person;

(xv) has not had its assets listed as assets on the financial statement of any other Person, except that Borrower's assets may be included in consolidated financial statements of its affiliates, provided that (1) 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 (2) such assets shall be listed on Borrower's own separate balance sheet;

(xvi) has filed its own tax returns (except to the extent that it has been a tax-disregarded entity not required to file tax returns under applicable law and except that Borrower may file or may include its filing as part of a consolidated tax return, to the extent required or permitted under Applicable Law, provided that there shall be an appropriate notation indicating the separate existence of Borrower and its assets and liabilities) and, if it is a corporation, has not filed a consolidated federal income tax return with any other Person;

(xvii) has been, and at all times has held itself out to the public as, a legal entity separate and distinct from any other Person (including any Affiliate or other Related Party);

(xviii) has corrected any known misunderstanding regarding its status as a separate entity;

(xix) has conducted all of its business and held all of its assets in its own name;

(xx) has not identified itself or any of its affiliates as a division or part of the other;

(xxi) has maintained and utilized separate stationery, invoices and checks bearing its own name;

(xxii) has not commingled its assets with those of any other Person and has held all of its assets in its own name;

(xxiii) has not guaranteed or become obligated for the debts of any other Person;

(xxiv) has not held itself out as being responsible for the debts or obligations of any other Person;

(xxv) has allocated fairly and reasonably any overhead expenses that have been shared with an Affiliate, including paying for office space and services performed by any employee of an Affiliate or Related Party;

(xxvi) has not pledged its assets to secure the obligations of any other Person and no such pledge remains outstanding except in connection with the Loan;

(xxvii) has maintained adequate capital in light of its contemplated business operations, provided that the foregoing shall not require any direct or indirect member, partner or shareholder of Borrower to make additional capital contributions to Borrower;

(xxviii) has maintained a sufficient number of employees in light of its contemplated business operations and has paid the salaries of its own employees from its own funds;

(xxix) has not owned any subsidiary or any equity interest in any other entity;

(xxx) has not incurred any indebtedness that is still outstanding other than indebtedness that is permitted under the Loan Documents;

(xxxi) has not had any of its obligations guaranteed by an affiliate, except for guarantees that have been either released or discharged (or that will be discharged as a result of the closing of the Loan) or guarantees that are expressly contemplated by the Loan Documents; and

(xxxii) has not leased any portion of the Property to a Tenant that is affiliated with the Borrower.

## **Section 5.2 Independent Director.**

(a) The organizational documents of Borrower (to the extent Borrower is a corporation or an Acceptable LLC) or the SPE Component Entity, as applicable, shall provide

that at all times there shall be at least one (1) duly appointed member of its board of directors or managers, as applicable (each, an “**Independent Director**”) reasonably satisfactory to Lender who each shall not have been at the time of each such individual’s initial appointment, and (I) shall not have been at any time during the preceding five (5) years, and shall not be at any time while serving as Independent Director, either (i) a shareholder (or other equity owner) of, or an officer, director (other than in its capacity as Independent Director), partner, member or employee of, Borrower or any of its respective shareholders, partners, members, subsidiaries or affiliates, (ii) a customer of, or supplier to, or other Person who derives any of its purchases or revenues from its activities with, Borrower or any of its respective shareholders, partners, members, subsidiaries or affiliates (other than in its capacity as an Independent Director), (iii) a Person who Controls or is under common Control with any such shareholder, officer, director, partner, member, employee supplier, customer or other Person, or (iv) a member of the immediate family of any such shareholder, officer, director, partner, member, employee, supplier, customer or other Person, and (II) shall be employed by, in good standing with and engaged by Borrower in connection with, in each case, an Approved ID Provider. Each Independent Director at the time of their initial engagement shall have had at least three (3) years prior experience as an independent director to a company or a corporation in the business of owning and operating commercial properties similar in type and quality to the Property.

(b) The organizational documents of Borrower or the SPE Component Entity (as applicable) shall further provide that (I) the board of directors or managers of Borrower or the SPE Component Entity as applicable, and the constituent members of such entities (the “**Constituent Members**”) shall not (A) file or consent to the filing of any petition, either voluntary or involuntary, unless sought by Lender, to take advantage of any Creditors Rights Laws, (B) seek or consent to the appointment of a receiver, liquidator or any similar official unless sought by Lender, (C) take any action that might cause such entity to become insolvent, or (D) make an assignment for the benefit of creditors, unless sought by Lender, without the unanimous vote of (1) the board of directors or managers of Borrower or the SPE Component Entity as applicable, or (2) the Constituent Members and the Independent Director engaged as provided by the terms hereof; (II) any resignation, removal or replacement of any Independent Director shall not be effective without two (2) Business Days prior written notice to Lender accompanied by evidence that the replacement Independent Director satisfies the applicable terms and conditions hereof and of the applicable organizational documents; (III) to the fullest extent permitted by applicable law, including Section 18-1101(c) of the Act and notwithstanding any duty otherwise existing at law or in equity, the Independent Director shall consider only the interests of the Constituent Members and Borrower and any SPE Component Entity (including Borrower’s and any SPE Component Entity’s respective creditors) in acting or otherwise voting on the matters provided for herein and in Borrower’s and SPE Component Entity’s organizational documents (which such fiduciary duties to the Constituent Members and Borrower and any SPE Component Entity (including Borrower’s and any SPE Component Entity’s respective creditors), in each case, shall be deemed to apply solely to the extent of their respective economic interests in Borrower or SPE Component Entity (as applicable) exclusive of (x) all other interests (including, without limitation, all other interests of the Constituent Members), (y) the interests of other affiliates of the Constituent Members, Borrower and SPE Component Entity and (z) the interests of any group of affiliates of which the Constituent Members, Borrower or SPE Component Entity is a part)); (IV) other than as provided in subsection (III) above, the Independent Director shall not have any fiduciary duties to any



Constituent Members, any directors of Borrower or SPE Component Entity or any other Person; (V) the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing under applicable law; and (VI) to the fullest extent permitted by applicable law, including Section 18-1101(e) of the Act, an Independent Director shall not be liable to Borrower, SPE Component Entity, any Constituent Member or any other Person for breach of contract or breach of duties (including fiduciary duties), unless the Independent Director acted in bad faith or engaged in willful misconduct.

**Section 5.3 Change of Name, Identity or Structure.**

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

**Section 5.4 Business and Operations.**

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

**ARTICLE 6.**

**NO SALE OR ENCUMBRANCE**

**Section 6.1 Transfer Definitions.**

For purposes of this Article 6, "**Restricted Party**" shall mean Borrower, Guarantor, any SPE Component Entity, any Affiliated Manager, or any shareholder, partner, member or non-member manager, or any direct or indirect legal or beneficial owner of Borrower, Guarantor, any SPE Component Entity, any Affiliated Manager or any non-member manager; and a "**Sale or Pledge**" shall mean a voluntary or involuntary sale, conveyance, mortgage, grant, bargain, lien, encumbrance, pledge, assignment, grant of any options with respect to, or any other transfer or disposition of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) a legal or beneficial interest.

## **Section 6.2 No Sale/Encumbrance.**

(a) Except as expressly permitted pursuant to Section 6.3, without the prior written consent of Lender, Borrower shall not cause or permit (i) a Sale or Pledge of the Property or any part thereof or any legal or beneficial interest therein, (ii) a Sale or Pledge of an interest in any Restricted Party or (iii) any change in Control of Borrower, Guarantor, any Affiliated Manager, or any change in control of the day-to-day operations of the Property (collectively, a “**Prohibited Transfer**”), other than pursuant to (x) Leases of space in the Improvements to Tenants in accordance with the provisions of Section 4.14, (y) any Permitted Encumbrances, and (z) any Permitted Equipment Leases.

(b) A Prohibited Transfer shall include, but not be limited to, (i) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments; (ii) an agreement by Borrower leasing all or a substantial part of the Property for other than actual occupancy by a Tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower’s right, title and interest in and to (A) any Leases or any Rents or (B) any REA or any Material Agreements; (iii) any action for partition of the Property (or any portion thereof or interest therein) or any similar action instituted or prosecuted by Borrower or by any other person or entity, pursuant to any contractual agreement or other instrument or under Applicable Law (including, without limitation, common law); (iv) any other action instituted by (or at the behest of) Borrower or its affiliates or consented to or acquiesced in by Borrower or its affiliates which results in a termination of an REA or any Material Agreements; (v) if a Restricted Party is a corporation, any merger, consolidation or Sale or Pledge of such corporation’s stock or the creation or issuance of new stock in one or a series of transactions; (vi) if a Restricted Party is a limited or general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the Sale or Pledge of the partnership interest of any general or limited partner or any profits or proceeds relating to such partnership interests or the creation or issuance of new limited partnership interests; (vii) if a Restricted Party is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) or the Sale or Pledge of the membership interest of any member or any profits or proceeds relating to such membership interest; (viii) if a Restricted Party is a trust or nominee trust, any merger, consolidation or the Sale or Pledge of the legal or beneficial interest in a Restricted Party or the creation or issuance of new legal or beneficial interests; or (ix) the removal or the resignation of Manager (including, without limitation, an Affiliated Manager) other than in accordance with Section 4.15.

## **Section 6.3 Permitted Equity Transfers.**

Notwithstanding the restrictions contained in this Article 6, the following equity transfers shall be permitted without Lender’s consent (each, a “**Permitted Equity Transfer**”): (a) a transfer (but not a pledge) by devise or descent or by operation of law upon the death of a Restricted Party or any member, partner or shareholder of a Restricted Party, (b) the transfer (but not the pledge), in one or a series of transactions, of the stock, partnership interests or membership interests (as the case may be) in a Restricted Party (including, without limitation, transfers for estate planning purposes), (c) the sale, transfer or issuance of shares of common stock in any Restricted Party 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, and (d) the sale, transfer or issuance of stock in a Restricted Party that is a non-traded public real estate investment trust to third party investors through licensed U.S. broker-dealers in accordance with Applicable Law (provided that the foregoing provisions of clauses (c) and (d) shall not be deemed to waive, qualify or otherwise limit Borrower's obligation to comply (or to cause the compliance) with the other covenants set forth herein and in the other Loan Documents (including, without limitation, the covenants contained herein relating to ERISA matters)); provided, further, that, with respect only to the transfers listed in clauses (a) and/or (b) above, (A) (x) Lender shall receive written notice of any transfers pursuant to clause (a) above within ten (10) days of Borrower's notice of such transfer and (y) Lender shall receive not less than thirty (30) days prior written notice of such transfers in connection with any transfer pursuant to clause (b) above, (B) no such transfers shall result in a change in Control of Guarantor or Affiliated Manager, (C) after giving effect to such transfers, Guarantor shall (I) own at least a 51% direct or indirect equity ownership interest in each of Borrower and any SPE Component Entity; (II) Control Borrower and any SPE Component Entity; and (III) control the day-to-day operation of the Property, (D) after giving effect to such transfers, the Property shall continue to be managed by Affiliated Manager or a New Manager approved in accordance with the applicable terms and conditions hereof, (E) in the case of the transfer of any direct equity ownership interests in Borrower or in any SPE Component Entity, such transfers shall be conditioned upon continued compliance with the relevant provisions of Article 5 hereof, (F) in the case of (1) the transfer of the management of the Property to a new Affiliated 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 SPE Component Entity that did not own the same on the date hereof or at the time of the delivery of any New Non-Consolidation Opinion prior to such transfer, such transfers shall be conditioned upon delivery to Lender of a New Non-Consolidation Opinion addressing such transfer, (G) such transfers shall be conditioned upon Borrower's ability to, after giving effect to the equity transfer in question, (I) remake the representations contained herein relating to ERISA, OFAC and Patriot Act matters (and, upon Lender's request, Borrower shall deliver to Lender (x) an Officer's Certificate containing such updated representations effective as of the date of the consummation of the applicable equity transfer and (y) searches, acceptable to Lender, for any Person owning, directly or indirectly, 20% or more of the interests in the Borrower as a result of such transfer) and (II) continue to comply with the covenants contained herein relating to ERISA OFAC and Patriot Act matters, and (H) without the prior written consent of Lender, after giving effect to such transfers, no party shall own, directly or indirectly, 49% or more of the interests in any Borrower unless such party owned 49% or more of the interests in either Borrower prior to such transfers. Upon request from Lender, Borrower shall promptly provide Lender a revised version of the organizational chart delivered to Lender in connection with the Loan reflecting any equity transfer consummated in accordance with this Section 6.3.

**Section 6.4 Permitted Property Transfers (Assumptions).**

Notwithstanding the provisions of this Article 6, following the date which is twelve (12) months from the Closing Date, Lender shall not unreasonably withhold consent to the transfer of the Property, on three (3) occasions, in its entirety to, and the related assumptions of the Loan by, any Person (a "Transferee") provided that, with respect to each such transfer, each of the following terms and conditions are satisfied (each, a "Permitted Property Transfer"):

- (a) no Default or Event of Default has occurred and is continuing;

(b) Borrower shall have (i) delivered written notice to Lender of the terms of such prospective transfer not less than forty-five (45) days before the date on which such transfer is scheduled to close and, concurrently therewith, all such information concerning the proposed Transferee as Lender shall reasonably require and (ii) paid to Lender a non-refundable processing fee in the amount of \$25,000. Lender shall have the right to approve or disapprove the proposed transfer based on its then current underwriting and credit requirements for similar loans secured by similar properties which loans are sold in the secondary market, such approval not to be unreasonably withheld. In determining whether to give or withhold its approval of the proposed transfer, Lender shall consider the experience and track record of Transferee and its principals in owning and operating facilities similar to the Property, the financial strength of Transferee and its principals, the general business standing of Transferee and its principals and Transferee's and its principals' relationships and experience with contractors, vendors, tenants, lenders and other business entities; provided, however, that, notwithstanding Lender's agreement to consider the foregoing factors in determining whether to give or withhold such approval, such approval shall be given or withheld based on what Lender determines to be commercially reasonable and, if given, may be given subject to such conditions as Lender may deem reasonably appropriate;

(c) Borrower shall have paid to Lender, concurrently with the closing of such prospective transfer, (i) a non-refundable assumption fee in an amount equal to the greater of (y) (I) one-half of one percent (0.5%) of the then outstanding principal balance of the Loan for the first Permitted Property Transfer and (II) three-quarters of one percent (0.75%) of the then outstanding principal balance of the Loan for the second and third Permitted Property Transfers or (z), in each such case, \$15,000, (ii) all reasonable out-of-pocket costs and expenses, including reasonable attorneys' fees, incurred by Lender in connection therewith and (iii) all fees, costs and expenses of all third parties and the Rating Agencies incurred in connection therewith;

(d) Transferee assumes and agrees to pay the Debt as and when due subject to the provisions of Article 13 hereof and, prior to or concurrently with the closing of such transfer, Transferee and its constituent partners, members, shareholders, affiliates or sponsors as Lender may require, shall execute, without any cost or expense to Lender, such documents and agreements as Lender shall reasonably require to evidence and effectuate said assumption and an Affiliate of Transferee reasonably acceptable to Lender shall execute a recourse guaranty and an environmental indemnity in form and substance identical to the Guaranty and Environmental Indemnity, respectively, with such changes to each of the foregoing as may be reasonably required by Lender;

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

(f) Borrower shall have delivered to Lender, without any cost or expense to Lender, such endorsements to Lender's Title Insurance Policy insuring that fee simple or leasehold title to the Property, as applicable, is vested in Transferee (subject to Permitted Encumbrances), hazard insurance endorsements or certificates and other similar materials as Lender may deem necessary at the time of the transfer, all in form and substance satisfactory to Lender;

(g) Transferee shall have furnished to Lender all appropriate papers evidencing Transferee's organization and good standing, and the qualification of the signers to execute the assumption of the Debt, which papers shall include certified copies of all documents relating to the organization and formation of Transferee and of the entities, if any, which are partners or members of Transferee. Transferee and such constituent partners, members or shareholders of Transferee (as the case may be), as Lender shall require, shall comply with the covenants set forth in Article 5 hereof;

(h) Transferee shall assume the obligations of Borrower under any Management Agreement or provide a new management agreement with a new manager which meets with the requirements of the Assignment of Management Agreement and Section 4.15 hereof and assign to Lender as additional security such new management agreement;

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

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

(k) intentionally omitted; and

(l) Borrower's obligations under the contract of sale pursuant to which the transfer is proposed to occur shall expressly be subject to the satisfaction of the applicable terms and conditions of this Section 6.4.

Notwithstanding the foregoing or anything herein to the contrary, Borrower may not exercise its rights pursuant to this Section 6.4 during the period that commences on the date that is sixty (60) days prior to the date of any intended Securitization of the Loan and ending on the date that is sixty (60) days after the date of such Securitization of the Loan.

**Section 6.5 Lender's Rights.**

Lender reserves the right to condition the consent to a Prohibited Transfer (expressly excluding any Permitted Equity Transfer and Permitted Property Transfer) requested hereunder upon (a) a modification of the terms hereof and on assumption of this Agreement and the other Loan Documents as so modified by the proposed Prohibited Transfer, (b) payment of a transfer fee of 1% of outstanding principal balance of the Loan and all of Lender's expenses incurred in connection with such Prohibited Transfer, (c) to the extent required by Lender, receipt of a Rating Agency Confirmation with respect to the Prohibited Transfer, (d) the proposed transferee's continued compliance with the covenants set forth in this Agreement, including, without limitation, the covenants in Article 5, (e) receipt of a New Non-Consolidation Opinion with respect to the Prohibited Transfer, and/or (f) such other conditions and/or legal opinions as Lender shall determine in its sole discretion to be in the interest of Lender. All expenses incurred by Lender shall be payable by Borrower whether or not Lender consents to the Prohibited Transfer. Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon a Prohibited Transfer without Lender's consent. This provision shall apply to every Prohibited Transfer, whether or not Lender has consented to any previous Prohibited Transfer.

**Section 6.6 Substitution.**

Subject to the terms and conditions set forth in this Section 6.6, Borrower may obtain a release of the Lien of the Security Instrument (and the related Loan Documents) on any Individual Property (the "**Substituted Property**"), by substituting therefor another commercial property acceptable to Lender with a property of kind, quality (including location attributes of submarket strength, population and access) and use equal to or better than the Substituted Property to be acquired by Borrower or an Affiliate thereof (the "**Substitute Property**"), provided that any such substitution (a "**Substitution**") shall be subject, in each case, to the following conditions precedent are satisfied:

- (a) The aggregate Loan-To-Value Ratio for all of the Individual Properties (including the Substitute Property, but excluding the Substituted Property) immediately following the Substitution shall not exceed the aggregate Loan-To-Value Ratio for all of the Individual Properties (including the Substituted Property, but excluding the Substitute Property) immediately prior to the Substitution.
- (b) No Substitution shall occur during the twelve (12) month period preceding the Maturity Date.
- (c) Lender shall have received at least sixty (60) days prior written notice requesting the Substitution and identifying the Substitute Property.
- (d) Lender shall have received a fee equal to \$15,000, for each Substitution.
- (e) Lender shall have received an appraisal of the Substitute Property, dated no more than sixty (60) days prior to the Substitution date, by an appraiser reasonably acceptable to the Rating Agencies (if the Loan has been Securitized) and Lender.

(f) The fair market value of the Substitute Property shall not be less than one hundred five percent (105%) of the fair market value of the Substituted Property as of the Closing Date, which determination shall be made by Lender based on the appraisals delivered pursuant to clause (e) above.

(g) SPE Component Entity shall transfer its indirect interest in the Substituted Property to a third party and shall assume the interest of the Substitute Property. In the event the applicable Borrower relating to the Substituted Property is Golden Arrow Clermont FL LLC, the Deposit Account and the Cash Management Account shall be transferred to another Borrower.

(h) The weighted average credit rating of the Tenants of the Property (including the Substitute Property, but excluding the Substituted Property) must not be less than the weighted average credit rating of the Tenants of the Property (including the Substituted Property, but excluding the Substitute Property), prior to the Substitution. The weighted average remaining lease term of the Leases of the Property (including the Substitute Property, but excluding the Substituted Property) must not be less than the weighted average remaining lease term of the Leases of the Property (including the Substituted Property, but excluding the Substitute Property), prior to the Substitution.

(i) The Substitute Property shall be leased (A) for a fixed rent equal to or better than the rent of the Substituted Property, (B) for a lease term (excluding any option to extend, renew or terminate the lease) of no less than the remaining lease term of the Tenant for the Substituted Property, (C) on terms and conditions no less favorable than the Lease to the Tenant of the Substitute Property and (D) the credit rating of the Tenant at the Substitute Property shall be equal to or great than the Tenant's at the Substituted Property's credit rating as of the Substitution.

(j) If the Loan is part of a Securitization, Lender shall have received a Rating Agency Confirmation. If the Loan is not part of a Securitization, Lender shall have consented in writing to such Substitution, which consent shall not be unreasonably withheld.

(k) No Event of Default shall have occurred and be continuing (unless such Substitution would cure such Event of Default, Lender consents to the Substitution and Borrower pays any and all fees and expenses related to the Event of Default and payable by Borrower pursuant to the terms of this Agreement). Lender shall have received a certificate from Borrower confirming the foregoing, stating that the representations and warranties of Borrower contained in this Agreement and the other Loan Documents are true and correct in all material respects on and as of the date of the Substitution with respect to Borrower, the Properties and the Substitute Property and containing any other representations and warranties with respect to Borrower, the Properties, the Substitute Property or the Loan as Lender and the Rating Agencies may reasonably require, unless such certificate would be inaccurate, such certificate to be in form and substance reasonably satisfactory to Lender and the Rating Agencies.

(l) Borrower shall (A) have executed, acknowledged and delivered to Lender (I) such security instruments and UCC-1 financing statements with respect to the Substitute Property as Lender may reasonably require, together with a letter from Borrower countersigned by a title insurance company acknowledging receipt of such security instruments and financing statements

and agreeing to record or file, as applicable, such security instruments and financing statements in the appropriate recording or filing offices so as to effectively create upon such recording and filing valid and enforceable Liens upon the Substitute Property, of the requisite priority, in favor of Lender (or such other trustee as may be desired under local law), subject only to the Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents and (II) an amendment to the Environmental Indemnity Agreement with respect to the Substitute Property and (B) have caused the Guarantor to acknowledge and confirm their respective obligations under the Loan Documents. The required security documents, financing statements and other documents shall be the same in form and substance as the counterparts of such documents executed and delivered with respect to the related Substituted Property subject to modifications reflecting only the Substitute Property as the property that is the subject of such documents and such modifications reflecting the laws of the state in which the Substitute Property is located as are customarily delivered in similar transactions in such state and delivering the opinion as to the enforceability of such documents required pursuant to clause (r) below. The security instrument encumbering the Substitute Property shall secure all amounts evidenced by the Note, provided that in the event that the jurisdiction in which the Substitute Property is located imposes a mortgage recording, intangibles or similar tax and does not permit the allocation of indebtedness for the purpose of determining the amount of such tax payable, the principal amount secured by such security instrument shall be equal to one hundred twenty-five percent (125%) of the Allocated Loan Amount of the Substitute Property.

(m) Lender shall have received (A) to the extent available any "tie-in" or similar endorsement to each title insurance policy insuring the Lien of an existing Security Instrument as of the date of the Substitution with respect to the title insurance policy insuring the Lien of the Security Instrument with respect to the Substitute Property and (B) a title insurance policy (or a marked, signed and redated commitment to issue such title insurance policy) insuring the Lien of the Security Instrument encumbering the Substitute Property, issued by the title company that issued the title insurance policies insuring the Lien of the existing Security Instruments (or any other reputable national title insurance company approved by Lender) and dated as of the date of the Substitution, with reinsurance and direct access agreements that replace such agreements issued in connection with the title insurance policy insuring the Lien of the Security Instrument encumbering the Substituted Property. The title insurance policy issued with respect to the Substitute Property shall (1) provide coverage in the amount of the Allocated Loan Amount if the "tie-in" or similar endorsement described above is available or, if such endorsement is not available, in an amount equal to one hundred fifty percent (150%) of the Allocated Loan Amount, (2) insure Lender that the relevant Security Instrument creates a valid first lien on the Substitute Property encumbered thereby, free and clear of all exceptions from coverage other than Permitted Encumbrances and standard exceptions and exclusions from coverage (as modified by the terms of any endorsements) as reasonably approved by Lender, (3) contain such endorsements and affirmative coverages as are then available and are contained in the title insurance policies insuring the Liens of the existing Security Instruments, and (4) name Lender as the insured. Lender also shall have received copies of paid receipts or other evidence showing that all premiums in respect of such endorsements and title insurance policies have been paid.

(n) Lender shall have received a current survey for the Substitute Property, certified to the title company and Lender and their successors and assigns, in the same form and having the same content as the certification of the survey of the Substituted Property prepared by a



professional land surveyor licensed in the state in which the Substitute Property is located and acceptable to Lender and the Rating Agencies. Such survey shall reflect the same legal description contained in the title insurance policy relating to such Substitute Property and shall include, among other things, a metes and bounds description of the real property comprising part of such Substitute Property (unless such real property has been satisfactorily designated by lot number on a recorded plat). The surveyor's seal shall be affixed to each survey and each survey shall certify that the surveyed property is not located in a "one-hundred-year flood hazard area."

(o) Lender shall have received valid certificates of insurance indicating that the requirements for the policies of insurance required for an Individual Property hereunder have been satisfied with respect to the Substitute Property and evidence of the payment of all premiums payable for the existing policy period.

(p) Lender shall have received a Phase I environmental report from an environmental consultant reasonably approved by Lender, and, if recommended under the Phase I environmental report, a Phase II environmental report, which conclude that the Substitute Property does not contain any Hazardous Substances in violation of any Environmental Laws and is not subject to any material risk of contamination from any off-site Hazardous Substances. If any such report discloses the presence of any Hazardous Substances in violation of any Environmental Laws or a material risk of contamination from any off-site Hazardous Substances, such report shall include an estimate of the cost of any related remediation and Borrower shall deposit with Lender an amount equal to one hundred twenty-five percent (125%) of such estimated cost, which deposit shall constitute additional security for the Loan and shall be released to Borrower upon the delivery to Lender of (A) an update to such report indicating that there are no longer Hazardous Substances on the Substitute Property in violation of any Environmental Laws or any material danger of contamination from any off-site Hazardous Substances that has not been fully remediated and (B) paid receipts indicating that the costs of all such remediation work have been paid.

(q) Borrower shall deliver or cause to be delivered to Lender (A) updates certified by Borrower of all organizational documentation related to the Borrower effecting the Substitution and/or the formation, structure, existence, good standing and/or qualification to do business delivered to Lender on the date hereof; (B) good standing certificates, certificates of qualification to do business in the jurisdiction in which the Substitute Property is located (if required in such jurisdiction); and (C) resolutions of Borrower authorizing the Substitution and any actions taken in connection with such Substitution.

(r) Lender shall have received the following opinions of Borrower's counsel: (A) an opinion or opinions of counsel admitted to practice under the laws of the state in which the Substitute Property is located stating that the Loan Documents delivered with respect to the Substitute Property pursuant to clause (l) above are valid and enforceable in accordance with their terms, subject to the laws applicable to creditors' rights and equitable principles, and that Borrower is qualified to do business and in good standing under the laws of the jurisdiction where the Substitute Property is located or that Borrower is not required by applicable law to qualify to do business in such jurisdiction; (B) an opinion of counsel acceptable to the Rating Agencies if the Loan is part of a Securitization, or the Lender if the Loan is not part of a Securitization, stating that the Loan Documents delivered with respect to the Substitute Property

pursuant to clause (l) above were duly authorized, executed and delivered by Borrower and that the execution and delivery of such Loan Documents and the performance by Borrower of its obligations thereunder will not cause a breach of, or a default under, any agreement, document or instrument to which Borrower is a party or to which it or its properties are bound; (C) an opinion of counsel acceptable to, the Rating Agencies if the Loan is part of a Securitization, or the Lender if the Loan is not part of a Securitization, stating that subjecting the Substitute Property to the Lien of the related Security Instrument and the execution and delivery of the related Loan Documents does not and will not impair the ability of Lender to enforce its remedies under all of the Loan Documents or to realize the benefits of the cross-collateralization provided for thereunder; (D) intentionally omitted; (E) intentionally omitted and (F) if the Loan is part of a Securitization, an opinion of counsel obtained by the applicable servicer at Borrower's expense, acceptable to the Rating Agencies stating that any REMIC Trust that has acquired the loan secured hereby will not fail to maintain its status as a REMIC Trust solely as a result of such Substitution and that the Substitution and related transaction would not be a "Significant Modification" and would not cause the loan to fail to be a "Qualified Mortgage" under the REMIC Requirements. Notwithstanding the foregoing provisions of this Section 6.6 or anything herein to the contrary, this Section 6.6 is subject to the terms of Section 11.3 hereof, and to the extent Borrower is required to make any principal prepayment pursuant to Section 11.3 hereof, Borrower shall also pay to Lender the Yield Maintenance Premium in connection with such principal prepayment.

(s) Borrower shall have paid, or escrowed with Lender, all due and payable insurance premiums (unless the Property is covered by a blanket insurance policy or Tenant provides self-insurance that is satisfactory to Lender), taxes and other charges relating to each of the Individual Properties and the Substitute Property, including without limitation, (i) accrued but unpaid insurance premiums relating to each of the Individual Properties and the Substitute Property, and (ii) currently due and payable Taxes (including any in arrears) relating to each of the Individual Properties and the Substitute Property and (iii) currently due and payable maintenance charges and other impositions relating to each of the Properties and Substitute Property. Any Impounds or other amounts held by Lender with respect to the Substituted Property shall, at the Borrower's election, be applied to (i) amounts payable by Borrower in connection with this clause (s), (ii) returned to Borrower, or (iii) or applied to other amounts due and payable by Borrower under this Agreement.

(t) Borrower shall have paid or reimbursed Lender for all reasonable third party costs and expenses incurred by Lender (including, without limitation, reasonable attorney's fees and disbursements) in connection with the Substitution and Borrower shall have paid all recording charges, filing fees, taxes or other expenses (including, without limitation, mortgage and intangibles taxes and documentary stamp taxes) payable in connection with the Substitution. Borrower shall have paid all costs and expenses of the Rating Agencies incurred in connection with the Substitution.

(u) Lender shall have received annual operating statements for the Substitute Property for the most current completed fiscal year and a current operating statement for the Substituted Property, each certified (to Borrower's knowledge) to Lender as being true and correct in all material respects and a certificate from Borrower certifying (to Borrower's knowledge) that there has been no material adverse change in the financial condition of the Substitute Property since the date of such operating statements.

(v) Borrower shall have delivered to Lender estoppel certificates from the existing tenants of the Substitute Property. All such estoppel certificates shall be substantially in the form approved by Lender in connection with the origination of the Loan or in the form specified in the applicable Lease. If an estoppel certificate indicates that all tenant improvement work required under the subject lease has not yet been completed, Borrower shall, if required by the Rating Agencies, deliver to Lender financial statements indicating that Borrower has adequate funds to pay all costs related to such tenant improvement work as required under such lease.

(w) Lender shall have received a copy of the tenant lease affecting the Substitute Property certified to Borrower's knowledge as being true and correct.

(x) Lender shall have received subordination, nondisturbance and attornment agreements in the form approved by Lender in connection with the origination of the Loan with respect to the tenant at the Substitute Property.

(y) Lender shall have received (A) an endorsement to the title insurance policy insuring the Lien of the Security Instrument encumbering the Substitute Property insuring that the Substitute Property constitutes a separate tax lot or, if such an endorsement is not available in the state in which the Substitute Property is located, a letter from the title insurance company issuing such title insurance policy stating that the Substitute Policy constitutes a separate tax lot or (B) a letter from the appropriate taxing authority stating that the Substitute Property constitutes a separate tax lot (or other evidence with respect thereto).

(z) Lender shall have received a physical conditions report with respect to the Substitute Property stating that the Substitute Property and its use comply in all material respects with all applicable legal requirements (including, without limitation, zoning, subdivision and building laws) and that the Substitute Property is in good condition and repair and free of material damage or waste and is in as good a condition as the Substituted Property. If compliance with any legal requirements are not addressed by the physical conditions report, such compliance shall be confirmed by delivery to Lender of a certificate of an architect licensed in the state in which the Substitute Property is located, a letter from the municipality in which such Property is located, a certificate of a surveyor that is licensed in the state in which the Substitute Property is located (with respect to zoning and subdivision laws), an ALTA 3.1 zoning endorsement to the title insurance policy delivered pursuant to clause (o) above (with respect to zoning laws) or a subdivision endorsement to the title insurance policy delivered pursuant to clause (o) above (with respect to subdivision laws). If the physical conditions report recommends that any repairs be made with respect to the Substitute Property, such physical conditions report shall include an estimate of the cost of such recommended repairs and Borrower shall deposit with Lender an amount equal to one hundred twenty-five percent (125%) of such estimated cost, which deposit shall constitute additional security for the Loan and shall be released to Borrower upon the delivery to Lender of (A) an update to such physical conditions report or a letter from the engineer that prepared such physical conditions report indicating that the recommended repairs were completed in good and workmanlike manner and (B) paid receipts indicating that the costs of all such repairs have been paid.

(aa) To the extent there is a Management Agreement, Lender shall have received a certified copy reflecting the Substitute Property as a property managed pursuant thereto and Manager shall have executed and delivered to Lender a consent and subordination agreement with respect to such management agreement in the same form as provided for herein.

(bb) Lender shall have received such other and further approvals, opinions, documents and information in connection with the Substitution as reasonably requested by the Rating Agencies if the Loan is part of a Securitization, or the Lender if the Loan is not part of a Securitization.

(cc) Lender shall have received copies of all contracts and agreements relating to the leasing and operation of the Substitute Property together with a certification of Borrower attached to each such contract or agreement certifying that the attached copy is a true and correct copy of such contract or agreement and all amendments thereto.

(dd) Borrower shall submit to Lender, not less than ten (10) days prior to the date of such Substitution, a release of Lien (and related Loan Documents) for the Substituted Property for execution by Lender. Such release shall be in a form appropriate for the jurisdiction in which the Substituted Property is located. Borrower shall deliver an Officer's Certificate certifying that the requirements set forth in this Section 6.6 have been satisfied.

(ee) Upon the satisfaction of the foregoing conditions precedent, Lender will release its Lien from the Substituted Property to be released and the Substitute Property shall be deemed to be a Property for purposes of this Agreement.

## ARTICLE 7.

### INSURANCE; CASUALTY; CONDEMNATION; RESTORATION

#### Section 7.1 Insurance.

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

(i) insurance with respect to the Improvements and, if applicable, the Personal Property insuring against any peril now or hereafter included within the "Special" or "All Risks" Causes of Loss form (which shall not exclude fire, lightning, windstorm (including named storms), hail, explosion, riot, civil commotion, aircraft, vehicles and smoke), in each case (A) in an amount equal to 100% of the "Full Replacement Cost," which for purposes of this Agreement shall mean actual replacement value exclusive of costs of excavations, foundations, underground utilities and footings waiving of depreciation; (B) to be written on a no coinsurance form or containing an agreed amount endorsement with respect to the Improvements and, if applicable, Personal Property waiving all co-insurance provisions; (C) providing for no deductible in excess of \$25,000, excluding windstorm and earthquake insurance which may have a deductible of 5% of the total insurable value; (D) at all times insuring against at least those hazards that are commonly insured against under a "Special" or "All Risks" Causes of Loss form of policy, as the same shall exist on the date hereof, and together with any

increase in the scope of coverage provided under such form after the date hereof; and (E) providing Law & Ordinance coverage, including Coverage for Loss to the Undamaged Portion of the Building, Demolition Costs and Increased Cost of Construction in amounts acceptable to Lender. The Full Replacement Cost shall be re-determined from time to time (but not more frequently than once in any thirty-six (36) calendar months) at the request of Lender by contractor designated and paid by Borrower and approved by Lender, or by an engineer or appraiser in the regular employ of the insurer; however Lender shall not require a full, formal appraisal of the Property in connection therewith. After the first appraisal, additional appraisals may be based on construction cost indices customarily employed in the trade. No omission on the part of Lender to request any such ascertainment shall relieve Borrower of any of its obligations under this Subsection;

(ii) commercial general liability insurance against all claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, including "Dram Shop" or other liquor liability coverage if the Borrower sells or distributes alcoholic beverages from the Property, such insurance (A) to be on the so-called "occurrence" form with a general aggregate limit of not less than \$2,000,000 and a per occurrence limit of not less than \$1,000,000; (B) to continue at not less than the aforesaid limit until required to be changed by Lender in writing by reason of changed economic conditions making such protection inadequate; and (C) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations on an "if any" basis; (3) independent contractors; (4) contractual liability for all insured contracts; and (5) contractual liability covering the indemnities contained in Articles 12 and 13 hereof to the extent the same is available;

(iii) loss of rents and/or business interruption insurance (A) with loss payable to Lender; (B) covering all risks required to be covered by the insurance provided for in Subsections 7.1(a)(i), (iv) and (vi) through (viii); (C) in an amount equal to 100% of the projected gross income from the Property on an actual loss sustained basis for a period beginning on the date of Casualty and continuing until the Restoration of the Property is completed, or the expiration of twelve (12) months, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period; the amount of such business interruption/loss of rents insurance shall be determined prior to the Closing Date and at least once each year thereafter based on the greatest of: (x) Borrower's reasonable estimate of the gross income from the Property and (y) the highest gross income received during the term of the Loan for any full calendar year prior to the date the amount of such insurance is being determined, in each case for the succeeding twelve (12) month period and (D) containing an extended period of indemnity endorsement which provides that after the physical loss to the Improvements has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of six (6) months from the date that the Property is repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period. All Net Proceeds payable to Lender pursuant to this Subsection (the "**Rent Loss Proceeds**") shall be held by Lender (1) during the continuation of a Cash Trap Event Period, in accordance with the terms of the Cash Management Agreement or (2) otherwise, in an Eligible

Account (which shall be deemed to be included within the definition of the "Accounts" hereunder) and shall be applied to the obligations secured hereunder from time to time due and payable hereunder and under the Note; provided, however, that (I) nothing herein contained shall be deemed to relieve Borrower of its obligations to pay the obligations secured hereunder on the respective dates of payment provided for in the Note except to the extent such amounts are actually paid out of the Rent Loss Proceeds and (II) in the event the Rent Loss Proceeds are paid in a lump sum in advance and Borrower is entitled to disbursement of such Rent Loss Proceeds in accordance with the terms hereof, Lender or Servicer shall hold such Rent Loss Proceeds in a segregated interest-bearing Eligible Account and Lender or Servicer shall estimate the number of months required for Borrower to restore the damage caused by the applicable Casualty, shall divide the applicable aggregate Rent Loss Proceeds by such number of months and shall disburse such monthly installment of Rent Loss Proceeds from such Eligible Account (1) during the continuation of a Cash Trap Event Period, into the Cash Management Account each month during the performance of such Restoration or (2) otherwise, to Borrower after Lender's deduction therefrom of the amount of Debt Service and deposits into the Reserve Funds then due and payable hereunder;

(iv) at all times during which structural construction, repairs or alterations are being made with respect to the Improvements and only if the current property and liability coverage forms do not otherwise apply (A) commercial general liability and umbrella liability insurance covering claims related to the construction, repairs or alterations being made at the Property which are not covered by or under the terms or provisions of the commercial general liability and umbrella liability insurance policies required herein; and (B) the insurance provided for in Subsection 7.1(a)(i) written in a so-called builder's risk completed value form (1) on a non-reporting basis, (2) against all risks insured against pursuant to Subsections 7.1(a)(i), (iv) and (vi) through (viii), as applicable, (3) including permission to occupy the Property, and (4) written on a no coinsurance form or containing an agreed amount endorsement waiving co-insurance provisions;

(v) workers' compensation, subject to the statutory limits of the state in which the Property is located, and employer's liability insurance with a limit of at least \$1,000,000 per accident and per disease per employee, and \$1,000,000 for disease aggregate in respect of any work or operations on or about the Property, or in connection with the Property or its operation (if applicable);

(vi) equipment breakdown/boiler and machinery insurance, if applicable, covering all mechanical and electrical equipment in such amounts as shall be reasonably be required by Lender, on terms and in amounts consistent with the commercial property insurance policy required under Subsection 7.1(a)(i) above or in such other amount as shall be reasonably required by Lender (if applicable to the Property);

(vii) if any portion of the Improvements is at any time located in an area identified in the Federal Register by the Federal Emergency Management Agency or any successor thereto as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood

Insurance Reform Act of 1994, as each may be amended, or any successor law (the “**Flood Insurance Acts**”), flood hazard insurance in an amount equal to “Full Replacement Cost”, which shall include, without limitation, the maximum limit of coverage available for the Property under the Flood Insurance Acts; provided, that, the insurance provided pursuant to this clause (vii) shall be on terms consistent with the “All Risk” insurance policy required in Section 7.1(a)(i) above;

(viii) intentionally omitted;

(ix) umbrella liability insurance in an amount not less than \$15,000,000 per occurrence on terms consistent with the commercial general liability insurance policy required under subsection (ii) above;

(x) intentionally omitted;

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

(xii) such other insurance and in such amounts as Lender from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against for property similar to the Property located in or around the region in which the Property is located.

(b) All insurance provided for in Subsection 7.1(a) hereof shall be obtained under valid and enforceable policies (the “**Policies**” or in the singular, the “**Policy**”), in such forms and, from time to time after the date hereof, in such amounts as may be satisfactory to Lender, issued by financially sound and responsible insurance companies authorized to do business in the state in which the Property is located and approved by Lender. The insurance companies must have a financial strength rating of “A” or better and a financial size category of “VIII” or better by A.M. Best Company, Inc., and a rating of (i) “A-” or better by S&P, and (ii) if Moody’s rates the insurance company and is designated by Lender in connection with the Securitization, “A3” or better by Moody’s (each such insurer shall be referred to below as a “**Qualified Insurer**”). Not less than fifteen (15) days prior to the expiration dates of the Policies theretofore furnished to Lender pursuant to Subsection 7.1(a), Borrower shall deliver carrier-issued binders and certificates of the renewal Policies, and thereafter, complete copies of the Policies when issued. Upon renewal of the Policies, Borrower shall deliver evidence satisfactory to Lender of payment of the premiums due thereunder (the “**Insurance Premiums**”).

(c) Except to the extent required pursuant to Section 7.1(a) hereof, Borrower shall not obtain (or permit to be obtained) (i) any umbrella or blanket liability or casualty Policy unless, in each case, such Policy is approved in advance in writing by Lender and Lender’s interest is included therein as provided in this Agreement and such Policy is issued by a Qualified Insurer, or (ii) separate insurance concurrent in form or contributing in the event of loss with that required in Subsection 7.1(a) to be furnished by, or which may be reasonably required to be furnished by, Borrower. In the event Borrower obtains (or causes to be obtained) separate insurance or an umbrella or a blanket Policy, Borrower shall notify Lender of the same and shall

cause complete copies of each Policy to be delivered as required in Subsection 7.1(a). Any umbrella or blanket Policy remains subject to review and approval by Lender based on the schedule of locations and values.

(d) All Policies of insurance provided for or contemplated by Subsection 7.1(a) shall name Borrower as the named insured and, in the case of liability policies, except for the Policies referenced in Subsection 7.1(a)(v) and (xi), shall name Lender as additional insured, as their respective interests may appear, and in the case of property coverages, including but not limited to the all-risk/special form coverage, rent loss, business interruption, terrorism, boiler and machinery, earthquake and flood insurance, shall name Lender as mortgagee/lender's loss payable by a standard noncontributing mortgagee clause in favor of Lender providing that the loss thereunder shall be payable to Lender.

(e) All property Policies of insurance provided for in Subsection 7.1(a) shall provide that:

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

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

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

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

Additionally, Borrower further covenants and agrees to promptly send to Lender any notices of non-renewal or cancellation it receives from the insurer with respect to the Policies required pursuant to this Section 7.1.

(f) Intentionally omitted.

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



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

(i) As an alternative to the Policies required to be maintained pursuant to the preceding provisions of this Section 7.1, Borrower will not be in default under this Section 7.1 if Borrower maintains (or causes to be maintained) Policies which (i) have coverages, deductibles and/or other related provisions other than those specified above and/or (ii) are provided by insurance companies not meeting the credit ratings requirements set forth above (any such Policy, a **“Non-Conforming Policy”**), provided, that, prior to obtaining such Non-Conforming Policies (or permitting such Non-Conforming Policies to be obtained), (1) Borrower shall have received Lender’s prior written consent thereto and (2) if required by Lender, confirmed that Lender has received a Rating Agency Confirmation with respect to any such Non-Conforming Policy.

(j) The property, loss of rents/business interruption, general liability and umbrella liability insurance policies required in this Section 7.1 shall not exclude Terrorism Coverage (defined below) (such insurance policies, the **“Applicable Policies”**). Such Terrorism Coverage shall comply with each of the applicable requirements for Policies set forth above (including, without limitation, those relating to deductibles); provided that, Lender, at Lender’s option, may reasonably require Borrower to obtain or cause to be obtained the Terrorism Coverage with higher deductibles than set forth above. As used above, **“Terrorism Coverage”** shall mean insurance for acts of terror or similar acts of sabotage; provided, that, for so long as the Terrorism Risk Insurance Act of 2002, as extended and modified by the Terrorism Risk Insurance Program Authorization Act of 2007 (as the same may be further modified, amended, or extended, **“TRIPRA”**) (i) remains in full force and effect and (ii) continues to cover both foreign and domestic acts of terror, the provisions of TRIPRA shall determine what is deemed to be included within this definition of **“Terrorism Coverage.”**

(k) Notwithstanding the foregoing, with respect to that portion of the Individual Property located at 2590 E. Highway 50, Clermont, Florida (**“Walgreen Property”**) leased to Walgreen Co. (**“Walgreen Tenant”**) pursuant to the Lease to Walgreen Co., dated November 12, 2002 (as the same may be amended or modified pursuant to the terms of this Lease, **“Walgreen Lease”**), to the extent: (i) the Walgreen Lease is in full force and effect, (ii) no default beyond any applicable notice and cure period has occurred and is continuing under the Walgreen Lease, (iii) the Walgreen Tenant or guarantor under the Walgreen Lease remains fully liable for the obligations and liabilities under the Walgreen Lease and maintains a rating from S&P of at least “BBB”, (iv) such Walgreen Lease will remain in full force and effect following a Casualty and Walgreen Tenant is obligated per the terms of the Walgreen Lease to rebuild and/or repair the Walgreen Property at its sole cost and expense and is entitled to no period of rent abatement, (v) Walgreen Tenant maintains, either through a program of self-insurance or otherwise, the insurance required to be maintained by it under the Walgreen Lease (vi) Walgreen

Tenant names Lender and Borrower as additional insured under the commercial general liability insurance policies or self-insurance required under the Walgreen Lease (inclusive of any required umbrella/excess liability as may be required under the Walgreen Lease), and (vii) Borrower shall have provided to Lender, evidence satisfactory to Lender that the Walgreen Tenant under such Walgreen Lease maintains in full force and effect the insurance described in clauses (v) and (vi) above (subsections (i) through (vii), collectively, the “**Self-Insurance Requirements**”), then Borrower shall be deemed in compliance with the requirements herein Section 7.1 as respects the Walgreen Property and Borrower will not be required to maintain the coverage required under Section 7.1 with respect to the Walgreen Property. If Walgreen Tenant fails to meet the Self-Insurance Requirements, then Borrower shall obtain, at Borrower’s sole cost and expense, all insurance as required by this Section 7.1 which meets the requirements hereof providing coverage that will pay proceeds in an amount sufficient to restore the Walgreen Property to the extent such proceeds are not paid or otherwise made available under the insurance policies carried by Walgreen Tenant. Such insurance shall either be (x) “Primary” insurance coverage in the event that the Walgreen Tenant does not provide the applicable insurance coverage required in Section 7.1, or (y) “excess and contingent” insurance coverage, over and above any other valid and collectible coverage then in existence, in the event that Walgreen Tenant does not have sufficient coverage to meet the requirements under this Section 7.1, as shall be necessary to bring the insurance coverage for the Walgreen Property into full compliance with all of the terms and conditions of this Section 7.1.

### **Section 7.2          Casualty.**

If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (a “**Casualty**”), Borrower shall give prompt notice of such damage to Lender and shall promptly commence and diligently prosecute the completion of the repair and restoration of the Property as nearly as possible to the condition the Property was in immediately prior to such Casualty, with such alterations as may be reasonably approved by Lender (a “**Restoration**”) and otherwise in accordance with Section 7.4. Borrower shall pay all costs of such Restoration whether or not such costs are covered by insurance. Lender may, but shall not be obligated to make proof of loss if not made promptly by Borrower. Notwithstanding anything to the contrary contained herein, Borrower’s obligations to promptly commence and diligently prosecute the Restoration of the Property in accordance with this Section 7.2 or take other actions on the Property under this Section are subject to any restrictions on the property owner to take such actions contained in the applicable Leases. To the extent the obligations of Borrower to restore the Property or take other actions on the Property are the responsibility of Tenant pursuant to the applicable Lease, Borrower shall be deemed to be in compliance with this Section so long as Borrower is asserting its rights and is using commercially reasonable efforts to enforce Tenant’s obligations under the applicable Lease including, without limitation, the exercise of remedies available under the applicable Lease; provided, however, that the foregoing shall in no way limit Borrower’s obligations to Lender under this Section 7.2 and this Agreement.

### **Section 7.3          Condemnation.**

Borrower shall promptly give Lender notice of the actual or threatened commencement of any proceeding for the Condemnation of the Property of which Borrower has knowledge and shall deliver to Lender copies of any and all papers served in connection with such proceedings.

Lender may participate in any such proceedings, and Borrower shall from time to time deliver to Lender all instruments requested by it to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings, and shall consult with Lender, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. Notwithstanding any taking by any public or quasi-public authority through Condemnation or otherwise (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Agreement and the Debt shall not be reduced until any Award shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Lender shall not be limited to the interest paid on the Award by the condemning authority but shall be entitled to receive out of the Award interest at the rate or rates provided herein or in the Note. If the Property or any portion thereof is taken by a condemning authority, Borrower shall promptly commence and diligently prosecute the Restoration of the Property and otherwise comply with the provisions of Section 7.4. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the Award, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the Award, or a portion thereof sufficient to pay the Debt. To the extent the obligations of Borrower to restore the Property or take other actions on the Property are the responsibility of Tenant pursuant to the applicable Lease, Borrower shall be deemed to be in compliance with this Section so long as Borrower is asserting its rights and is using commercially reasonable efforts to enforce Tenant's obligations under the applicable Lease including, without limitation, the exercise of remedies available under the applicable Lease; provided, however, that the foregoing shall in no way limit Borrower's obligations to Lender under this Section 7.3 and this Agreement.

**Section 7.4            Restoration.**

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

(a) If the Net Proceeds shall be less than the Restoration Threshold and the costs of completing the Restoration shall be less than the Restoration Threshold, the Net Proceeds will be disbursed by Lender to Borrower upon receipt, provided that all of the conditions set forth in Section 7.4(b)(i) are met and Borrower delivers to Lender a written undertaking to expeditiously commence and to satisfactorily complete with due diligence the Restoration in accordance with the terms of this Agreement.

(b) Unless the terms of the Walgreen Lease require that Net Proceeds be used for the restoration of the Walgreen Property, if the Net Proceeds are equal to or greater than the Restoration Threshold or the costs of completing the Restoration are equal to or greater than the Restoration Threshold, Lender shall make the Net Proceeds available for the Restoration in accordance with the provisions of this Section 7.4.

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

(A) no Event of Default shall have occurred and be continuing;

- (B) Unless the terms of an Existing Lease require that Net Proceeds be used for the restoration of the affected Individual Property, (1) in the event the Net Proceeds are insurance proceeds, less than thirty percent (30%) of each of (i) the fair market value of the affected Individual Property as reasonably determined by Lender, and (ii) the rentable area of the affected Individual Property has been damaged, destroyed or rendered unusable as a result of a Casualty or (2) in the event the Net Proceeds are condemnation proceeds, less than ten percent (10%) of each of (i) the fair market value of the affected Individual Property as reasonably determined by Lender and (ii) the rentable area of the affected Individual Property is taken, such land is located along the perimeter or periphery of the affected Individual Property, no portion of the Improvements is located on such land, and such taking does not materially impair the existing access to the affected Individual Property;
- (C) Leases demising in the aggregate a percentage amount equal to or greater than 75% of the total rentable space in the affected Individual Property which has been demised under executed and delivered Leases in effect as of the date of the occurrence of such fire or other casualty or taking, whichever the case may be, shall remain in full force and effect during and after the completion of the Restoration, notwithstanding the occurrence of any such Casualty or Condemnation, whichever the case may be, and Borrower furnishes to Lender evidence satisfactory to Lender that all Tenants under Major Leases shall continue to operate their respective space at the Property after the completion of the Restoration;
- (D) Borrower shall commence the Restoration as soon as reasonably practicable (but in no event later than ninety (90) days after the issuance of a building permit with respect thereto or as required by the applicable Lease, whichever is earlier) and shall diligently pursue the same to satisfactory completion in compliance with all Applicable Laws, in all material respects, including, without limitation, all applicable Environmental Laws;
- (E) Unless the terms of an Existing Lease require that Net Proceeds be used for the restoration of the affected Individual Property, Lender shall be satisfied that any operating deficits which will be incurred with respect to the Property as a result of the occurrence of any such fire or other casualty or taking will be covered out of (1) the Net Proceeds, (2) the insurance coverage referred to in Section 7.1(a)(iii) above, or (3) by other funds of Borrower;
- (F) Unless the terms of an Existing Lease require that Net Proceeds be used for the restoration of the affected Individual Property, Lender shall be satisfied that, upon the completion of the Restoration, the fair market value and cash flow of the affected Individual Property will not be less than the fair market value and cash flow of the affected Individual

Property as the same existed immediately prior to the applicable Casualty or Condemnation (assuming the affected portion of the affected Individual Property is relet within a reasonable period after the date of such Casualty or Condemnation);

- (G) Lender shall be satisfied that the Restoration will be completed on or before the earliest to occur of (1) six (6) months prior to the Anticipated Repayment Date, (2) the expiration of the insurance coverage referred to in Section 7.1(a)(iii) above, (3) such time as may be required under applicable zoning law, ordinance, rule or regulation in order to repair and restore the affected Individual Property to the condition it was in immediately prior to such fire or other casualty or taking, or (4) the earliest date required for such completion under the terms of any Material Agreements or REA;
- (H) the affected Individual Property and the use thereof after the Restoration will be in compliance with and permitted under any REA, any Material Agreements and all Applicable Law;
- (I) the Restoration shall be done and completed in an expeditious and diligent fashion and in compliance with any REA, any Material Agreements and all Applicable Law; and
- (J) Lender shall be satisfied that making the Net Proceeds available for Restoration shall be permitted pursuant to REMIC Requirements.

(ii) The Net Proceeds shall be held by Lender and, until disbursed in accordance with the provisions of this Section 7.4(b), shall constitute additional security for the Debt and other obligations under this Agreement, the Security Instrument, the Note and the other Loan Documents. The Net Proceeds (other than the Rent Loss Proceeds) shall be disbursed by Lender to, or as directed by, Borrower from time to time during the course of the Restoration, upon receipt of evidence satisfactory to Lender that (A) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with the related Restoration item have been paid for in full, and (B) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Property which have not either been fully bonded to the satisfaction of Lender and discharged of record or in the alternative fully insured to the satisfaction of Lender by the title company issuing the Title Insurance Policy.

(iii) All plans and specifications required in connection with the Restoration shall be subject to prior review and acceptance in all respects by Lender (not to be unreasonably withheld) and by an independent consulting engineer selected by Lender (the "**Casualty Consultant**"). All such plans and specifications and all permits, licenses and approvals required or obtained in connection with the Restoration shall be assigned to Lender as additional collateral for the Loan and Lender shall have the use of the same.

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

(iv) In no event shall Lender be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the costs actually incurred from time to time for work in place as part of the Restoration, as certified by the Casualty Consultant, minus the Restoration Retainage. The term "**Restoration Retainage**" as used in this Section 7.4(b) shall mean an amount equal to 10% of the costs actually incurred for work in place as part of the Restoration, as certified by the Casualty Consultant, until such time as the Casualty Consultant certifies to Lender that Net Proceeds representing 50% of the required Restoration have been disbursed. There shall be no Restoration Retainage with respect to costs actually incurred by Borrower for work in place in completing the last 50% of the required Restoration. The Restoration Retainage shall in no event, and notwithstanding anything to the contrary set forth above in this Section 7.4(b), be less than the amount actually held back by Borrower from contractors, subcontractors and materialmen engaged in the Restoration. The Restoration Retainage shall not be released until the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Section 7.4(b) and that all approvals necessary for the re-occupancy and use of the Property have been obtained from all appropriate governmental and quasi-governmental authorities, and Lender receives evidence satisfactory to Lender that the costs of the Restoration have been paid in full or will be paid in full out of the Restoration Retainage, provided, however, that Lender will release the portion of the Restoration Retainage being held with respect to any contractor, subcontractor or materialman engaged in the Restoration as of the date upon which the Casualty Consultant certifies to Lender that the contractor, subcontractor or materialman has satisfactorily completed all work and has supplied all materials in accordance with the provisions of the contractor's, subcontractor's or materialman's contract, and the contractor, subcontractor or materialman delivers the lien waivers and evidence of payment in full of all sums due to the contractor, subcontractor or materialman as may be reasonably requested by Lender or by the title company insuring the lien of the Security Instrument. If required by Lender, the release of any such portion of the Restoration Retainage shall be approved by the surety company, if any, which has issued a payment or performance bond with respect to the contractor, subcontractor or materialman.

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

(vi) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the reasonable opinion of Lender in consultation with the Casualty Consultant, be sufficient to pay in full the balance of the costs which are estimated by the Casualty Consultant to be incurred in connection with the completion of the Restoration, Borrower shall deposit the deficiency (the "**Net Proceeds Deficiency**") with Lender before any further disbursement of the Net Proceeds shall be made. The Net Proceeds Deficiency deposited with Lender shall be held by Lender and shall be disbursed for costs actually incurred in connection with the Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this Section 7.4(b) shall constitute additional security for the Debt and other obligations under this Agreement, the Security Instrument, the Note and the other Loan Documents.

(vii) The excess, if any, of the Net Proceeds and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Lender after the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Section 7.4(b), and the receipt by Lender of evidence satisfactory to Lender that all costs incurred in connection with the Restoration have been paid in full, shall be remitted by Lender to Borrower, provided no Event of Default shall have occurred and shall be continuing under this Agreement, the Security Instrument, the Note or any of the other Loan Documents.

(c) All Net Proceeds not required (i) to be made available for the Restoration or (ii) to be returned to Borrower as excess Net Proceeds pursuant to Section 7.4(b)(vii) shall be retained and applied by Lender toward the payment of the Debt whether or not then due and payable in such order, priority and proportions as Lender in its discretion shall deem proper; provided no Event of Default is continuing, without any prepayment fee or penalty. If Lender shall receive and retain Net Proceeds, the lien of the Security Instrument shall be reduced only by the amount thereof received and retained by Lender and actually applied by Lender in reduction of the Debt.

(d) Intentionally omitted.

(e) Notwithstanding the foregoing provisions of this Section 7.4 or anything herein to the contrary, this Section 7.4 is subject to the terms of Section 11.3 hereof to the extent applicable with respect to any Casualty or Condemnation.

## ARTICLE 8.

### RESERVE FUNDS

#### Section 8.1 Tax Reserve Funds.

(a) On the Closing Date, Borrower shall deposit with Lender the amount of \$0.00 and Borrower shall deposit on each Monthly Payment Date an amount equal to one-twelfth (1/12<sup>th</sup>) of the Taxes that Lender estimates will be payable during the next ensuing twelve (12) months in order to accumulate sufficient funds to pay all such Taxes at least ten (10) days prior to their respective due dates (the "**Monthly Tax Deposit**"). Amounts deposited pursuant to this Section 8.1 are referred to herein as the "**Tax Reserve Funds**". The initial estimated Monthly

Tax Deposit shall be \$0.00. If at any time Lender reasonably determines that the Tax Reserve Funds will not be sufficient to pay the Taxes, Lender shall notify Borrower of such determination and the monthly deposits for Taxes shall be increased by the amount that Lender estimates is sufficient to make up the deficiency at least ten (10) days prior to the respective due dates for the Taxes; provided that if Borrower receives notice of any deficiency after the date that is ten (10) days prior to the date that Taxes are due, Borrower will deposit such amount within one (1) Business Day after its receipt of such notice. All Tax Reserve Funds shall be held by Lender or Servicer in an Eligible Account (the "**Tax Reserve Account**") which, during the continuation of a Cash Trap Event Period, may be a sub-account of the Cash Management Account.

(b) Lender shall have the right to apply the Tax Reserve Funds to payments of Taxes. In making any payment relating to Taxes, Lender may do so according to any bill, statement or estimate procured from the appropriate public office (with respect to Taxes) without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amount of the Tax Reserve Funds shall exceed the amounts due for Taxes, Lender shall, in its sole discretion, return any excess to Borrower or credit such excess against future payments to be made to the Tax Reserve Funds. Any Tax Reserve Funds remaining after the Debt has been paid in full shall be returned to Borrower.

(c) Notwithstanding the provisions of Section 8.1 to the contrary, Borrower initially shall not be required to make the Monthly Tax Deposit as provided herein, so long as each and all of the Tax Waiver Conditions Precedent are satisfied and remain satisfied at all times. If at any time any or all of the Tax Waiver Conditions Precedent are no longer met, the Borrower shall immediately begin and shall continue to make the Monthly Tax Deposit as provided herein, until such failure is remedied.

## **Section 8.2 Insurance Reserve Funds.**

(a) On the Closing Date, Borrower shall deposit with Lender the amount of \$0.00 and Borrower shall deposit on each Monthly Payment Date an amount equal to one-twelfth (1/12<sup>th</sup>) of the Insurance Premiums that Lender estimates will be payable for the renewal of the coverage afforded by the Policies upon the expiration thereof in order to accumulate sufficient funds to pay all such Insurance Premiums at least thirty (30) days prior to the expiration of the Policies (the "**Monthly Insurance Deposit**"). The initial estimated Monthly Insurance Deposit shall be \$0.00. Amounts deposited pursuant to this Section 8.2 are referred to herein as the "**Insurance Reserve Funds**". If at any time Lender reasonably determines that the Insurance Reserve Funds will not be sufficient to pay the Insurance Premiums, Lender shall notify Borrower of such determination and the monthly deposits for Insurance Premiums shall be increased by the amount that Lender estimates is sufficient to make up the deficiency at least thirty (30) days prior to expiration of the Policies. All Insurance Reserve Funds shall be held by Lender or Servicer in an Eligible Account (the "**Insurance Reserve Account**") which, during the continuation of a Cash Trap Event Period, may be a sub-account of the Cash Management Account.

(b) Lender shall have the right to apply the Insurance Reserve Funds to payment of Insurance Premiums. In making any payment relating to Insurance Premiums, Lender may do so according to any bill, statement or estimate procured from the insurer or its agent, without inquiry into the accuracy of such bill, statement or estimate. If the amount of the Insurance



Reserve Funds shall exceed the amounts due for Insurance Premiums, Lender shall, in its sole discretion, return any excess to Borrower or credit such excess against future payments to be made to the Insurance Reserve Funds. Any Insurance Reserve Funds remaining after the Debt has been paid in full shall be returned to Borrower.

(c) Notwithstanding the foregoing, Borrower shall not be required to make the Monthly Insurance Deposit as set forth above, provided that (i) no Event of Default shall have occurred and be continuing, (ii) the Policies maintained by Borrower covering the Property are part of a blanket or umbrella policy approved by Lender in its reasonable discretion pursuant to Section 7.1 hereof, including, without limitation, approval of the schedule of locations and values, (iii) Borrower provides Lender evidence of renewal of such Policies pursuant to Section 7.1 hereof, and (iv) Borrower provides Lender paid receipts for the payment of the Insurance Premiums by no later than ten (10) Business Days prior to the expiration dates of the Policies. Borrower shall immediately commence making all Monthly Insurance Deposits, as required pursuant to this Section 8.2, within five (5) days of receipt of notice from Lender of Borrower's failure to comply with items (i), (ii), (iii) or (iv) above, which such notice shall instruct Borrower to immediately commence making all Monthly Insurance Deposits, until such failure is remedied.

**Section 8.3 Intentionally Omitted.**

**Section 8.4 Replacement Reserve Funds.**

(a) Borrower shall deposit with Lender on each Monthly Payment Date an amount equal to \$4,203 (the "**Replacement Reserve Monthly Deposit**") for the Replacements. Amounts deposited pursuant to this Section 8.4 are referred to herein as the "**Replacement Reserve Funds**". Lender may reassess its estimate of the amount necessary for Replacements from time to time (but not more than once per year) and may require Borrower to increase the monthly deposits required pursuant to this Section 8.4 upon thirty (30) days' notice to Borrower if Lender determines in its reasonable discretion that an increase is necessary to maintain proper operation of the Property. All Replacement Reserve Funds shall be held by Lender or Servicer in an Eligible Account (the "**Replacement Reserve Account**") which, during the continuation of a Cash Trap Event Period, may be a sub-account of the Cash Management Account.

(b) Lender shall disburse Replacement Reserve Funds only for Replacements. Provided no Event of Default has occurred and is continuing, Lender shall disburse Replacement Reserve Funds to Borrower within fifteen (15) Business Days after the delivery by Borrower to Lender of a request therefor (but not more often than once per month), in increments of at least the Minimum Disbursement Amount (or a lesser amount if the total amount of the Replacement Reserve Funds is less than the Minimum Disbursement Amount, in which case only one disbursement of the amount remaining shall be made), accompanied by the following items (which items shall be in form and substance satisfactory to Lender): (i) an Officer's Certificate (A) stating that the items to be funded by the requested disbursement are Replacements, (B) stating that all Replacements at the Property to be funded by the requested disbursement have been completed in a good and workmanlike manner and in accordance with all Applicable Law, (C) identifying each Person that supplied materials or labor in connection with the Replacements to be funded by the requested disbursement, (D) stating that each such Person has been paid in full or will be paid in full upon such disbursement or, if such payment is a progress

payment, that such payment represents full payment to such Person, less any applicable retention amount, for work completed through the date of the relevant invoice from such Person, (E) stating that the Replacements (or relevant portion thereof) to be funded have not been the subject of a previous disbursement, and (F) stating that all previous disbursements of for Replacements have been used to pay the previously identified Replacements, (ii) as to any completed Replacement, a copy of any license, permit or other approval by any Governmental Authority required, if any, in connection with the Replacement and not previously delivered to Lender, (iii) copies of appropriate lien waivers (or conditional lien waivers) or other evidence of payment satisfactory to Lender, (iv) at Lender's option, a title search for the Property indicating that the Property is free from all Liens, claims and other encumbrances not previously approved by Lender, (v) at Lender's option, if the cost of any individual Replacement exceeds \$150,000, Lender shall have received a report satisfactory to Lender in its reasonable discretion from an architect or engineer approved by Lender in respect of such architect or engineer's inspection of the applicable Replacement, and (vi) such other evidence as Lender shall reasonably request to demonstrate that the Replacements to be funded by the requested disbursement have been completed (or completed to the extent of the requested payment) and are paid for or will be paid upon such disbursement to Borrower.

(c) Nothing in this Section 8.4 shall (i) make Lender responsible for making or completing the Replacements; (ii) require Lender to expend funds in addition to the Replacement Reserve Funds to complete any Replacements; (iii) obligate Lender to proceed with the Replacements; or (iv) obligate Lender to demand from Borrower additional sums to complete any Replacements.

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

(e) In addition to any insurance required under the Loan Documents, Borrower shall provide or cause to be provided workmen's compensation insurance, builder's risk, and public liability insurance and other insurance to the extent required under Applicable Law in connection with the Replacements. All such policies shall be in form and amount reasonably satisfactory to Lender.

#### **Section 8.5            Leasing Reserve Funds.**

(a) Borrower shall deposit with Lender on each Monthly Payment Date the sum of \$11,115 (the "**Leasing Reserve Monthly Deposit**") for tenant improvements and leasing commissions that may be incurred following the date hereof; however, with respect to the period commencing on the date hereof through the Monthly Payment Date occurring in November, 2019, provided no Event of Default is continuing and the Debt Yield is no less than 9.0%, Borrower shall not be required to make the Leasing Reserve Monthly Deposit. Amounts

deposited pursuant to this Section 8.5 are referred to herein as the “**Leasing Reserve Funds**”. All Leasing Reserve Funds shall be held by Lender or Servicer in an Eligible Account (the “**Leasing Reserve Account**”) which, during the continuation of a Cash Trap Event Period, may be a sub-account of the Cash Management Account.

(b) Provided no Event of Default has occurred and is continuing, Lender shall disburse Leasing Reserve Funds to Borrower for Qualified Leasing Expenses, within fifteen (15) Business Days after the delivery by Borrower to Lender of a request therefor (but not more often than once per month), in increments of at least the Minimum Disbursement Amount (or a lesser amount if the total amount of Leasing Reserve Funds is less than the Minimum Disbursement Amount, in which case only one disbursement of the amount remaining shall be made), accompanied by the following items (which items shall be in form and substance satisfactory to Lender): (i) an Officer’s Certificate (A) stating that all Qualified Leasing Expenses at the Property to be funded by the requested disbursement have been completed in a good and workmanlike manner and in accordance with all Applicable Law, (B) identifying each Person that supplied materials or labor in connection with the Qualified Leasing Expenses to be funded by the requested disbursement, (C) stating that each such Person has been paid in full or will be paid in full upon such disbursement, or if such payment is a progress payment, that such payment represents full payment to such Person, less any applicable retention amount, for work completed through the date of the relevant invoice from such Person, (D) stating that the Qualified Leasing Expenses to be funded have not been the subject of a previous disbursement, and (E) stating that all previous disbursements for Qualified Leasing Expenses have been used to pay the previously identified Qualified Leasing Expenses, (ii) as to any completed Qualified Leasing Expenses, a copy of any license, permit or other approval by any Governmental Authority required, if any, in connection with the Qualified Leasing Expenses and not previously delivered to Lender, (iii) copies of appropriate lien waivers (or conditional lien waivers) or other evidence of payment satisfactory to Lender, (iv) at Lender’s option, a title search for the Property indicating that the Property is free from all Liens, claims and other encumbrances not previously approved by Lender, (v) if required by Lender, an estoppel certificate from the applicable Tenant in form and substance reasonably acceptable to Lender and (vi) such other evidence as Lender shall reasonably request to demonstrate that the Qualified Leasing Expenses to be funded by the requested disbursement have been completed (or completed to the extent of the requested payment) and are paid for or will be paid upon such disbursement to Borrower.

### **Section 8.6            The Accounts Generally.**

(a) All Reserve Funds shall be held in Eligible Accounts. Borrower grants to Lender a first-priority perfected security interest in each of the Reserve Funds and all sums now or hereafter deposited in the Reserve Funds as additional security for payment of the Debt. Until expended or applied in accordance herewith, the Reserve Funds shall constitute additional security for the Debt. The provisions of this Section 8.6 are intended to give Lender and/or Servicer “control” of the Reserve Funds within the meaning of the UCC. Borrower acknowledges and agrees that the Reserve Funds are subject to the sole dominion, control and discretion of Lender, its authorized agents or designees, subject to the terms hereof, and Borrower shall have no right of withdrawal with respect to any Reserve Funds except with the prior written consent of Lender or as otherwise provided herein. The Reserve Funds shall not constitute trust funds and may be commingled with other monies held by Lender.

(b) Borrower shall not, without obtaining the prior written consent of Lender, further pledge, assign or grant any security interest in the Reserve Funds or permit any lien to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto. Lender shall have the right to file a financing statement or statements under the UCC in connection with any of the Reserve Funds with respect thereto in the form required to properly perfect Lender's security interest therein. Borrower agrees that at any time and from time to time, at the expense of Borrower, Borrower will promptly execute and deliver all further instruments and documents, and take all further action, that may be reasonably necessary or desirable, or that Lender may reasonably request, in order to perfect and protect any security interest granted or purported to be granted hereby or to enable Lender to exercise and enforce its rights and remedies hereunder with respect to any Reserve Funds.

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

(d) The insufficiency of Reserve Funds on deposit with Lender shall not absolve Borrower of the obligation to make any payments, as and when due pursuant to this Agreement and the other Loan Documents, and such obligations shall be separate and independent, and not conditioned on any event or circumstance whatsoever.

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

(f) Interest accrued, if any, on the Reserve Funds shall not be required to be remitted to any Account and may instead be retained by Lender.

(g) Borrower acknowledges and agrees that it solely shall be, and shall at all times remain, liable to Lender or Servicer for all fees, charges, costs and expenses in connection with the Reserve Funds, this Agreement and the enforcement hereof, including, without limitation, any monthly or annual fees or charges as may be assessed by Lender or Servicer in connection

with the administration of the Accounts and the Reserve Funds and the reasonable fees and expenses of legal counsel to Lender and Servicer as needed to enforce, protect or preserve the rights and remedies of Lender and/or Servicer under this Agreement.

**Section 8.7**      **Intentionally Omitted.**

**Section 8.8**      **Intentionally Omitted.]**

**Section 8.9**      **Existing TI/LC Obligations Reserve Funds.**

Borrower shall deposit with Lender on the date hereof \$550,000, representing the tenant improvement costs which are payable by Borrower under the Lowe's Lease (\$500,000 with respect to HVAC improvements and \$50,000 with respect to concrete repairs). Amounts deposited pursuant to this Section 8.9 are referred to herein as the "**Existing TI/LC Reserve Funds**". The Existing TI/LC Reserve Funds shall be disbursed in accordance with Section 8.5(b) hereof. All Existing TI/LC Reserve Funds shall be held by Lender or Servicer in an Eligible Account (the "**Existing TI/LC Reserve Account**") which, during the continuation of a Cash Trap Event Period, may be a sub-account of the Cash Management Account.

## **ARTICLE 9.**

### **CASH MANAGEMENT AGREEMENT**

**Section 9.1**      **Cash Management Agreement.**

Borrower shall enter into the Cash Management Agreement on the date hereof which shall govern the collection, holding and disbursement of Rents and any other income from the Property during the term of the Loan.

**Section 9.2**      **Cash Flow Sweep.**

In the event of a Cash Trap Event Period, all Excess Cash Flow (as defined in the Cash Management Agreement) shall be deposited into the Excess Cash Flow Subaccount (as defined in the Cash Management Agreement), as more particularly set forth in the Cash Management Agreement.

## **ARTICLE 10.**

### **EVENTS OF DEFAULT; REMEDIES**

**Section 10.1**      **Event of Default.**

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

(a) if Borrower shall fail to (i) pay when due (A) any sums which by the express terms of this Agreement and the other Loan Documents require immediate or prompt payment without any grace period, (B) any monthly Debt Service and any amount required to be paid into

the Reserve Funds or (C) sums which are payable on the Maturity Date, or (ii) pay within five (5) days following written notice any other sums payable under this Agreement or any of the other Loan Documents;

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

(c) if (i) the Policies are not kept in full force and effect or (ii) within five (5) days following written notice, evidence of the same is not delivered to Lender as provided in Section 7.1 hereof;

(d) if any of the representations or covenants contained in Article 5 hereof are breached or violated; provided, however, if (1) Lender determines that such breach of covenant or representation (i) was not made in bad faith, (ii) is capable of being cured, (iii) is not material and (iv) Lender would not be prejudiced by permitting Borrower to cure the same, and (2) at the request of Lender, Borrower provides a non-consolidation opinion addressing such breach, Lender will permit Borrower (30) days after written notice thereof to cure such misrepresentation or breach of warranty before it becomes an Event of Default hereunder;

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

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

(g) if (i) Borrower, any SPE Component Entity or Guarantor shall commence any case, proceeding or other action (A) under any Creditors Rights Laws seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or Borrower or any managing member or general partner of Borrower, any SPE Component Entity or Guarantor shall make a general assignment for the benefit of its creditors; (ii) there shall be commenced against Borrower or any managing member or general partner of Borrower, any SPE Component Entity or Guarantor any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of ninety (90) days; (iii) there shall be commenced against Borrower, any SPE Component Entity or Guarantor any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of any order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within ninety (90) days from the entry thereof; (iv) Borrower, any SPE Component Entity or Guarantor shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above, which

result in the actual commencement of any of the acts set forth in clauses (i), (ii) or (iii) above; or (v) Borrower, any SPE Component Entity or Guarantor shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due;

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

(i) subject to Borrower's right to contest pursuant to Sections 4.5(b) and 4.16(b) hereof, if the Property becomes subject to any mechanic's, materialman's or other lien other than a lien for any Taxes not then due and payable and the lien shall remain undischarged of record (by payment, bonding or otherwise) for a period of thirty (30) days;

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

(k) if Borrower shall fail to comply with the covenants in Article 15 or otherwise fails to deliver to Lender, in each case within ten (10) days after request by Lender, the estoppel certificates required by Section 4.13(a) or (c) hereof;

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

(m) if any of the assumptions contained in the Non-Consolidation Opinion, or in any New Non-Consolidation Opinion are untrue or shall become untrue in any material respect;

(n) if Borrower shall fail to deliver to Lender within thirty (30) days after request by Lender any Required Financial Item;

(o) if Borrower enters into a Management Agreement in violation of Section 4.15 hereof or if Borrower defaults under the Management Agreement beyond the expiration of applicable notice and grace periods, if any, thereunder or if the Management Agreement is canceled, terminated or surrendered or expires pursuant to its terms, unless in such case Borrower shall enter into a new management agreement with a Qualified Manager in accordance with the applicable terms and provisions hereof;

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

(q) if (i) Borrower defaults under any REA or Material Agreements beyond the expiration of applicable notice and grace periods, if any, thereunder, (ii) any REA or Material Agreements are amended, supplemented, replaced, restated or otherwise modified without Lender's prior written consent or if Borrower consents to a transfer of any party's interest thereunder without Lender's prior written consent (but only to the extent that any such action under the applicable REA or Material Agreement requires Borrower's consent);

(r) intentionally omitted;

(s) if Borrower shall continue to be in default under any term, covenant or condition of this Agreement not specified in subsections (a) through (r) above or not otherwise specifically specified as an Event of Default herein, (i) for more than ten (10) Business Days after notice from Lender, in the case of any default which can be cured by the payment of a sum of money or (ii) for thirty (30) days after notice from Lender, in the case of any other default, provided that if such default cannot reasonably be cured within such thirty (30) day period and Borrower shall have commenced to cure such default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as it shall require Borrower in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of ninety (90) days (subject to further extension by Lender, in Lender's sole discretion); and/or

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

## **Section 10.2 Remedies.**

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

(b) Upon the occurrence and during the continuance of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement, the Security Instrument, the Note or the other Loan Documents executed and delivered by, or applicable to, Borrower or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Debt shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under this Agreement, the Security Instrument, the Note or the other Loan Documents with respect to the Property. Any such



actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by Applicable Law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by Applicable Law, equity or contract or as set forth herein or in the Security Instrument, the Note or the other Loan Documents. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or to impair any remedy, right or power consequent thereon.

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

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

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

(f) Upon the occurrence and during the continuance of an Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder or being deemed to have cured any Event of Default hereunder, make, do or perform any obligation of Borrower hereunder in such manner and to such extent as Lender may deem necessary. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property for such purposes, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by Applicable Law), with interest as provided in this Section, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any action or proceeding shall bear interest at the Default Rate, for the period after such cost or expense was incurred through and including the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by the liens, claims and security interests provided to Lender under the Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

## ARTICLE 11.

### SECONDARY MARKET

#### Section 11.1      **Securitization.**

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

(b) If requested by Lender, Borrower shall assist Lender in satisfying the market standards to which Lender customarily adheres or which may be reasonably required in the marketplace or by the Rating Agencies in connection with any Secondary Market Transactions, at Borrower's cost and expense, including, without limitation, to:

(i) (A) provide updated financial and other information with respect to the Property, the business operated at the Property, Borrower, Guarantor and Manager, and (B) provide updated budgets relating to the Property (the "**Updated Information**"), together, if customary, with appropriate verification of the Updated Information through letters of auditors or opinions of counsel acceptable to Lender and the Rating Agencies;

(ii) provide opinions of counsel, which may be relied upon by Lender, the Rating Agencies and their respective counsel, agents and representatives, as to non-consolidation, matters of Delaware (or Maryland, as applicable) (including authority-to-file insolvency) and federal bankruptcy law relating to limited liability companies or any other opinion customary in Secondary Market Transactions or required by the Rating Agencies with respect to the Property and Borrower and Borrower's Affiliates, which counsel and opinions shall be satisfactory in form and substance to Lender and the Rating Agencies;

(iii) provide updated, as of the closing date of the Secondary Market Transaction, representations and warranties made in the Loan Documents and such additional representations and warranties as the Rating Agencies may require; and

(iv) execute such amendments to the Loan Documents and Borrower or any SPE Component Entity's organizational documents as may be reasonably requested by Lender or requested by the Rating Agencies or otherwise to effect the Securitization including, without limitation, bifurcation of the Loan into two or more components and/or separate notes and/or creating a senior/subordinate note structure (any of the foregoing, a "**Loan Bifurcation**"); provided, however, that Borrower shall not be required to modify or amend any Loan Document or organizational document if such modification or amendment would (A) change the interest rate, the stated maturity or the amortization of principal set forth in the Note, except in connection with a Loan Bifurcation which may result in varying fixed interest rates and amortization schedules, but which shall have the same initial weighted average coupon of the original Note or any other material economic or non-economic term of the Loan; (B) modify or amend any other material economic or material non-economic term of the Loan or the Loan Documents; or (C) materially increase Borrower's obligations and liabilities under the Loan Documents.

(c) If, at the time one or more Disclosure Documents are being prepared for a Securitization, Lender expects that Borrower alone or Borrower and one or more Affiliates of Borrower collectively, or the Property alone or the Property and Related Properties collectively, will be a Significant Obligor for purposes of such Securitization, Borrower shall furnish (or cause to be furnished) to Lender upon request (i) the selected financial data or, if applicable, net operating income, described in Item 1112(b)(1) of Regulation AB, if Lender expects that the principal amount of the Loan together with any Related Loans as of the cut-off date for such Securitization may, or if the principal amount of the Loan together with any Related Loans as of the cut-off date for such Securitization and at any time during which the Loan (or portion of the Loan included in such Securitization) and any Related Loans are included in a Securitization does, equal or exceed ten percent (10%) (but less than twenty percent (20%)) of the aggregate principal amount of all mortgage loans included or expected to be included, as applicable, in such Securitization or (ii) the financial statements described in Item 1112(b)(2) of Regulation AB, if Lender expects that the principal amount of the Loan (or portion of the Loan included in such Securitization) together with any Related Loans as of the cut-off date for such

Securitization may, or if the principal amount of the Loan together with any Related Loans as of the cut-off date for such Securitization and at any time during which the Loan (or apportion of the Loan included in such Securitization) and any Related Loans are included in a Securitization does, equal or exceed twenty percent (20%) of the aggregate principal amount of all mortgage loans included or expected to be included, as applicable, in the Securitization. Such financial data or financial statements shall be furnished to Lender (A) within ten (10) Business Days after notice from Lender in connection with the preparation of Disclosure Documents for the Securitization, (B) not later than thirty (30) days after the end of each fiscal quarter of Borrower and (C) not later than seventy-five (75) days after the end of each fiscal year of Borrower; provided, however, that Borrower shall not be obligated to furnish financial data or financial statements pursuant to clauses (B) or (C) of this sentence with respect to any period for which an Exchange Act Filing is not required. If requested by Lender, and to the extent not prohibited by any applicable lease, other agreement or order, Borrower shall furnish to Lender financial data and/or financial statements for any tenant of any of the Properties if, in connection with a Securitization, Lender expects there to be, with respect to such tenant or group of affiliated tenants, a concentration within all of the mortgage loans included or expected to be included, as applicable, in the Securitization such that such tenant or group of affiliated tenants would constitute a Significant Obligor.

(d) All financial data and financial statements provided by Borrower hereunder pursuant to Section 11.1(c) and (d) hereof shall be prepared in accordance with GAAP, and shall meet the requirements of Regulation AB and other applicable legal requirements. All financial statements referred to in Section 11.1(c) above shall be audited by independent accountants of Borrower (which accountants shall be acceptable to Lender) in accordance with Regulation AB and all other applicable legal requirements, shall be accompanied by the manually executed report of the independent accountants thereon, which report shall meet the requirements of Regulation AB and all applicable legal requirements, and shall be further accompanied by a manually executed written consent of the independent accountants, in form and substance acceptable to Lender, to the inclusion of such financial statements in any Disclosure Document and any Exchange Act Filing and to the use of the name of such independent accountants and the reference to such independent accountants as “experts” in any Disclosure Document and Exchange Act Filing, all of which shall be provided at the same time as the related financial statements are required to be provided. All financial data and financial statements (audited or unaudited) provided by Borrower under Section 11.1(c) shall be accompanied by an Officer’s Certificate stating that such financial statements meet the requirements set forth in the first sentence of this Section 11.1(d).

(e) If requested by Lender, Borrower shall provide Lender, promptly upon request, with any other or additional financial statements, or financial, statistical or operating information, as Lender shall determine to be required pursuant to Regulation AB or any amendment, modification or replacement thereto or other legal requirements in connection with any Disclosure Document or any Exchange Act Filing or as shall otherwise be reasonably requested by Lender.

(f) In the event Lender determines, in connection with a Securitization, that the financial data and financial statements and (if applicable) related accountants’ reports and consents required in order to comply with Regulation AB or any amendment, modification or

replacement of Regulation AB or with other legal requirements are other than as provided herein, then notwithstanding the provisions of Section 11.1(c) and (d), Lender may request, and Borrower shall promptly provide, such other financial statements and (if applicable) related accountants' reports and consents as Lender determines to be necessary or appropriate for such compliance.

## **Section 11.2      Securitization Indemnification.**

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

(b) Borrower shall provide in connection with each of (i) a preliminary and a final private placement memorandum or (ii) a preliminary and final prospectus or prospectus supplement, as applicable, an agreement (A) certifying that Borrower has examined such Disclosure Documents specified by Lender and that each such Disclosure Document, as it relates to Borrower, Borrower Affiliates, the Property, Manager, Guarantor and all other aspects of the Loan, does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, (B) indemnifying Lender (and for purposes of this Section 11.2, Lender hereunder shall include its officers and directors), the Affiliate of Wells Fargo that has filed the registration statement relating to the Securitization (the **"Registration Statement"**), each of its directors, each of its officers who have signed the Registration Statement and each Person that controls the Affiliate within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the **"Wells Group"**), and Wells Fargo, and any other placement agent or underwriter with respect to the Securitization, each of their respective directors and each Person who controls Wells Fargo or any other placement agent or underwriter within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act (collectively, the **"Underwriter Group"**) for any losses, claims, damages or liabilities (collectively, the **"Liabilities"**) to which Lender, the Wells Group or the Underwriter Group may become subject insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in such sections or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated in such sections or necessary in order to make the statements in such sections, in light of the circumstances under which they were made, not misleading and (C) agreeing to reimburse Lender, the Wells Group and/or the Underwriter Group for any legal or other expenses reasonably incurred by Lender, the Wells Group and the Underwriter Group in connection with investigating or defending the Liabilities; provided, however, that Borrower will be liable in any such case under clauses (B) or (C) above only to the extent that any such loss claim, damage or liability arises out of or is based upon any such untrue statement or omission made therein in reliance upon and in conformity with information furnished to Lender by or on behalf of

Borrower in connection with the preparation of the Disclosure Document or in connection with the underwriting or closing of the Loan, including, without limitation, financial statements of Borrower, operating statements and rent rolls with respect to the Property (collectively, the “**Provided Information**”). The indemnification provided for in clauses (B) and (C) above shall be effective whether or not the indemnification agreement described above is provided; provided, however, such indemnity shall be limited to the Provided Information and shall only be effective to the extent that Lender accurately states the Provided Information in the applicable Disclosure Document. The aforesaid indemnity will be in addition to any liability which Borrower may otherwise have.

(c) In connection with Exchange Act Filings, Borrower shall (i) indemnify Lender, the Wells Group and the Underwriter Group for Liabilities to which Lender, the Wells Group or the Underwriter Group may become subject insofar as the Liabilities arise out of or are based upon the omission or alleged omission to state in the Disclosure Document a material fact required to be stated in the Disclosure Document in order to make the statements in the Disclosure Document, in light of the circumstances under which they were made, not misleading and (ii) reimburse Lender, the Wells Group or the Underwriter Group for any legal or other expenses reasonably incurred by Lender, the Wells Group or the Underwriter Group in connection with defending or investigating the Liabilities; provided, however, such indemnity shall be limited to the Provided Information and shall only be effective to the extent that Lender accurately states the Provided Information in the applicable Disclosure Document.

(d) Promptly after receipt by an indemnified party under this Section 11.2 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under this Section 11.2, notify the indemnifying party in writing of the commencement thereof, but the omission to so notify the indemnifying party will not relieve the indemnifying party from any liability which the indemnifying party may have to any indemnified party hereunder except to the extent that failure to notify causes prejudice to the indemnifying party. In the event that any action is brought against any indemnified party, and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled, jointly with any other indemnifying party, to participate therein and, to the extent that it (or they) may elect by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense thereof with counsel satisfactory to such indemnified party. After notice from the indemnifying party to such indemnified party under this Section 11.2, such indemnified party shall pay for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation; provided, however, if the defendants in any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there are any legal defenses available to it and/or other indemnified parties that are different from or additional to those available to the indemnifying party, the indemnified party or parties shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such indemnified party at the cost of the indemnifying party. The indemnifying party shall not be liable for the expenses of more than one separate counsel unless an indemnified party shall have reasonably concluded that there may be legal defenses available to it that are different from or additional to those available to another indemnified party.

(e) In order to provide for just and equitable contribution in circumstances in which the indemnity agreement provided for in Section 11.2(b) or (c) hereof is for any reason held to be unenforceable as to an indemnified party in respect of any losses, claims, damages or liabilities (or action in respect thereof) referred to therein which would otherwise be indemnifiable under Section 11.2(b) or (c) hereof, the indemnifying party shall contribute to the amount paid or payable by the indemnified party as a result of such losses, claims, damages or liabilities (or action in respect thereof); provided, however, that no Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. In determining the amount of contribution to which the respective parties are entitled, the following factors shall be considered: (i) Wells Fargo's and Borrower's relative knowledge and access to information concerning the matter with respect to which the claim was asserted; (ii) the opportunity to correct and prevent any statement or omission; and (iii) any other equitable considerations appropriate in the circumstances. Lender and Borrower hereby agree that it would not be equitable if the amount of such contribution were determined by pro rata or per capita allocation.

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

(g) The liabilities and obligations of both Borrower and Lender under this Section 11.2 shall survive the termination of this Agreement and the satisfaction and discharge of the Debt.

### **Section 11.3      REMIC Savings Clause.**

Notwithstanding anything herein to the contrary, if the Loan is included in a REMIC Trust and, immediately following a release of any portion of the real property relating to the Property, the ratio of the unpaid principal balance of the Loan to the value of the remaining real property relating to the Property is greater than 125% (such value to be determined, in Lender's sole discretion, by any commercially reasonable method permitted to a REMIC Trust and it being agreed and acknowledged that such loan-to-value determination shall be based on the value of only real property and shall exclude any personal property or going-concern value, if any), the principal balance of the Loan must be paid down by Borrower by an amount sufficient to satisfy REMIC Requirements, unless the Lender receives an opinion of counsel that the Loan will not fail to maintain its status as a "qualified mortgage" within the meaning of Section 860G(a)(3)(A) of the IRS Code as a result of the related release of lien.

**Section 11.4 Servicer.**

At the option of Lender, the Loan may be serviced by a servicer/trustee selected by Lender (the “**Servicer**”) and Lender may delegate all or any portion of its responsibilities under this Agreement and the other Loan Documents to such servicer/trustee pursuant to a servicing agreement between Lender and such Servicer; provided, however, Borrower shall not be obligated to pay any monthly servicing fees to such Servicer.

**Section 11.5 Rating Agency Costs.**

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

**Section 11.6 Mezzanine Option.**

Lender shall have the option (the “**Mezzanine Option**”) at any time to divide the Loan into two parts, a mortgage loan and a mezzanine loan, provided, that (i) the total loan amounts for such mortgage loan and such mezzanine loan shall equal the then outstanding amount of the Loan immediately prior to Lender’s exercise of the Mezzanine Option, and (ii) the weighted average interest rate of such mortgage loan and mezzanine loan shall initially equal the Applicable Interest Rate. Borrower shall, at Lender’s sole cost and expense, cooperate with Lender in Lender’s exercise of the Mezzanine Option in good faith and in a timely manner, which such cooperation shall include, but not be limited to, (i) executing such amendments to the Loan Documents and Borrower or any SPE Component Entity’s organizational documents as may be reasonably requested by Lender or requested by the Rating Agencies, (ii) creating one or more Single Purpose Entities (the “**Mezzanine Borrower**”), which such Mezzanine Borrower shall (A) own, directly or indirectly, 100% of the equity ownership interests in Borrower (the “**Equity Collateral**”), and (B) together with such constituent equity owners of such Mezzanine Borrower as may be designated by Lender, execute such agreements, instruments and other documents as may be required by Lender in connection with the mezzanine loan (including, without limitation, a promissory note evidencing the mezzanine loan and a pledge and security agreement pledging the Equity Collateral to Lender as security for the mezzanine loan); and (iii) delivering such opinions, title endorsements, UCC title insurance policies and other materials as may be required by Lender or the Rating Agencies.

**Section 11.7 Conversion to Registered Form.**

At the request of Lender, Borrower shall appoint, as its agent, a registrar and transfer agent (the “**Registrar**”) reasonably acceptable to Lender which shall maintain, subject to such reasonable regulations as it shall provide, such books and records as are necessary for the registration and transfer of the Note in a manner that shall cause the Note to be considered to be in registered form for purposes of Section 163(f) of the IRS Code. The option to convert the Note into registered form once exercised may not be revoked. Any agreement setting out the rights and obligation of the Registrar shall be subject to the reasonable approval of Lender.



Borrower may revoke the appointment of any particular person as Registrar, effective upon the effectiveness of the appointment of a replacement Registrar. The Registrar shall not be entitled to any fee from Borrower or Lender or any other lender in respect of transfers of the Note and other Loan Documents.

## ARTICLE 12.

### INDEMNIFICATIONS

#### Section 12.1 General Indemnification.

Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all actual Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (b) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (d) any failure of the Property to be in compliance with any Applicable Law; (e) any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; (f) the payment of any commission, charge or brokerage fee to anyone (other than a broker or other agent retained by Lender) which may be payable in connection with the funding of the Loan evidenced by the Note and secured by the Security Instrument; and/or (g) the holding or investing of the funds on deposit in the Accounts or the performance of any work or the disbursement of funds in each case in connection with the Reserve Funds, provided, however, that Borrower shall not be responsible to indemnify any Indemnified Party for Losses to the extent arising solely from such Indemnified Party's gross negligence, willful misconduct, fraud, or illegal acts. Any amounts payable to Indemnified Parties by reason of the application of this Section 12.1 shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Indemnified Parties until paid.

#### Section 12.2 Mortgage and Intangible Tax and Transfer Tax Indemnification.

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

**Section 12.3 ERISA Indemnification.**

Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses (including, without limitation, reasonable attorneys' fees and costs incurred in the investigation, defense, and settlement of Losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Lender's sole discretion) that Indemnified Parties may incur, directly or indirectly, as a result of a default under Sections 3.7 or 4.19 of this Agreement.

**Section 12.4 Duty to Defend, Legal Fees and Other Fees and Expenses.**

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

**Section 12.5 Survival.**

The obligations and liabilities of Borrower under this Article 12 shall fully survive indefinitely notwithstanding any termination, satisfaction, assignment, entry of a judgment of foreclosure, exercise of any power of sale, or delivery of a deed in lieu of foreclosure of the Security Instrument, but shall not relate to matters first occurring from and after the date of any foreclosure sale or deed in lieu of foreclosure, provided such matters were not caused by Borrower or Guarantor.

**Section 12.6 Environmental Indemnity.**

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

**ARTICLE 13.**

**EXCULPATION**

**Section 13.1 Exculpation.**

(a) Subject to the qualifications below, Lender shall not enforce the liability and obligation of Borrower to perform and observe the obligations contained in the Note, this Agreement, the Security Instrument or the other Loan Documents by any action or proceeding wherein a money judgment or any deficiency judgment or other judgment establishing personal liability shall be sought against Borrower or any principal, director, officer, employee,

beneficiary, shareholder, partner, member, trustee, agent, or Affiliate of Borrower (but specifically excluding Guarantor with respect to its obligations set forth in the Guaranty and the Environmental Indemnity) or any legal representatives, successors or assigns of any of the foregoing (collectively, the “**Exculpated Parties**”), except that Lender may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Lender to enforce and realize upon its interest under the Note, this Agreement, the Security Instrument and the other Loan Documents, or in the Property, the Rents, or any other collateral given to Lender pursuant to the Loan Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against Borrower only to the extent of Borrower’s interest in the Property, in the Rents and in any other collateral given to Lender, and Lender, by accepting the Note, this Agreement, the Security Instrument and the other Loan Documents, shall not sue for, seek or demand any deficiency judgment against Borrower or any of the Exculpated Parties in any such action or proceeding under or by reason of or under or in connection with the Note, this Agreement, the Security Instrument or the other Loan Documents. The provisions of this Section shall not, however, (1) constitute a waiver, release or impairment of any obligation evidenced or secured by any of the Loan Documents; (2) impair the right of Lender to name Borrower as a party defendant in any action or suit for foreclosure and sale under the Security Instrument; (3) affect the validity or enforceability of any indemnity, guaranty or similar instrument (including, without limitation, the indemnities set forth in Article 12 hereof, Section 11.2 hereof, in the Guaranty and in the Environmental Indemnity) made in connection with the Loan or any of the rights and remedies of Lender thereunder (including, without limitation, Lender’s right to enforce said rights and remedies against Borrower and/or Guarantor (as applicable) personally and without the effect of the exculpatory provisions of this Article 13); (4) impair the right of Lender to obtain the appointment of a receiver; (5) impair the enforcement of the assignment of leases and rents contained in the Security Instrument; (6) impair the right of Lender to enforce Section 4.12(e) of this Agreement; (7) constitute a prohibition against Lender to seek a deficiency judgment against Borrower in order to fully realize the security granted by the Security Instrument or to commence any other appropriate action or proceeding in order for Lender to exercise its remedies against the Property; or (8) constitute a waiver of the right of Lender to enforce the liability and obligation of Borrower, by money judgment or otherwise, to the extent of any Losses incurred by Lender (including attorneys’ fees and costs reasonably incurred) arising out of or in connection with any of the following:

(i) fraud or intentional misrepresentation or any failure to disclose a material fact by Borrower, any SPE Component Entity, Guarantor, or any Borrower Party in connection with the Loan, to the extent such fact is known by Borrower, any SPE Component Entity, Guarantor or any Borrower Party;

(ii) the gross negligence or willful misconduct of Borrower, any SPE Component Entity, Guarantor, or any Borrower Party or the commission of a criminal act by Borrower, any SPE Component Entity, Guarantor or any Borrower Party which results in any seizure or forfeiture of the Property, or any portion thereof, or Borrower’s interest therein;

(iii) material physical waste to the Property caused by the intentional acts or intentional omissions of Borrower, any SPE Component Entity, Guarantor, or any

Borrower Party (including, without limitation, any arson or abandonment of the Property) and/or the removal or disposal of any portion of the Property after an Event of Default by Borrower, any SPE Component Entity, Guarantor or any Borrower Party, provided it shall not be considered waste if Borrower fails to maintain the Property due solely to insufficient revenue from the Property;

(iv) the misapplication, misappropriation or conversion by Borrower of (A) any insurance proceeds paid by reason of any loss, damage or destruction to the Property, (B) any Awards or other amounts received in connection with the Condemnation of all or a portion of the Property, (C) any Rents upon and during a continuing Event of Default or (D) any Tenant security deposits or Rents collected in advance;

(v) failure to pay any Taxes or Other Charges, charges for labor or materials or any other charges that can create liens on any portion of the Property to the extent that the revenue from the Property is sufficient to pay such amounts (other than (x) amounts deposited with Lender as Tax Reserve Funds for Taxes or Other Charges where Lender elects not to apply such funds toward payment of such Taxes or Other Charges owed, (y) Taxes or Other Charges owed that are contested strictly in accordance with the terms of the Loan Documents or (z) Taxes or Other Charges that first arise and accrue from and after the date that Lender acquires title to the Property, whether by foreclosure, deed-in-lieu of foreclosure or other comparable conversion of the Security Instrument following an Event of Default);

(vi) failure to maintain insurance as required by this Agreement to the extent that the revenue from the Property is sufficient to pay the Insurance Premiums relating thereto (other than the failure to pay amounts deposited with Lender as Insurance Reserve Funds for Insurance Premiums to be paid to maintain such insurance where Lender elects not to apply such funds toward payment of such Insurance Premiums), provided Borrower shall not be liable for premiums that first arise and accrue from and after the date that Lender acquires title to the Property, whether by foreclosure, deed-in-lieu of foreclosure or other comparable conversion of the Security Instrument following an Event of Default;

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

(viii) any fees or commissions paid by Borrower after the occurrence of any Event of Default to Guarantor and/or any Affiliate of Borrower and/or Guarantor in violation of the terms of the Note, this Agreement, the Security Instrument or the other Loan Documents;

(ix) Borrower's breach of, or failure to comply with, the representations, warranties and covenants contained in Article 15 of this Agreement and/or the provisions of Sections 11.2, 12.2 and 12.3 hereof;

(x) any representation, warranty or covenant contained in Article 5 hereof is violated or breached; and/or

(xi) any litigation or other legal proceeding related to the Debt filed by Borrower, any SPE Component Entity, Guarantor or any Borrower Party in bad faith or frivolously that delays, opposes, impedes, obstructs, hinders, enjoins or otherwise interferes with or frustrates the efforts of Lender to exercise any rights and remedies available to Lender as provided herein and in the other Loan Documents.

Notwithstanding anything to the contrary in this Agreement, the Note or any of the Loan Documents, (A) Lender shall not be deemed to have waived any right which Lender may have under Section 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Debt or to require that all collateral shall continue to secure all of the Debt owing to Lender in accordance with the Loan Documents, and (B) the Debt shall be fully recourse to Borrower in the event that: (i) any representation, warranty or covenant contained in Article 5 hereof is violated or breached, provided, however, that any such breach or violation with respect to Article 5 shall not result in recourse liability hereunder unless such breach was material and, within fifteen (15) days of notice from any source whatsoever, Borrower fails to cure such breach and then only to the extent that such breach results in the substantive consolidation of the assets and liabilities of Borrower with any other Person as a result of such breach; (ii) if any Sale or Pledge occurs that is not a Permitted Transfer; (iii) Borrower or any SPE Component Entity files a voluntary petition under the Bankruptcy Code or any other Creditors Rights Laws; (iv) unless sought by Lender, an Affiliate, officer, director, or representative which Controls, directly or indirectly, Borrower or any SPE Component Entity files, or joins in the filing of, an involuntary petition against Borrower or any SPE Component Entity under the Bankruptcy Code or any other Creditors Rights Laws, or solicits or causes to be solicited petitioning creditors for any involuntary petition against Borrower or any SPE Component Entity from any Person; (v) unless sought by Lender, Borrower or any SPE Component Entity files an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Creditors Rights Laws, or solicits or causes to be solicited petitioning creditors for any involuntary petition from any Person; (vi) unless sought by Lender, any Affiliate, officer, director, or representative which Controls Borrower or any SPE Component Entity consents to or acquiesces in or joins in an application for the appointment of a custodian, receiver, trustee, or examiner for Borrower, any SPE Component Entity or any portion of the Property; (vii) unless sought by Lender, Borrower or any SPE Component Entity makes an assignment for the benefit of creditors or admits in any legal proceeding its insolvency or inability to pay its debts as they become due; (viii) there is substantive consolidation of Borrower or any SPE Component Entity (or any Restricted Party) with any other Person in connection with any federal or state bankruptcy proceeding involving the Guarantor or any of its Affiliates; (ix) Borrower or any SPE Component Entity (or any Restricted Party) contests or opposes any motion made by Lender to obtain relief from the automatic stay or seeks to reinstate the automatic stay in the event of any federal or state bankruptcy or insolvency proceeding involving the Guarantor or its Affiliates; (x) if following thirty (30) days written notice, Borrower fails to comply with the Cash Management Agreement relating to the establishment of a Deposit Account or Cash Management Account until such accounts shall have been established; (xi) if Borrower shall have failed to satisfy the Harris Teeter Condemnation Requirements in

accordance with Section 2.7 hereof, in an amount equal to the then outstanding Allocated Loan Amount of the Harris Teeter Property (after deducting the Net Proceeds payable and paid to Lender relating to such Condemnation) until such time as the Harris Teeter Condemnation Requirements are satisfied or (xii) if Borrower shall have failed to satisfy the Lowe's Casualty Requirements in accordance with Section 2.7 hereof, in an amount equal to the then outstanding Allocated Loan Amount of the Lowe's Property (after deducting the Net Proceeds payable and paid to Lender relating to such Casualty) until such time as the Lowe's Casualty Requirements are satisfied.

**Section 13.2 Survival.**

The obligations and liabilities of Borrower under this Article 13 shall fully survive indefinitely notwithstanding any termination, satisfaction, assignment, entry of a judgment of foreclosure, exercise of any power of sale, or delivery of a deed in lieu of foreclosure of the Security Instrument.

**ARTICLE 14.**

**NOTICES**

**Section 14.1 Notices.**

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

If to Borrower: c/o Consolidated-Tomoka Land Co.  
1530 Cornerstone Blvd., Suite 100  
Daytona Beach, Florida 32117  
Attention: Steven R. Greathouse  
Facsimile No.: 386-274-1223

With a copy to: c/o Consolidated-Tomoka Land Co.  
1530 Cornerstone Blvd., Suite 100  
Daytona Beach, Florida 32117  
Attention: General Counsel  
Facsimile No.: 386-274-1223

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

With a copy to: Winstead PC  
201 North Tryon Street  
Suite 2000  
Charlotte, North Carolina 28202  
Attention: Jeffrey J. Lee  
Facsimile No.: 704-339-1701

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

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

## ARTICLE 15.

### FURTHER ASSURANCES

#### Section 15.1 Replacement Documents.

Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note, this Agreement or any of the other Loan Documents which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of the Note, this Agreement or such other Loan Document, Borrower will issue, in lieu thereof, a replacement thereof, dated the date of the Note, this Agreement or such other Loan Document, as applicable, in the same principal amount thereof and otherwise of like tenor.

#### Section 15.2 Recording of Security Instrument, etc.

Borrower forthwith upon the execution and delivery of the Security Instrument and thereafter, from time to time, will cause the Security Instrument and any of the other Loan Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Lender in, the Property. Borrower will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, the Security Instrument, this Agreement, the other Loan Documents, any note, deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Security Instrument, any

deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by Applicable Law so to do.

**Section 15.3 Further Acts, etc.**

Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Agreement or for filing, registering or recording the Security Instrument, or for complying with all Applicable Law. Borrower, within five (5) Business Days of written demand, will execute and deliver, and in the event it shall fail to so execute and deliver, hereby authorizes Lender to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more financing statements to evidence more effectively the security interest of Lender in the Property. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including without limitation, such rights and remedies available to Lender pursuant to this Section 15.3.

**Section 15.4 Changes in Tax, Debt, Credit and Documentary Stamp Laws.**

(a) If any law is enacted or adopted or amended after the date of this Agreement which deducts the Debt from the value of the Property for the purpose of taxation and which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Borrower will pay the tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of tax by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury then Lender shall have the option by written notice of not less than ninety (90) days to declare the Debt immediately due and payable without any payment of any prepayment fee or penalty; provided no Event of Default is continuing.

(b) Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of the Security Instrument or the Debt. If such claim, credit or deduction shall be required by Applicable Law, Lender shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable, without any payment of any prepayment fee or penalty; provided no Event of Default is continuing.

(c) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note, the Security Instrument, or any of the other Loan Documents or impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any.



## ARTICLE 16.

### WAIVERS

#### **Section 16.1 Remedies Cumulative; Waivers.**

The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement, the Security Instrument, the Note or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or to impair any remedy, right or power consequent thereon.

#### **Section 16.2 Modification, Waiver in Writing.**

No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, the Security Instrument, the Note and the other Loan Documents, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances.

#### **Section 16.3 Delay Not a Waiver.**

Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege under this Agreement, the Security Instrument, the Note or the other Loan Documents, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Security Instrument, the Note or the other Loan Documents, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Security Instrument, the Note and the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

**Section 16.4 Waiver of Trial by Jury.**

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

**Section 16.5 Waiver of Notice.**

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

**Section 16.6 Remedies of Borrower.**

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

**Section 16.7 Marshalling and Other Matters.**

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

**Section 16.8 Waiver of Statute of Limitations.**

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

**Section 16.9 Waiver of Counterclaim.**

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

**Section 16.10 Sole Discretion of Lender.**

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

**ARTICLE 17.**

**MISCELLANEOUS**

**Section 17.1 Survival.**

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

**Section 17.2 Governing Law.**

**(A) THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK AND THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING**

TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, PRIORITY AND ENFORCEMENT OF THE LIEN AND SECURITY INTEREST CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS (OTHER THAN WITH RESPECT TO LIENS AND SECURITY INTERESTS IN PROPERTY WHOSE PERFECTION AND PRIORITY IS COVERED BY ARTICLE 9 OF THE UCC (INCLUDING, WITHOUT LIMITATION, THE ACCOUNTS) WHICH SHALL BE GOVERNED BY THE LAW OF THE JURISDICTION APPLICABLE THERETO IN ACCORDANCE WITH SECTIONS 9-301 THROUGH 9-307 OF THE UCC AS IN EFFECT IN THE STATE OF NEW YORK) SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS, AND THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW EXCEPT AS SPECIFICALLY SET FORTH ABOVE.

**(B) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:**

c/o Consolidated-Tomoka Land Co.  
1530 Cornerstone Blvd., Suite 100  
Daytona Beach, Florida 32117  
Attention: General Counsel  
Facsimile No.: 386-274-1223

**AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER, IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.**

**Section 17.3 Headings.**

The Article and/or Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

**Section 17.4 Severability.**

Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under Applicable Law, but if any provision of this Agreement shall be prohibited by or invalid under Applicable Law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

**Section 17.5 Preferences.**

Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrower to any portion of the obligations of Borrower hereunder. To the extent Borrower makes a payment or payments to Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any Creditors Rights Laws, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

**Section 17.6 Expenses.**

Borrower shall, within ten (10) Business Days of demand, pay Lender all reasonable, out-of-pocket costs and expenses incurred by Lender in connection with: (a) the preparation, negotiation, execution and delivery of this Agreement and all of the other Loan Documents; (b) any modifications and amendments, if any, of this Agreement or any of the other Loan Documents; (c) the processing of any Borrower requests made hereunder and under any of the other Loan Documents; (d) the enforcement of any remedies hereunder or under the other Loan Documents or the satisfaction by Lender of any of Borrower's or Guarantor's obligations under this Agreement and the other Loan Documents; (e) enforcing or preserving any rights, in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation, in each case against, under or affecting Borrower, this Agreement, the Security Instrument, the Note, the other Loan Documents, the Property, or any other security given for the Loan; and (f) otherwise protecting Lender's interests under this Agreement and any other Loan Document, including, without limitation, in connection with any "work-out" of the Loan or any bankruptcy, insolvency, receivership, reorganization, rehabilitation, liquidation or other similar proceeding in respect of Borrower, SPE Component Entity or Guarantor or an assignment by Borrower, SPE Component Entity or Guarantor for the benefit of its creditors. For all purposes of this Agreement and the other Loan Documents, Lender's costs and expenses as described above shall also include, without limitation, all appraisal fees, engineering and architect costs and inspection fees, reasonable legal fees and expenses, accounting fees, fees for the disbursement of any Reserve Funds, environmental and other consultant fees, auditor fees, and the cost to Lender of any title insurance premiums and title company charges (including for down dates, abstracts, tax certificates, title insurance endorsements required by Lender, and UCC financing statements, tax lien and litigation searches), surveys, recording, reconveyance and notary fees, any transfer and mortgage taxes, any Rating Agency fees and expenses, and any loan servicing and special servicing fees and expenses (including, without limitation, any "work-out" and/or liquidation fees, but excluding any monthly servicing fees). Borrower shall not be liable for the payment of any such costs and expenses to the extent the same arise by reason of the gross negligence, illegal acts, fraud or willful misconduct of Lender. Borrower recognizes and agrees that formal written appraisals of the Property by a licensed independent appraiser may be required by Lender's internal procedures and/or federal regulatory reporting requirements on an annual and/or specialized basis and that Lender may, at its option, require inspection of the Property by an independent supervising architect and/or cost engineering specialist at least semiannually. Notwithstanding the foregoing, Borrower shall not be required to pay for more than one appraisal in any thirty-six (36) month period unless an Event of Default occurs and is continuing or as otherwise required by law. Additionally, if Borrower is undertaking a Restoration or is performing work that requires the obtaining of a building permit, then Borrower shall pay the reasonable out-of-pocket costs of architects, engineers and other consultants retained by Lender to review the performance of such Restoration or work. Any amounts payable to Lender pursuant to this Section 17.6 shall become immediately due and payable upon written demand and, if the same is not paid within ten (10) Business Days from such written demand, shall bear interest at the Default Rate from the date which is ten (10) Business Days from such written demand until the date such amounts have been paid.

**Section 17.7 Cost of Enforcement.**

In the event (a) that the Security Instrument is foreclosed in whole or in part, (b) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Borrower or any of its constituent Persons or an assignment by Borrower or any of its constituent Persons for the benefit of its creditors, or (c) Lender exercises any of its other remedies under this Agreement, the Security Instrument, the Note and the other Loan Documents, Borrower shall be chargeable with and agrees to pay all costs of collection and defense, including attorneys' fees and costs, incurred by Lender or Borrower in connection therewith and in connection with any appellate proceeding or post judgment action involved therein, together with all required service or use taxes. Any amounts payable to Lender pursuant to this Section 17.7 shall become immediately due and payable upon written demand and, if the same is not paid within ten (10) Business Days from such written demand, shall bear interest at the Default Rate from the date which is ten (10) Business Days from such written demand until the date such amounts have been paid.

**Section 17.8 Exhibits and Schedules Incorporated.**

The Exhibits and Schedules annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

**Section 17.9 Offsets, Counterclaims and Defenses.**

Any assignee of Lender's interest in and to this Agreement, the Security Instrument, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

**Section 17.10 No Joint Venture or Partnership; No Third Party Beneficiaries.**

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

(b) This Agreement, the Security Instrument, the Note and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement, the Security Instrument, the Note or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person

shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender's sole discretion, Lender deems it advisable or desirable to do so.

(c) The general partners, members, principals and (if Borrower is a trust) beneficial owners of Borrower are experienced in the ownership and operation of properties similar to the Property, and Borrower and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Borrower is not relying on Lender's expertise, business acumen or advice in connection with the Property.

(d) Notwithstanding anything to the contrary contained herein, Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents.

(e) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender pursuant to this Agreement, the Security Instrument, the Note or the other Loan Documents, including, without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Lender.

(f) Borrower recognizes and acknowledges that in accepting this Agreement, the Note, the Security Instrument and the other Loan Documents, Lender is expressly and primarily relying on the truth and accuracy of the representations and warranties set forth in Article 3 of this Agreement without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; that such reliance existed on the part of Lender prior to the date hereof, that the warranties and representations are a material inducement to Lender in making the Loan; and that Lender would not be willing to make the Loan and accept the this Agreement, the Note, the Security Instrument and the other Loan Documents in the absence of the warranties and representations as set forth in Article 3 of this Agreement.

#### **Section 17.11      Publicity; Advertising.**

(a) Except for disclosures and reporting required by applicable Legal Requirements and communications with shareholders of Guarantor or other constituent entities of Borrower in the ordinary course of business, all news releases, publicity or advertising by Borrower or its Affiliates through any media intended to reach the general public which refers to this Agreement, the Note, the Security Instrument or the other Loan Documents or the financing evidenced by this Agreement, the Note, the Security Instrument or the other Loan Documents, to Lender or any of its Affiliates shall be subject to the prior written approval of Lender, not to be unreasonably withheld.

(b) Borrower hereby agrees that Lender and its affiliated entities, including, without limitation, Wells Fargo & Company and its subsidiaries, may publicly identify details of the Loan in their respective advertising and public communications of all kinds, including, but not



limited to, press releases, direct mail, newspapers, magazines, journals, e-mail or internet advertising or communications. Such details may include the name of the Property, the address of the Property, the amount of the Loan, the Closing Date, and a description of the size and location of the Property.

**Section 17.12 Conflict; Construction of Documents; Reliance.**

In the event of any conflict between the provisions of this Agreement and the Security Instrument, the Note or any of the other Loan Documents, the provisions of this Agreement shall control. Wherever the phrase “during the continuance of an Event of Default” or the like appears herein or in any other Loan Document, such phrase shall not mean or imply that Lender has any obligation to accept a cure of such Event of Default. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of this Agreement, the Note, the Security Instrument and the other Loan Documents and this Agreement, the Note, the Security Instrument and the other Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same. Borrower acknowledges that, with respect to the Loan, Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under this Agreement, the Note, the Security Instrument and the other Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender’s exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse-to or competitive with the business of Borrower or its Affiliates.

**Section 17.13 Entire Agreement.**

This Agreement, the Note, the Security Instrument and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written between Borrower and Lender are superseded by the terms of this Agreement, the Note, the Security Instrument and the other Loan Documents.

**Section 17.14 Liability.**

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

**Section 17.15 Duplicate Originals; Counterparts.**

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

**Section 17.16 Contribution.**

(a) In the event of (i) any payment by any one or more of the Borrowers of any amount in excess of the Allocated Loan Amount relating to an Individual Property owned by such Borrower together with interest thereon and any other amounts payable with respect thereto, and (ii) the foreclosure of, or the delivery of deeds in lieu of foreclosure relating to, any of the collateral owned by one or more of the Borrowers, each Borrower (the “**Overpaying Borrower**”) whose collateral or assets have been utilized to satisfy obligations under the Loan or otherwise for the benefit of one or more other Borrowers shall be entitled, after payment in full of the Note and the satisfaction of all the Borrowers’ other obligations to Lender, to contribution from each of the benefited Borrowers, for the amounts so paid, advanced or benefited, up to such benefited Borrower’s then current applicable Allocated Loan Amount.

(b) If a Borrower (a “**Defaulting Borrower**”) shall have failed to make a contribution payment as herein provided, after the payment of the Note in full and the satisfaction of all of the Borrowers’ other obligations to Lender, the Overpaying Borrower shall be subrogated to the rights of Lender against such Defaulting Borrower, including the right to receive a portion of the Collateral of such Defaulting Borrower in an amount equal to the contribution payment required hereunder that such Defaulting Borrower failed to make; provided, however, if Lender returns any payments in connection with a bankruptcy of a Borrower, all subrogated Borrowers shall jointly and severally repay Lender all such amounts repaid, together with interest at the rate set forth in the Note.

(c) At the request of any Borrower or Borrowers, upon such repayment of the Note in full and satisfaction of all other obligations of the Borrowers, Lender shall assign the applicable collateral, without recourse, to such Borrower or Borrowers; provided, that, if Lender shall have received conflicting requests from more than one Borrower to receive such collateral and such requesting Borrowers cannot agree as to the disposition of such collateral, Lender shall have no obligation to deliver such collateral to such requesting Borrowers unless and until such requesting Borrowers shall have agreed as to the disposition of such collateral and so authorized Lender. Provided Lender shall have received such authorization, Lender shall assign the collateral in question, without recourse, to the Borrower entitled to receive such collateral within ninety (90) days thereafter. Prior to delivering such collateral, Lender shall be entitled to receive from the requesting Borrower or Borrowers such other assurances, indemnities and agreements as may be reasonably requested by Lender.

(d) The liabilities and obligations of Borrower under this Section 17.16 shall survive the termination of this Agreement and the satisfaction and discharge of the Debt.

**Section 17.17 Cross Default; Cross Collateralization.**

Borrower acknowledges that Lender has made the Loan to Borrower upon the security of its collective interest in the Properties and in reliance upon the aggregate of the Properties taken together being of greater value as collateral security than the sum of the

Properties taken separately. Borrower agrees that the Security Instruments are and will be cross-collateralized and cross-defaulted with each other so that (i) an Event of Default under any of the Security Instruments shall constitute an Event of Default under each of the other Security Instruments which secure the Note; (ii) an Event of Default under the Note or this Agreement shall constitute an Event of Default under each Security Instrument; and (iii) each Security Instrument shall constitute security for the Note as if a single blanket lien were placed on all of the Properties as security for the Note.

**[NO FURTHER TEXT ON THIS PAGE]**

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

**BORROWER:**

**BLUEBIRD ARROWHEAD PHOENIX LLC, a Delaware limited liability company**

By: Golden Arrow 6 LLC, a Delaware limited liability company, its sole member

By: Consolidated-Tomoka Land Co., a Florida corporation, its sole member

By: /s/ John P. Albright

Name: John P. Albright

Title: President and CEO

**GOLDEN ARROW CLERMONT FL LLC, a Delaware limited liability company**

By: Golden Arrow 6 LLC, a Delaware limited liability company, its sole member

By: Consolidated-Tomoka Land Co., a Florida corporation, its sole member

By: /s/ John P. Albright

Name: John P. Albright

Title: President and CEO

**BLUEBIRD GERMANTOWN MD LLC, a Delaware  
limited liability company**

By: Golden Arrow 6 LLC, a Delaware limited liability  
company, its sole member

By: Consolidated-Tomoka Land Co., a Florida  
corporation, its sole member

By: /s/ John P. Albright \_\_\_\_\_

Name: John P. Albright

Title: President and CEO

**GOLDEN ARROW CHARLOTTE NC LLC, a Delaware  
limited liability company**

By: Golden Arrow 6 LLC, a Delaware limited liability  
company, its sole member

By: Consolidated-Tomoka Land Co., a Florida  
corporation, its sole member

By: /s/ John P. Albright \_\_\_\_\_

Name: John P. Albright

Title: President and CEO

**CTLC GOLDEN ARROW KATY LLC, a Delaware limited liability company**

By: Golden Arrow 6 LLC, a Delaware limited liability company, its sole member

By: Consolidated-Tomoka Land Co., a Florida corporation, its sole member

By: /s/ John P. Albright \_\_\_\_\_

Name: John P. Albright

Title: President and CEO

**BLUEBIRD RENTON WA LLC, a Delaware limited liability company**

By: Golden Arrow 6 LLC, a Delaware limited liability company, its sole member

By: Consolidated-Tomoka Land Co., a Florida corporation, its sole member

By: /s/ John P. Albright \_\_\_\_\_

Name: John P. Albright

Title: President and CEO

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**LENDER:**

**WELLS FARGO BANK, NATIONAL ASSOCIATION**

By: /s/ John G. Nicol

Name: John G. Nicol

Title: Managing Director

EXHIBIT A

**ADDITIONAL DEFINITIONS**

“**Adjusted Net Cash Flow**” shall mean NOI minus (a) normalized tenant improvement and leasing commission expenditures equal to \$38,191 per annum, and (b) normalized capital improvements equal to \$0.19 per square foot per annum.

“**Debt Service Coverage Ratio**” shall mean as of the last day of the calendar month immediately preceding the applicable date of calculation, the quotient obtained by dividing (1) the Adjusted Net Cash Flow by (2) the aggregate principal and interest projected to be due and payable over the twelve (12) month period subsequent to the date of calculation (interest only periods will be disregarded for purposes of this calculation) and a 30-year amortization period. Borrower shall deliver to Lender such information as is reasonably required for Lender to make all applicable calculations. Lender’s calculation of the Debt Service Coverage Ratio, and all component calculations, shall be conclusive and binding on Borrower absent manifest error.

“**Debt Yield**” shall mean, as of the last day of the calendar month immediately preceding the applicable date of determination, the quotient (expressed as a percentage) obtained by dividing (a) Adjusted Net Cash Flow as of such date by (b) the outstanding principal amount of the Loan as of such date. Lender’s calculation of the Debt Yield, and all component calculations, shall be conclusive and binding on Borrower absent manifest error.

“**NOI**” shall mean EGI minus Underwritten Operating Expenses.

**INCOME**

“**EGI**” shall mean Net Rental Income plus Other Income minus Bad Debt and Rent Concessions.

“**Net Rental Income**” shall mean Gross Potential Rent plus Expense Reimbursements minus Vacancy Deduction plus Percentage Rent.

“**Gross Potential Rent**” shall mean gross potential rent, computed in accordance with accounting principles reasonably acceptable to Lender, based on the most recent rent roll annualized, which should include (a) effective rent for occupied space (that is, actual rent collected from tenants in actual physical occupancy pursuant to valid Leases (which may be adjusted downward by Lender to reflect market rents), provided that to the extent a particular tenant is either in a scheduled rent concession period at the time of determination or has a rent concession period scheduled in the future, such tenant’s annualized rent may be adjusted by Lender in its reasonable discretion to reflect a normalized annualized amount unless no future rent is scheduled to be received from such tenant in which case no rent will be included for such tenant) and (b) market rents for vacant space.

“**Expense Reimbursements**” shall mean expense reimbursements as determined from the most recent operating statement, to the extent deemed recurring and sustainable, determined on a trailing 12-month basis (which should include actual expense reimbursements for occupied space and market expense reimbursements for vacant space and newly-leased space); provided, however, that (a) total Expense Reimbursements cannot exceed one hundred percent (100%) of



Borrower's Actual Operating Expenses (as defined in the definition of "Operating Expenses" herein), and (b) if the Underwritten Expenses are used for determination of Operating Expenses, then Lender's underwritten gross potential expense reimbursements will be used, which equal \$949,376.

**"Vacancy Deduction"** shall be determined by multiplying Gross Potential Rent and Expense Reimbursements by the greatest of (a) the actual vacancy at the Property at the time of determination, (b) the then-prevailing market vacancy in the vicinity of the Property, and (c) an imputed vacancy rate of 3.0% with respect to the Individual Properties located at 17510 N. 75th Ave., Glendale, Arizona, 20926 Frederick Road, Germantown, Maryland, and 17615 140th Ave. S.E., Renton, Washington, and 0.0% with respect to the Individual Properties located at 19935 Katy Freeway, Houston, Texas, 2201 W. W.T. Harris Blvd., Charlotte, North Carolina, 2590 E. Highway 50, Clermont, Florida.

**"Percentage Rent"** shall mean percentage rent as determined from the most recent operating statement, to the extent deemed recurring and sustainable, determined on a trailing 12-month basis; provided, however, that for any particular tenant, the aggregate annual rent (including percentage rent) attributed to such tenant cannot exceed market rent.

**"Other Income"** shall mean all other applicable income as determined from the most recent operating statement for the Property at the time of determination, to the extent such income is deemed recurring and sustainable, determined on a trailing 12-month basis, computed in accordance with accounting principles reasonably acceptable to Lender, including, without limitation (and without duplication), parking income, cellular tower income, vending income and other similar items. Notwithstanding the foregoing, Other Income will not include insurance proceeds (other than proceeds of rent loss, business interruption or other similar insurance allocable to the applicable period); Condemnation Proceeds (other than Condemnation Proceeds arising from a temporary taking or the use and occupancy of all or part of the applicable Property allocable to the applicable period); proceeds of any financing; proceeds of any sale, exchange or transfer of the Property or any part thereof or interest therein (including proceeds of any sales of furniture, fixtures and equipment); capital contributions or loans to Borrower or an Affiliate of Borrower; any item of income otherwise includable in Other Income but paid directly by any tenant to a Person other than Borrower; any other extraordinary, non-recurring revenues; payments paid by or on behalf of any tenant under a Lease which is the subject of any proceeding or action relating to its bankruptcy, reorganization or other arrangement pursuant to the Bankruptcy Code or any similar federal or state law or which has been adjudicated a bankrupt or insolvent unless such Lease has been affirmed by the trustee in such proceeding or action pursuant to a final, non-appealable order of a court of competent jurisdiction; payments paid by or on behalf of any tenant under a Lease the demised premises of which are not occupied either by such tenant or an affiliate or sublessee thereof; payments paid by or on behalf of any tenant under a Lease in whole or partial consideration for the termination of any Lease; sales tax rebates from any Governmental Authority; sales, use and occupancy taxes on receipts required to be accounted for by Borrower to any Governmental Authority; refunds and uncollectible accounts; interest income from any source; unforfeited security deposits, utility and other similar deposits; income from tenants not paying rent; or any disbursements to Borrower from the Reserve Funds.

“**Bad Debt**” shall mean debt that remains uncollectible after reasonable efforts have been exhausted to collect the debt. Bad Debt will be determined on a trailing 12-month basis.

“**Rent Concessions**” shall mean any remaining rent concessions for the Leases used to determine Gross Potential Rent (other than any concessions already accounted for in the determination of Gross Potential Rent above) to the extent such rent concessions relate to the forward 12-month period at the time of determination.

**EXPENSE**

“**Underwritten Operating Expenses**” shall mean projected annualized Operating Expenses based on a trailing 12-month period adjusted upwards or downwards in Lender’s reasonable discretion by anticipated changes in Operating Expenses.

“**Operating Expenses**” shall mean the greater of (a) all expenses, computed in accordance with accounting principles reasonably acceptable to Lender, of whatever kind and from whatever source, relating to the ownership, operation, repair, maintenance and management of the Property that are incurred on a regular monthly or other periodic basis, including, without limitation (and without duplication): Taxes (based on the most current bill annualized, subject to adjustment by Lender to take into account any change in assessment that has not yet been reflected in the most current tax bill); Insurance Premiums (based on the most current premium annualized); management fees (whether or not actually paid) equal to the greater of the actual management fees or 3.0% of EGI; costs attributable to the ordinary operation, repair and maintenance of the Improvements; common area maintenance costs; advertising and marketing expenses; professional fees; license fees; general and administrative costs and expenses; utilities; payroll, benefits and related taxes and expenses; janitorial expenses; computer processing charges; operating equipment or other lease payments as approved by Lender; ground lease payments; bond assessments; and other similar costs and expenses; in each instance, unless otherwise noted, only to the extent actually paid for by Borrower (the foregoing expenses being referred to herein as “**Actual Operating Expenses**”), or (b) Lender’s underwritten operating expenses at the time of closing (“**Underwritten Expenses**”), which equal \$1,058,968. Notwithstanding the foregoing, Operating Expenses shall not include debt service (including principal, interest, impounds and other reserves), capital expenditures, tenant improvement costs, leasing commissions or other expenses which are paid from escrows required by the Loan Documents; any payment or expense for which Borrower was or is to be reimbursed from proceeds of the loan or insurance or by any third party; federal, state or local income taxes; any non-cash charges such as depreciation and amortization; and any item of expense otherwise includable in Operating Expenses which is paid directly by any tenant and any expenses (including legal, accounting and other professional fees, expenses and disbursement) incurred in connection with the making of the Loan or the sale, exchange, transfer, financing or refinancing of all or any portion of the Property or in connection with the recovery of Insurance Proceeds or Awards which are applied to prepay the Note.

In making the calculations described herein, applicable line items may be adjusted by Lender in its reasonable discretion (a) to accurately reflect the amounts of any extraordinary non-recurring items in the relevant period and to reflect on a pro rata basis those items on an annual or semi-annual basis and (b) to reflect Leases (and projected changes to the applicable line items above)

which are either (i) anticipated to terminate within the 90 days of the date of calculation or (ii) executed with creditworthy tenants with rent commencement dates scheduled to occur within 90 days of the date of calculation.

**[NO FURTHER TEXT ON THIS PAGE]**

SCHEDULE I

**IMMEDIATE REPAIRS**

(attached hereto)

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SCHEDULE II

**ORGANIZATIONAL CHART**

(attached hereto)

SCHEDULE III

**DESCRIPTION OF REA'S**

**Big Lots, Germantown, MD**

Declaration of Covenants, Conditions, Easements and Restrictions by Germantown Seneca Joint Ventures, a Maryland general partnership, dated November, 1995 and recorded in Liber 13760, Page 483 ("Germantown REA"), as affected by the Supplementary Declaration of Covenants, Conditions, Easements and Restrictions for Land Bay 1 – Milestone Center by and between Germantown Seneca Joint Ventures, a Maryland general partnership, and Milestone Commercial Center Association, Inc., a Maryland nonstock corporation, dated \_\_\_\_\_, 1995 and recorded in Liber 13760, Page 569; as amended by First Amendment to Germantown REA dated July 24, 1997 and recorded in Liber 15045, Page 139; as further amended by First Amendment to Germantown REA dated May 13, 2010 and recorded in Liber 39958, Page 001; as further supplemented by Supplementary Declaration of Covenants, Conditions, Easements and Restrictions for Land Bay 2 by and between Germantown Seneca Joint Ventures, a Maryland general partnership, and Milestone Commercial Center Association, Inc., a Maryland nonstick corporation, dated \_\_\_\_\_, 1996 and recorded in Liber 13989, Page 464, as amended by First Amendment to Supplementary Germantown REA dated July 24, 1997 and recorded in Liber 15045, Page 188.

Maintenance and Easement Agreement between Germantown Seneca Joint Ventures, a Maryland general partnership, and GFS Realty, Inc., a Delaware corporation dated December 12, 1995 and recorded in Liber 13821, Page 270 (M&E Agreement); as amended by the First Amendment to Maintenance and Easement Agreement dated July 24, 1997 and recorded in Liber 15045, Page 201.

The Milestone Conservancy Declaration of Covenants, Conditions, and Restrictions by Germantown Seneca Joint Ventures, a Maryland general partnership, dated November, 1995 and recorded in Liber 13760, Page 483 ("Conservancy CC&Rs")

**Big Lots, Glendale, AZ**

Agreement Respecting Easements and Restrictions between New River Associates, an Arizona partnership and Chicago Trust Company, an Arizona corporation dated June 29, 1992 and recorded in as Instrument No. 92-0361406 in the Maricopa County Recorder's office (the "Glendale REA")

**Harris Teeter, Charlotte, NC**

Declaration of Protective Covenants and Easements by University Research Park, Incorporated, a North Carolina corporation dated December 30, 1992 and recorded in Book 7156, Page 555, as amended by the Cross Deed, Boundary Agreement and Amendment to Declaration of Protective Covenants and Easements by and between University Research Park, Incorporated, a North Carolina corporation and Ruddco, Inc., a North Carolina corporation, dated November 29, 1993 and recorded in Book7568, Page 710, all in the Mecklenburg County Registry (the "Charlotte REA").

**Lowe's, Katy, TX**

Declaration of Covenants, Conditions and Restrictions by Barker Venture, Ltd., a Texas limited partnership and Earlon C. McWhorter dated May 28, 1996 and recorded as Instrument No. R943792 (the "Katy REA").

**RA, Renton, WA**

Declaration of Easements, Covenants, Conditions and Restrictions between Gunna-Fairwood II, L.L.C., a Washington limited liability company and Gunna-Fairwood III, L.L.C., a Washington limited liability company dated May 11, 2006 and recorded as Instrument No. 2006511001592, as amended by Amendment to Declaration of Easements, Covenants, Conditions and Restrictions between Gunna-Fairwood II, L.L.C., a Washington limited liability company and Cho & Lee Investments, Inc., a Washington corporation dated , 2006 and recorded as Instrument No. 20061212001349, all in the King County, WA recorder's office (the "Renton REA")

**WG, Clermont, FL**

Reciprocal Easement Agreement with Covenants Conditions and Restrictions between Hancock Village LLC, a Florida limited liability company and Rock Hancock, Inc., a Florida corporation dated November 14, 2002 and recorded in Book 2209, Page 835 in the Public Records of Lake County, FL (the "Clermont REA").

SCHEDULE IV

**INTENTIONALLY OMITTED**



SCHEDULE V

**ALLOCATED LOAN AMOUNT**

<u>Individual Property</u>	<u>Allocated Loan Amount</u>
19935 Katy Freeway, Houston, Texas	\$ 8,500,000
2201 W. W.T. Harris Blvd., Charlotte, North Carolina	\$ 6,600,000
17615 140th Ave. S.E., Renton, Washington	\$ 4,700,000
17510 N. 75th Ave., Glendale, Arizona	\$ 3,400,000
20926 Frederick Road, Germantown, Maryland	\$ 3,300,000
2590 E. Highway 50, Clermont, Florida	\$ 3,500,000

SCHEDULE VI

**BORROWERS**

BLUEBIRD ARROWHEAD PHOENIX LLC, a Delaware limited liability company

GOLDEN ARROW CLERMONT FL LLC, a Delaware limited liability company

BLUEBIRD GERMANTOWN MD LLC, a Delaware limited liability company

GOLDEN ARROW CHARLOTTE NC LLC, a Delaware limited liability company

CTLG GOLDEN ARROW KATY LLC, a Delaware limited liability company

BLUEBIRD RENTON WA LLC, a Delaware limited liability company

## CERTIFICATIONS

I, John P. Albright, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Consolidated-Tomoka Land Co.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: October 28, 2014

By: /s/ John P. Albright

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

## CERTIFICATIONS

I, Mark E. Patten, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Consolidated-Tomoka Land Co.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: October 28, 2014

By: /s/ Mark E. Patten

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

CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Consolidated-Tomoka Land Co. (the "Company") on Form 10-Q for the period ended September 30, 2014, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, John P. Albright, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: October 28, 2014

By: /s/ John P. Albright

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

CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Consolidated-Tomoka Land Co. (the "Company") on Form 10-Q for the period ended September 30, 2014, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Mark E. Patten, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: October 28, 2014

By: /s/ Mark E. Patten

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