
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

(Mark One)

☒ **Quarterly report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

For the quarterly period ended June 30, 2004

OR

☐ **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 0-25739

WELLS REAL ESTATE INVESTMENT TRUST, INC.

(Exact name of registrant as specified in its charter)

Maryland
(State or other jurisdiction of
incorporation or organization)

58-2328421
(I.R.S. Employer
Identification Number)

6200 The Corners Parkway
Norcross, Georgia
(Address of principal executive offices)

30092
(Zip Code)

Registrant's telephone number, including area code (770) 449-7800

N/A

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

**Number of shares outstanding of each of the registrant's
classes of common stock, as of July 31, 2004:**

Common Stock, par value \$.01 per share: 466,070,941 shares

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 is an accelerated filer (as defined in Rule 12b-2 of the Act). Yes ☒ No ☐

FORM 10-Q
WELLS REAL ESTATE INVESTMENT TRUST, INC.
TABLE OF CONTENTS

	Page No.
PART I.	
Financial Information	
Item 1. Consolidated Financial Statements	
Consolidated Balance Sheets—June 30, 2004 (unaudited) and December 31, 2003	6
Consolidated Statements of Income for the Three and Six Months Ended June 30, 2004 and 2003 (unaudited)	7
Consolidated Statements of Stockholders' Equity for the Year Ended December 31, 2003 and the Six Months Ended June 30, 2004 (unaudited)	8
Consolidated Statements of Cash Flows for the Six Months Ended June 30, 2004 and 2003 (unaudited)	9
Notes to Consolidated Financial Statements (unaudited)	10
Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations	18
Item 3. Quantitative and Qualitative Disclosures About Market Risks	28
Item 4. Controls and Procedures	28
PART II.	
Other Information	
Item 1. Legal Proceedings	29
Item 2. Changes in Securities and Use of Proceeds	29
Item 3. Defaults Upon Senior Securities	29
Item 4. Submission of Matters to a Vote of Security Holders	29
Item 5. Other Information	29
Item 6. Exhibits and Reports on Form 8-K	30

[Table of Contents](#)

Forward-Looking Statements

Certain statements contained in this report on Form 10-Q of Wells Real Estate Investment Trust, Inc. ("Wells REIT") other than historical facts may be considered forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. We intend for all such forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Such statements include statements about our future plans, strategies and prospects including, but not limited to, our ability to generate sufficient cash from operating activities to enable us to pay dividends to stockholders; our ability to refinance maturing debt on favorable terms; our ability to maintain compliance with covenants on term debt; the level of capital requirements at our properties; our ability to qualify as a REIT in future periods; and the expected outcome of pending litigation. Such statements are subject to certain risks and uncertainties, as well as known and unknown risks, which could cause actual results to differ materially from those projected or anticipated. Therefore, such statements are not intended to be a guarantee of our performance in future periods. Such forward-looking statements can generally be identified by our use of forward-looking terminology such as "may," "will," "expect," "intend," "anticipate," "estimate," "believe," "continue" or other similar words. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date this report is filed with the Securities and Exchange Commission. We make no representation or warranty (express or implied) about the accuracy of any such forward-looking statements contained in this report on Form 10-Q, and we do not intend to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

Any such forward-looking statements are subject to unknown risks, uncertainties and other factors and are based on a number of assumptions involving judgments with respect to, among other things, future economic, competitive and market conditions, all of which are difficult or impossible to predict accurately. To the extent that our assumptions differ from actual results, our ability to meet such forward-looking statements, including our ability to generate positive cash flow from operations, provide dividends to stockholders and maintain the value of our real estate properties, may be significantly hindered. Following are some of the risks and uncertainties, although not all risks and uncertainties, which could cause actual results to differ materially from those presented in certain forward-looking statements:

General economic risks

- Adverse changes in general economic conditions or local conditions;
- Adverse economic conditions affecting the particular industry of one or more of our tenants;

Real estate risks

- Our ability to achieve appropriate occupancy levels resulting in sufficient rental amounts;
- Supply of or demand for similar or competing rentable space which may impact our ability to retain or obtain new tenants at lease expiration at acceptable rental amounts;
- Tenant ability or willingness to satisfy obligations relating to our existing lease agreements;
- Our potential need to fund tenant improvements, lease-up costs or other capital expenditures out of operating cash flow;
- Actual property operating expenses, including property taxes, insurance and other costs at our properties may differ from anticipated costs;
- Our ability to secure adequate insurance at reasonable and appropriate rates to avoid uninsured losses or losses in excess of insured amounts;

Table of Contents

- Discovery of previously undetected environmentally hazardous or other undetected adverse conditions at our properties;
- Our ability to invest dividend reinvestment plan proceeds to acquire properties at appropriate amounts that provide acceptable returns;
- Unexpected costs of capital expenditures related to tenant build-out projects or other unforeseen capital expenditures;
- Our ability to sell a property when desirable at an acceptable return, including the ability of the purchaser to satisfy any continuing obligations to us;

Financing and equity risks

- Our continued access to adequate credit facilities or other debt financing and refinancing as appropriate;
- Our ability to pay amounts to our lenders before any distributions to our stockholders;
- Changes in interest rates related to variable rate debt;
- Possible requirements by lenders that we enter into restrictive covenants relating to our operations and our ability to satisfy such restrictions;
- Possible limitations on our ability to borrow funds in the future that may result from our participation in the Section 1031 exchange program sponsored by affiliates of Wells Capital, Inc. (the “Advisor”);
- Future demand for our equity securities through our dividend reinvestment plan;
- Potential changes to our share redemption program or dividend reinvestment plan;
- The amount of redemptions or prices paid for redeemed shares approved by our board of directors in future periods;

Other operational risks

- Our ability to continue to qualify as a REIT for tax purposes;
- Our dependency on our Advisor, its key personnel and its affiliates for various administrative services;
- Our Advisor’s ability to attract and retain high quality personnel who can provide acceptable service levels to us and generate economies of scale for us over time;
- Administrative operating expenses, including increased expenses associated with operating as a public company, may differ from our estimates;
- Changes in governmental, tax, real estate, environmental and zoning laws and regulations and the related costs of compliance;
- Our ability to maintain compliance with any governmental, tax, real estate, environmental and zoning laws and regulations in the event that such position is questioned by the respective authority; and
- Actions of our joint venture partners, including potential bankruptcy, business interests differing from ours or other actions that may adversely impact the operations of our joint ventures.

PART I. FINANCIAL INFORMATION

The information furnished in our accompanying consolidated balance sheets and consolidated statements of income, stockholders' equity and cash flows reflects all adjustments, which are, in our opinion, necessary for a fair presentation of the aforementioned financial statements.

The financial statements should be read in conjunction with the notes to our financial statements and Management's Discussion and Analysis of Financial Condition and Results of Operations included in this report on Form 10-Q and with our Annual Report on Form 10-K for the year ended December 31, 2003. Our results of operations for the three and six months ended June 30, 2004, are not necessarily indicative of the operating results expected for the full year.

WELLS REAL ESTATE INVESTMENT TRUST, INC.
CONSOLIDATED BALANCE SHEETS
(in thousands, except share amounts)

	June 30, 2004 (unaudited)	December 31, 2003
Assets:		
Real estate assets, at cost:		
Land	\$ 664,961	\$ 649,788
Buildings and improvements, less accumulated depreciation of \$216,087 and \$172,106 at June 30, 2004 and December 31, 2003, respectively	3,519,248	3,483,409
Intangible lease assets, less accumulated amortization of \$35,907 and \$10,041 at June 30, 2004 and December 31, 2003, respectively	323,403	297,595
Construction in progress	8,385	2,609
Total real estate assets	4,515,997	4,433,401
Investments in unconsolidated joint ventures	100,344	102,832
Cash and cash equivalents	82,659	64,469
Tenant receivables	74,749	56,175
Due from affiliates	7,391	3,072
Prepaid expenses and other assets	7,030	5,687
Deferred financing costs, less accumulated amortization of \$7,247 and \$3,624 at June 30, 2004 and December 31, 2003, respectively	11,255	5,472
Deferred lease costs, less accumulated amortization of \$16,957 and \$4,741 at June 30, 2004 and December 31, 2003, respectively	192,865	189,685
Investments in bonds	64,500	64,500
Total assets	\$5,056,790	\$4,925,293
Liabilities and Stockholders' Equity:		
Lines of credit and notes payable	\$ 822,707	\$ 612,514
Obligations under capital leases	64,500	64,500
Intangible lease liabilities, less accumulated amortization of \$13,692 and \$5,998 at June 30, 2004 and December 31, 2003, respectively	127,086	132,465
Accounts payable and accrued expenses	75,884	74,500
Due to affiliates	1,559	32,520
Dividends payable	11,541	13,562
Deferred rental income	23,787	28,025
Total liabilities	1,127,064	958,086
Minority Interest	4,779	4,801
Redeemable common shares	145,117	—
Stockholders' Equity:		
Common shares, \$.01 par value; 750,000,000 shares authorized and 466,389,276 shares outstanding at June 30, 2004, and 750,000,000 shares authorized and 465,049,864 shares outstanding at December 31, 2003	4,664	4,650
Additional paid-in capital	4,143,416	4,138,017
Cumulative distributions in excess of earnings	(223,218)	(180,261)
Redeemable common shares	(145,117)	—
Other comprehensive income	85	—
Total stockholders' equity	3,779,830	3,962,406
Total liabilities and stockholders' equity	\$5,056,790	\$4,925,293

See accompanying notes.

WELLS REAL ESTATE INVESTMENT TRUST, INC.
CONSOLIDATED STATEMENTS OF INCOME
FOR THE THREE AND SIX MONTHS ENDED JUNE 30, 2004 AND 2003 (UNAUDITED)
(in thousands, except per share amounts)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2004	2003	2004	2003
Revenues:				
Rental income	\$ 121,590	\$ 68,505	\$ 241,147	\$ 121,290
Tenant reimbursements	31,365	16,176	63,388	25,416
Lease termination income	7,707	—	7,863	—
	<u>160,662</u>	<u>84,681</u>	<u>312,398</u>	<u>146,706</u>
Expenses:				
Property operating costs	46,174	24,257	91,502	38,681
Asset and property management fees	5,893	3,091	11,442	5,526
General and administrative expense	4,256	2,015	7,574	3,876
Depreciation	24,258	24,853	48,255	43,866
Amortization	16,327	271	31,839	349
	<u>96,908</u>	<u>54,487</u>	<u>190,612</u>	<u>92,298</u>
Real estate operating income	<u>63,754</u>	<u>30,194</u>	<u>121,786</u>	<u>54,408</u>
Other income (expense):				
Interest expense	(11,611)	(4,271)	(19,325)	(6,922)
Interest and other income	1,737	1,161	3,013	2,316
Equity in income of unconsolidated joint ventures	1,145	1,131	2,283	2,392
Loss on extinguishment of debt	(1,734)	(479)	(2,101)	(479)
	<u>(10,463)</u>	<u>(2,458)</u>	<u>(16,130)</u>	<u>(2,693)</u>
Income from continuing operations before minority interest	<u>53,291</u>	<u>27,736</u>	<u>105,656</u>	<u>51,715</u>
Minority interest in earnings of consolidated entities	<u>151</u>	<u>—</u>	<u>277</u>	<u>—</u>
Income from continuing operations	<u>53,140</u>	<u>27,736</u>	<u>105,379</u>	<u>51,715</u>
Discontinued operations:				
Income from operations	276	249	661	634
Gain on sale	11,629	—	11,629	—
Income from discontinued operations	<u>11,905</u>	<u>249</u>	<u>12,290</u>	<u>634</u>
Net income	<u>\$ 65,045</u>	<u>\$ 27,985</u>	<u>\$ 117,669</u>	<u>\$ 52,349</u>
Per common share data-basic and diluted				
Income from continuing operations	\$ 0.11	\$ 0.10	\$ 0.23	\$ 0.20
Income from discontinued operations	\$ 0.03	\$ 0.00	\$ 0.02	\$ 0.00
Net income	<u>\$ 0.14</u>	<u>\$ 0.10</u>	<u>\$ 0.25</u>	<u>\$ 0.20</u>
Weighted average shares outstanding - basic and diluted	<u>464,441</u>	<u>283,903</u>	<u>463,917</u>	<u>258,575</u>
Dividends declared per share	<u>\$ 0.18</u>	<u>\$ 0.18</u>	<u>\$ 0.35</u>	<u>\$ 0.35</u>

See accompanying notes.

WELLS REAL ESTATE INVESTMENT TRUST, INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
FOR THE YEAR ENDED DECEMBER 31, 2003
AND FOR THE SIX MONTHS ENDED JUNE 30, 2004 (UNAUDITED)
(in thousands, except per share amounts)

	Common Stock		Additional Paid-In Capital	Cumulative Distributions in Excess of Earnings	Redeemable Common Shares	Other Comprehensive Income	Total Stockholders' Equity
	Shares	Amount					
Balance, January 1, 2003	215,700	\$2,157	\$1,908,490	\$ (74,310)	—	\$ (387)	\$1,835,950
Issuance of common stock	253,719	2,537	2,534,655	—	—	—	2,537,192
Redemptions of common stock	(4,369)	(44)	(43,646)	—	—	—	(43,690)
Dividends (\$0.70 per share)	—	—	—	(226,636)	—	—	(226,636)
Commissions on stock sales and related dealer manager fees	—	—	(239,949)	—	—	—	(239,949)
Other offering costs	—	—	(21,533)	—	—	—	(21,533)
Components of comprehensive income:							
Net income	—	—	—	120,685	—	—	120,685
Change in value of interest rate swap	—	—	—	—	—	387	387
Comprehensive income							121,072
Balance, December 31, 2003	465,050	\$4,650	\$4,138,017	\$ (180,261)	\$ —	\$ —	\$3,962,406
Issuance of common stock	10,087	101	100,772	—	—	—	100,873
Redemptions of common stock	(8,748)	(87)	(87,401)	—	—	—	(87,488)
Dividends (\$0.35 per share)	—	—	—	(160,626)	—	—	(160,626)
Commissions on stock sales and related dealer manager fees	—	—	(7,398)	—	—	—	(7,398)
Other offering costs	—	—	(574)	—	—	—	(574)
Redeemable common shares	—	—	—	—	(145,117)	—	(145,117)
Components of comprehensive income:							
Net income	—	—	—	117,669	—	—	117,669
Change in value of interest rate swap	—	—	—	—	—	85	85
Comprehensive income							117,754
Balance, June 30, 2004	466,389	\$4,664	\$4,143,416	\$ (223,218)	\$ (145,117)	\$ 85	\$3,779,830

See accompanying notes.

WELLS REAL ESTATE INVESTMENT TRUST, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
FOR THE SIX MONTHS ENDED JUNE 30, 2004 AND 2003 (UNAUDITED)
(in thousands)

	Six Months Ended June 30,	
	2004	2003
Cash Flows from Operating Activities:		
Net income	\$ 117,669	\$ 52,349
Adjustments to reconcile net income to net cash provided by operating activities:		
Equity in income of unconsolidated joint ventures	(2,283)	(2,392)
Minority interest in earnings of consolidated entities	277	—
Depreciation	48,442	44,278
Amortization	31,579	299
Loss on extinguishment of debt	2,101	479
Gain on sale	(11,629)	—
Changes in assets and liabilities:		
Tenant receivables	(19,188)	(7,493)
Due to/from affiliates	—	34
Prepaid expenses and other assets	(1,260)	(4,799)
Accounts payable and accrued expenses	(4,127)	7,961
Deferred rental income	(745)	(2,205)
Distributions received from joint ventures	5,445	4,009
Total adjustments	48,612	40,171
Net cash provided by operating activities	166,281	92,520
Cash Flows from Investing Activities:		
Investment in real estate and related assets	(157,247)	(793,003)
Contributions to joint ventures	—	(79)
Acquisition and advisory fees paid	(21,123)	(40,521)
Proceeds from sale	30,553	—
Net cash used in investing activities	(147,817)	(833,603)
Cash Flows from Financing Activities:		
Proceeds from lines of credit and notes payable	970,687	549,297
Repayments of lines of credit and notes payable	(791,631)	(601,074)
Dividends paid to stockholders	(162,700)	(87,605)
Issuance of common stock	100,873	1,044,285
Redemptions of common stock	(87,488)	(31,010)
Sales commissions and dealer manager fees paid	(6,455)	(96,037)
Other offering costs paid	(13,908)	(18,753)
Deferred financing costs paid	(9,406)	(4,379)
Other	(246)	—
Net cash (used in) provided by financing activities	(274)	754,724
Net increase in cash and cash equivalents	18,190	13,641
Cash and cash equivalents, beginning of period	\$ 64,469	\$ 45,464
Cash and cash equivalents, end of period	\$ 82,659	\$ 59,105

See accompanying notes.

WELLS REAL ESTATE INVESTMENT TRUST, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

JUNE 30, 2004
(unaudited)

1. Organization

General

Wells Real Estate Investment Trust, Inc. ("Wells REIT") is a Maryland corporation that engages in the acquisition and ownership of commercial real estate properties throughout the United States, including properties that are under construction, are newly constructed, or have operating histories for investment purposes. Wells REIT was incorporated in 1997, commenced operations on June 5, 1998, and qualifies as a real estate investment trust ("REIT") for federal income tax purposes. Wells REIT conducts business primarily through Wells Operating Partnership, L.P. ("Wells OP"), a Delaware limited partnership, or through Wells OP's subsidiaries. Wells REIT is the sole general partner of Wells OP and Wells Capital, Inc. (the "Advisor") is the sole limited partner of Wells OP. See Note 6 included herein for a further discussion of the Advisor. Wells OP owns certain properties directly or through wholly owned subsidiaries and has also entered into certain joint ventures with real estate limited partnerships sponsored by the Advisor, as well as certain joint ventures with parties not otherwise affiliated with Wells REIT or the Advisor. References to Wells REIT herein shall include all subsidiaries of Wells REIT, including Wells OP, its subsidiaries and any consolidated joint ventures.

At June 30, 2004, Wells REIT owned interests in 112 properties either directly or through joint ventures comprising approximately 24.9 million square feet of commercial office and industrial space located in 26 states and the District of Columbia. At June 30, 2004, these properties were approximately 97% leased.

Since its inception, Wells REIT has completed four public offerings of common stock at \$10 per share providing approximately \$4.8 billion in offering proceeds. Out of these proceeds, Wells REIT paid costs associated with the offerings of (1) approximately \$163.2 million in acquisition and advisory fees and acquisition expenses, (2) approximately \$453.7 million in selling commissions and dealer manager fees, and (3) approximately \$62.1 million in organization and other offering costs. In addition, Wells REIT used approximately \$152.1 million to redeem shares pursuant to Wells REIT's share redemption program. The remaining offering proceeds of approximately \$4.0 billion were primarily used to fund the purchase of real estate assets. As of June 30, 2004, no additional shares will be offered under these four prior public offerings.

Wells REIT registered an additional 100 million shares of common stock with the Securities and Exchange Commission (the "SEC") for future issuances to our stockholders under our dividend reinvestment plan pursuant to a Registration Statement on Form S-3 (Commission File No. 333-114212), which was filed and became effective with the SEC on April 5, 2004.

Wells REIT's stock is not listed on a national exchange. However, Wells REIT's Articles of Incorporation currently require Wells REIT to begin the process of liquidating its investments and distributing the resulting proceeds to the stockholders if its shares are not listed on a national exchange by January 30, 2008. Wells REIT's Articles of Incorporation can only be amended by a proxy vote of Wells REIT's stockholders.

Basis of Presentation

The consolidated financial statements of Wells REIT have been prepared in accordance with the rules and regulations of the Securities and Exchange Commission, including the instructions to Form 10-Q and Article 10 of Regulation S-X, and do not include all of the information and footnotes required by accounting principles generally accepted in the United States for complete financial statements. In the opinion of management, the statements for the unaudited interim periods presented include all adjustments, which are of a normal and recurring nature, necessary for a fair presentation of the results for such periods. Results for these interim periods are not necessarily indicative of full year results. For further information, refer to the financial statements and footnotes included in Wells REIT's Annual Report on Form 10-K for the year ended December 31, 2003.

[Table of Contents](#)

Income Taxes

Wells REIT has elected to be taxed as a REIT under the Internal Revenue Code of 1986, as amended (the “Code”), and has operated as such beginning with its taxable year ended December 31, 1998. To qualify as a REIT, Wells REIT must meet certain organizational and operational requirements, including a requirement to distribute at least 90% of Wells REIT’s annual REIT taxable income (excluding capital gains) to stockholders. As a REIT, Wells REIT is generally not subject to federal income taxes. Accordingly, no provision for federal income taxes has been made in the accompanying consolidated financial statements. Wells REIT is subject to certain state and local taxes related to the operations of properties in certain locations, which has been provided for in the accompanying consolidated financial statements.

Stockholders’ Equity

The par value of investor proceeds raised is classified as common stock, with the remainder allocated to additional paid-in capital.

Wells REIT maintains a share redemption program that allows stockholders to redeem shares held at a specified price within certain limitations. Under Accounting Series Release No. 268, “*Presentation in Financial Statements of Redeemable Preferred Stock*,” if the redemption of shares is outside the control of the issuer, such shares are required to be classified as mezzanine, or temporary, equity. Wells REIT’s share redemption program was amended for redemptions made beginning in January 2004. The amended plan modified the share redemption program by, among other things, removing the discretionary feature of approving redemption requests. Redemptions are limited to the aggregate proceeds received from the dividend reinvestment plan. Since cumulative funds received under the dividend reinvestment plan totaled approximately \$297.2 million and aggregate redemptions to date totaled approximately \$152.1 million at June 30, 2004, the difference of approximately \$145.1 million has been recorded as redeemable common shares on the consolidated balance sheet and statement of stockholders’ equity.

Change in Accounting Estimate

In the first quarter of 2004, Wells REIT completed a review of its real estate related depreciation by performing an analysis of the components of each property type in an effort to determine weighted average composite useful lives of its real estate assets. As a result of this review, Wells REIT changed its estimate of the weighted average composite useful lives for building assets. Effective January 1, 2004, for all building assets, Wells REIT extended the weighted average composite useful life to 40 years from 25 years. This change resulted in an increase to net income of approximately \$13.7 million or \$0.03 per share and \$27.7 million or \$0.06 per share for the three and six months ended June 30, 2004, respectively. Wells REIT believes the change reflects the estimated useful lives of the assets and is consistent with prevailing industry practice.

Reclassifications

Certain prior period amounts, as reported, have been reclassified to conform to the current period financial statement presentation, including but not limited to the reclassification noted in the following paragraph.

Through the first quarter 2004, Wells REIT and its unconsolidated joint ventures have reported the amortization of the fair values of in-place leases, including opportunity costs associated with lost rentals that are avoided by acquiring in-place leases and tenant relationships, as an adjustment to rental income in the consolidated statements of income. Beginning with the second quarter 2004, Wells REIT and its unconsolidated joint ventures are presenting this amortization as amortization expense in the consolidated statements of income, and have reclassified such amortization from rental income to amortization expense for all periods previously presented. The period of amortization continues to be the term of the respective lease and results in no change in previously reported net income. Additionally, in the consolidated balance sheets, the intangible lease liabilities have historically been netted with the intangible lease assets. Beginning in the second quarter 2004, Wells REIT is presenting below-market leases separately in the consolidated balance sheets as intangible lease liabilities. As such, these amounts included in the December 31, 2003 consolidated balance sheet have been reclassified to intangible lease liabilities to conform to the presentation in the current period.

[Table of Contents](#)

2. Real Estate Assets

Disposition

On June 3, 2004, Wells REIT sold a four-story office building and 5.2 acres of adjacent land in Tampa, Florida, for gross sales proceeds of approximately \$31.2 million. The property, 5104 Eisenhower Boulevard, was acquired in December 1998 for approximately \$21.2 million. The transaction resulted in a gain of approximately \$11.6 million.

Statement of Financial Accounting Standards No. 144 "Accounting for the Impairment or Disposal of Long-Lived Assets" requires, among other things, that the operating results of real estate assets sold be included in discontinued operations in the statements of income for all periods presented.

3. Lines of Credit and Notes Payable

Wells REIT has financed certain investments, acquisitions and developments through various borrowings as described below. On June 30, 2004, and December 31, 2003, Wells REIT had the following amounts outstanding, in thousands:

Facility	June 30, 2004	December 31, 2003
\$86.0 million line of credit; accruing interest at LIBOR plus 175 basis points (2.84% at June 30, 2004); requiring interest payments monthly with principal due at maturity (September 2004); collateralized by various Novartis Building, Cinemark Building, Dial Building, ASML Building, Alstom Power-Richmond Building, Avnet Building, Agilent-Atlanta Building (1)	\$ —	\$ —
\$500.0 million unsecured revolving line of credit; accruing interest at various rates of interest based on prime or LIBOR plus up to 1.625%; requiring interest payments monthly with principal payments due at maturity (April 2005)(2)	—	175,000
\$50.0 million line of credit; accruing interest at LIBOR plus 175 basis points (2.84% at June 30, 2004); requiring interest payments monthly with principal due at maturity (June 2005); collateralized by various buildings	—	—
\$90.0 million note payable; accruing interest at LIBOR plus 115 basis points; requiring interest payments monthly, with principal due at maturity (December 2006); subject to certain prepayment penalties; collateralized by the Nestle Building(2)	—	90,000
\$120.0 million note payable; accruing interest at 5.0955%; requiring interest payments monthly with principal due at maturity (January 2014); subject to certain prepayment penalties; collateralized by the Leo Burnett Building	120,000	120,000
\$115.2 million notes payable; accruing interest at 4.40%; requiring interest payments monthly with principal due at maturity (November 2007); subject to certain prepayment penalties; collateralized by the US Park Service and 1225 Eye Street Buildings	115,167	115,167
\$112.3 million note payable; seller financed interest free loan obtained upon purchase of Aon Center Chicago Building in May 2003; Principal balance due upon maturity (January 2004); collateralized by the Aon Center Chicago Building (2)	—	112,347
\$31.1 million note payable, assumed upon purchase of One Brattle Square Building in February 2004; accruing interest at 8.5% requiring interest and principal payments monthly through maturity (March 2028); subject to certain prepayment penalties through March 2008; collateralized by the Brattle Square Cambridge Building (3)	30,787	—
\$21.1 million term note payable; accruing interest at LIBOR plus 85 basis points (1.94% at June 30, 2004); requiring interest payments monthly and principal due at maturity (March 2006); collateralized by the Merck New Jersey Property(4)	6,753	—
\$350.0 million note payable; accruing interest at 4.84%; requiring interest payments monthly with principal due at maturity (June 2014); collateralized by the Harcourt Austin Building, Citicorp Englewood Building, Caterpillar Nashville Building, Keybank Parsippany Building, State Street Building, Aventis Northern NJ Building, Continental Casualty Orange County Building, NASA Washington DC Building, and the OCC Washington DC Building	350,000	—
\$200.0 million note payable; accruing interest at 4.87%; requiring interest payments monthly with principal due at maturity (May 2014); collateralized by the Aon Center Chicago Building	200,000	—
Total lines of credit and notes payable	\$ 822,707	\$ 612,514

- (1) Due to the sale of Eisenhower Boulevard property (see Note 2), the maximum available under the line of credit decreased from \$98.1 million to \$86.0 million. Additionally, the facility was extended through September 2004.
- (2) Wells REIT terminated this facility in 2004.
- (3) In accordance with GAAP, a fair value calculation of the loan was performed upon acquisition and resulted in a step-up of approximately \$4.0 million. At June 30, 2004, the outstanding principal balance on the note payable is approximately \$27.2 million.
- (4) Wells REIT entered into an interest rate swap to hedge the term loan, resulting in Wells REIT paying a fixed rate of 2.75% of the balance outstanding at each payment date. The swap expires in July 2005.

[Table of Contents](#)

During the three months ended June 30, 2004, Wells REIT entered into two long-term debt facilities for \$200.0 million and \$350.0 million, respectively. Each facility consists of non-recourse debt and is collateralized by specific properties (mentioned above). The facilities are also subject to covenant compliance, which includes, but is not limited to, maintaining certain operating ratios at the property level that are customary for facilities of this nature.

4. Supplemental Disclosures of Non-Cash Investing and Financing Activities

	For the six months ended June 30, (in thousands)	
	2004	2003
Acquisition and advisory fees applied to investments	\$ 357	\$ 35,094
Acquisition and advisory fees due to affiliate	\$ 1,594	\$ 2,651
Other offering costs due to affiliate	\$ —	\$ 2,390
Sales commissions payable	\$ 3,748	\$ 5,543
Acquisition of intangible lease liability	\$ 2,316	\$ 15,980
Dividends payable	\$ 11,541	\$ 9,532
Accrued capital expenditures	\$ 2,605	\$ 5,408
Due from affiliates	\$ 7,391	\$ 1,807
Assumption of loan upon acquisition of property	\$ 31,136	\$ 112,347
Other liabilities assumed at acquisition	\$ —	\$ 19,064

5. Commitments and Contingencies

Properties Under Construction

As of June 30, 2004, Wells REIT had two executed construction agreements with an unrelated third party for the purpose of constructing one building ("Merck New Jersey") and one building expansion ("TRW Denver"). The table below details the status of the properties under construction as of June 30, 2004:

Property	Total Projected Cost	Construction Costs to Date	Expected Future Costs	Expected Completion Date
Merck New Jersey	\$ 21.2 million	\$ 6.3 million	\$ 14.9 million	June 2005
TRW Denver	\$ 15.0 million	\$ 0.6 million	\$ 14.4 million	June 2005

Properties Under Contract

As of June 30, 2004, Wells REIT had a contract to acquire one building for a total purchase price of approximately \$30.0 million. This property was acquired subsequent to period end as discussed in Note 8. Approximately \$0.5 million was held in escrow related to this acquisition at June 30, 2004, which was included in prepaid and other assets in the consolidated balance sheet.

Commitments Under Existing Lease Agreements

Certain lease agreements include provisions that, at the option of the tenant, may obligate Wells REIT to expend certain amounts of capital to expand an existing property, construct on adjacent property or provide other expenditures for the benefit of the tenant, in favor of additional rental revenue. At June 30, 2004, no tenants have exercised such options which have not been fully satisfied as of that date, except as noted above.

[Table of Contents](#)

Earn-out Agreements

Wells REIT acquired certain properties subject to purchase agreements that require Wells REIT to pay additional consideration to the seller provided certain unleased space is leased within a specified period after closing based on a pre-determined formula. During the three and six months ended June 30, 2004 and 2003, no payments were made under these agreements. Subsequent to period end, approximately \$1.2 million was incurred under the earn-out agreement in place at the GMAC building.

Leasehold Property Obligations

Certain properties are subject to ground leases with various expiration dates as disclosed in the Wells REIT's Annual Report on Form 10-K for the year ended December 31, 2003.

Take-out Purchase and Escrow Agreement

During the second quarter of 2004, Wells REIT entered into two Take-out Purchase and Escrow Agreements (the "Take-out Agreements") with programs sponsored by an affiliate of the Advisor. Under the terms of the Take-out Agreements, Wells REIT has committed to purchase any un-sold co-tenancy interests in properties acquired by subsidiaries of Wells Management Company, Inc. ("Wells Management"), an affiliate of the Advisor (see Note 6 below), by the Offering Period End Date, as defined (see table below). Wells Management acquired these properties with the intent of selling co-tenancy interests in each property to persons seeking qualified replacement property pursuant to Section 1031 of the Code. In consideration for these commitments, Wells REIT received fees aggregating approximately \$0.4 million for the six months ended June 30, 2004.

Information on the Take-out Agreements, including Wells REIT's potential exposure under the Take-out Agreements at June 30, 2004, is as follows:

Property	Property Acquisition Date	Offering Period End Date	Initial Maximum Exposure	Remaining Exposure at June 30, 2004	Fee Earned
Irving, TX	April 27, 2004	October 27, 2004	\$ 14.5 million	\$ 2.1 million	\$ 0.2 million
Orlando, FL	May 19, 2004	November 19, 2004	\$ 12.7 million	\$ 12.7 million	\$ 0.2 million

Litigation

On October 9, 2003, Stephen L. Flood, the Luzerne County, Pennsylvania, Controller, and the Luzerne County Retirement Board ("Luzerne Board") on behalf of the Luzerne County Employee Retirement System ("Plan") filed a lawsuit in the U.S. District Court, Middle District of Pennsylvania against 26 separate defendants including Wells REIT, Wells Investment Securities, Inc. ("WIS"), the dealer manager, and Wells Real Estate Funds, Inc., the parent company of both the Advisor and WIS ("Wells Defendants"). The complaint alleges, among other things, (1) that certain former members of the Luzerne Board named as defendants invested \$10 million in Wells REIT common stock on behalf of the Plan, (2) that certain former board members of the Luzerne Board named as defendants breached their fiduciary duties to the Plan by, among other things, permitting the investment of the Plan's funds in investments not suitable for the Plan because they were long-term illiquid investments, permitting the Plan to pay excessive fees and commissions to co-defendants, and accepting political contributions in exchange for awarding advisory and management agreements, (3) that the Wells Defendants and others knew or should have known that the investment, and the fees and commissions associated with the investment, was not a proper investment for the Plan because it was a long-term illiquid investment, (4) that the Wells Defendants and others knew or should have known that certain Luzerne Board members and certain investment advisors and managers were breaching their fiduciary duties to the Plan, (5) that the defendants engaged in and conspired to engage in an improper scheme to intentionally defraud the Plan and (6) that the investment was not approved by a majority of the Luzerne Board at a public meeting and, consequently, the investment was an inappropriate and void action. The Plan is seeking damages of not less than \$25 million, treble damages and punitive damages from all defendants on a joint and several liability basis. Management believes that this lawsuit is without merit with respect to the Wells Defendants. While it is premature to determine the likely outcome of this lawsuit, management does not believe that a reserve for a loss contingency is necessary.

6. Related-Party Transactions

Advisory Agreement

Wells REIT has entered into an Advisory Agreement with the Advisor, which entitles the Advisor to specified fees in consideration for certain services with regard to the offering of shares to the public and investment of funds in real estate projects. The current Advisory Agreement has been extended by our board of directors until October 25, 2004.

Under the terms of the Advisory Agreement, Wells REIT is required to pay the Advisor the following for services rendered:

- Acquisition and advisory fees and acquisition expenses of 3.5% of gross offering proceeds, subject to certain limitations;
- Reimbursement of organization and offering costs paid by the Advisor on behalf of Wells REIT, not to exceed 3% of gross offering proceeds;
- For any property sold by Wells REIT, a disposition fee of the lesser of 50% of a competitive real estate commission or 3.0% of the sales price of the property, subordinated to the payment of dividends to stockholders equal to the sum of the stockholders' invested capital plus an 8% return on invested capital;
- Incentive fee of 10% of net sales proceeds remaining after stockholders have received distributions equal to the sum of the stockholders' invested capital plus an 8% return of invested capital; and
- Listing fee of 10% of the excess by which the market value of the stock plus dividends paid prior to listing exceeds the sum of 100% of the invested capital plus an 8% return on invested capital.

Acquisition and advisory fees and acquisition expenses, as well as organizational and offering costs are shown below (in thousands) for the periods presented:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2004	2003	2004	2003
Acquisition and advisory fees & acquisition expenses	\$ 1,594	\$ 20,981	\$ 3,531	\$ 35,463
Organizational and offering costs	\$ 228	\$ 5,698	\$ 504	\$ 10,489

Wells REIT incurred no disposition, incentive or listing fees during the six months ended June 30, 2004 or 2003.

Under an agreement which may be cancelled by either party with thirty days' notice, the Advisor has agreed to reduce the acquisition and advisory fees by the amounts attributable to shares redeemed under the share redemption program as shown below (in thousands) for the periods presented:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2004	2003	2004	2003
Redemptions	\$ 31,399	\$ 18,055	\$ 87,488	\$ 31,007
Reduction of acquisition & advisory fee	\$ 1,099	\$ 632	\$ 3,062	\$ 1,085

[Table of Contents](#)

Administrative Services Reimbursement

Wells REIT has no direct employees. The employees of the Advisor and Wells Management perform a full range of real estate services including leasing and property management, accounting, asset management and investor relations for Wells REIT. The Advisor and Wells Management bill Wells REIT for their services based on time spent by administrative personnel. These expenses are included in general and administrative expenses in the consolidated statements of income. These expenses totaled \$2.0 million and \$1.0 million for the three months ended June 30, 2004 and 2003, respectively, and \$3.7 million and \$2.0 million for the six months ended June 30, 2004 and 2003, respectively.

Asset and Property Management Agreement

Wells REIT has entered into an asset and property management agreement with Wells Management. In consideration for asset management services and for supervising the management and leasing of Wells REIT's properties, Wells REIT pays asset and property management fees to Wells Management an amount equal to the lesser of (a) 4.5% of gross revenues or (b) 0.6% (per annum) of the net asset value of the properties (excluding vacant properties) owned by Wells REIT. These expenses totaled \$5.1 million and \$2.9 million for the three months ended June 30, 2004 and 2003, respectively, and \$10.2 million and \$5.1 million for the six months ended June 30, 2004 and 2003, respectively. Additionally, a separate fee for the initial lease-up of newly constructed properties is generally paid in conjunction with the receipt of the first month's rent. No such costs were incurred in the three or six months ended June 30, 2004. However, these costs totaled approximately \$0.4 million and \$0.7 million for the three and six months ended June 30, 2003, respectively.

Dealer Manager Agreement

Wells REIT entered into a dealer manager agreement with WIS, whereby WIS performed dealer manager services for offerings of Wells REIT. For these services, WIS earned selling commissions of approximately 7% of the gross proceeds from the sale of the shares of Wells REIT, the majority of which have been reallocated to participating broker-dealers. The amount of these commissions is shown below (in thousands) for the periods presented:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2004	2003	2004	2003
Commissions	\$ 3,187	\$ 43,225	\$ 7,061	\$ 73,100
Portion of commissions reallocated	In excess of 99%	In excess of 99%	In excess of 99%	In excess of 99%

Additionally, WIS earned a dealer manager fee of 2.5% of the gross offering proceeds at the time the shares are sold. Under the dealer manager agreement, up to 1.5% of gross offering proceeds may be reallocated to participating broker-dealers. Under an additional agreement, WIS has agreed to reduce the dealer manager fee by 2.5% of the gross redemptions for shares redeemed under Wells REIT's share redemption plan which may be cancelled by either party with thirty days' notice. The amount of these fees, reductions, and reallocations are shown below (in thousands) for the periods presented:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2004	2003	2004	2003
Dealer manager fees	\$ 1,138	\$ 14,986	\$ 2,522	\$ 25,332
Reallowance of fees to broker dealers	\$ 554	\$ 7,164	\$ 1,255	\$ 12,117
Reduction in fees related to share redemption	\$ 785	\$ 451	\$ 2,187	\$ 775

[Table of Contents](#)

Due From Affiliates

Due from affiliates included in the consolidated balance sheets represents (1) Wells REIT's share of the cash to be distributed from its joint venture investments, (2) amounts owed by the Advisor and WIS relating to share redemptions, and (3) other amounts payable to Wells REIT from other related parties.

7. Economic Dependency

Wells REIT has engaged Wells Management and the Advisor to provide asset management services and supervise the management and leasing of properties owned by Wells REIT as well as other administrative responsibilities for Wells REIT including accounting services and investor relations. As a result of these relationships, Wells REIT is dependent upon Wells Management, the Advisor and other affiliates of the Advisor to provide certain services which are essential to Wells REIT including certain asset management and property management services, asset acquisition and disposition services and other administrative responsibilities under agreements, some of which have terms of one year or less. In the event that these companies were unable to provide Wells REIT with the respective services, Wells REIT would be required to find alternative providers of these services.

By Order dated June 3, 2004, the Superior Court of Gwinnett County, Georgia, dismissed, without prejudice, the putative class action complaint filed on or about March 12, 2004 against Leo F. Wells, III, the Advisor, and certain affiliates of the Advisor relating to Wells Real Estate Fund I, a public limited partnership and affiliate of the Advisor (Hendry et al. v. Leo F. Wells, III et al., Superior Court of Gwinnett County, Georgia, Civil Action No. 04-A-2791 2).

8. Subsequent Events

On July 7, 2004, Wells REIT purchased a four-story office building containing approximately 210,000 rentable square feet located on an approximately 14-acre tract of land at 1075 West Entrance Drive in Auburn Hills, Michigan ("1075 West Entrance Building"). The purchase price of the 1075 West Entrance Building was approximately \$29.6 million, plus closing costs, which was partially funded through the assumption of a \$14.5 million loan secured by the property. The loan carries an annual interest rate of 8.2% and matures in January 2012. The 1075 West Entrance Building, which was built in 2001, is entirely leased to Electronic Data Systems Corporation.

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

The following discussion and analysis should be read in conjunction with our accompanying financial statements and notes thereto.

Liquidity and Capital Resources

From the commencement of our initial public offering in January 1998 through December 31, 2003, we raised significant funds through the sale of our common stock in four public offerings. Proceeds from these sales of common stock, net of offering costs and expenses, were used primarily for the acquisition of real estate properties and for certain capital expenditures identified at the time of acquiring certain properties. We do not anticipate receiving significant proceeds in the future from the sale of our common stock as all remaining public offering shares under the fourth offering were sold during the year ended December 31, 2003. We expect to continue to receive proceeds from shares issued under our dividend reinvestment plan; however, a substantial portion of these funds will be used to fund redemptions of our shares of common stock as approved by our board of directors.

We expect that our primary source of future cash flows will be cash provided by operating activities that are primarily generated from the operations of our properties and distributions from joint ventures in which we hold an interest. Additionally, we expect to raise a limited amount of funds through our dividend reinvestment plan (net of redemptions paid), and we may generate cash through the selective and strategic sale of certain operating properties. Dividends paid will be dependent upon the amount of cash we generate from operating activities and on our expectations of future cash flows and determination of near term cash needs for capital improvements, tenant re-leasing, share redemptions and debt repayments. To the extent the expected cash available changes significantly, the dividends declared by the board of directors may be adjusted.

Short-Term Liquidity and Capital Resources

During the six months ended June 30, 2004, we generated approximately \$166.3 million of cash flow from operating activities. This cash was generated primarily from revenues at our properties and cash flow distributions from our unconsolidated joint ventures net of direct property operating expenses, management fees, general administrative expenses, and interest expense. From cash flows from operating activities, we paid dividends to stockholders of approximately \$162.7 million. During the six months ended June 30, 2004, we raised approximately \$100.9 million from issuances of common stock (primarily pursuant to our dividend reinvestment plan), substantially all of which was used to redeem shares pursuant to our share redemption program. During the six months ended June 30, 2004, we raised approximately \$179.1 million from notes payable and lines of credit. Of this amount, we repaid all of our existing line of credit debt, extinguishing the Bank of America \$500 million facility in May 2004. In addition, we paid \$20.4 million in offering related costs and \$21.1 million in acquisition and advisory fees. During the six months ended June 30, 2004, we incurred approximately \$10.0 million in capital expenditures at our existing properties, excluding the build to suit and expansion projects as discussed in Note 5 of the accompanying consolidated financial statements. At June 30, 2004, we had approximately \$82.7 million in cash and cash equivalents.

On June 3, 2004, we sold a four-story office building and 5.2 acres of adjacent land in Tampa, Florida, for proceeds of approximately \$30.6 million. The property, 5104 Eisenhower Boulevard, was acquired in December 1998 for approximately \$21.2 million.

On April 20, 2004, we closed on a \$200.0 million 10-year term loan collateralized by the Aon Center Chicago Building, and on May 25, 2004, we obtained a \$350 million 10-year term loan facility with Morgan Stanley. The \$350 million 10-year term loan is non-recourse to Wells REIT and is secured by first priority mortgages against certain properties as discussed in Note 3 of the accompanying notes to our consolidated financial statements. We used a substantial portion of the proceeds from the \$200 million and \$350 million 10-year term loans to repay in full and terminate our existing \$500 million credit facility with Bank of America N.A. and reduce our exposure under other lines of credit.

[Table of Contents](#)

During the six months ended June 30, 2004, investors redeemed approximately \$87.5 million in shares under the terms of our share redemption program. Under the program, there was an aggregate of approximately \$97.2 million available for redemptions in 2004, of which 20% of this amount has been set aside to fund redemptions upon the death of a stockholder. During the second quarter of 2004, we reached our annual redemption limit for 2004, excluding those shares set aside for redemptions upon the death of a stockholder. Accordingly, we will be unable to honor any additional redemption requests this year, except for redemption requests relating to the death of a stockholder. Subsequent redemption requests made in 2004 will not be eligible for redemption until the first quarter of 2005, subject to our board's ability to modify the terms of or terminate our share redemption program, which may include changing the redemption price paid for shares redeemed in the future, with 30 days' notice at any time in its discretion.

Over the next twelve months, we do not anticipate any significant changes to our portfolio or financing arrangements. We project that cash flows from operations will be sufficient to maintain our dividend, as well as make necessary capital improvements at our properties. We do not anticipate substantial changes to our debt structure, as most of the outstanding borrowings are now in long-term, fixed rate facilities. Any excess cash provided from the dividend reinvestment program in the future, after redemptions and capital expenditures, could be used to fund further acquisitions, as appropriate investment properties are identified. We acquired one property in July 2004 for a purchase price of approximately \$29.6 million, as discussed in Note 8 of the accompanying notes to our consolidated financial statements, but do not have further properties identified for purchase as of the date of this report. Cash flows from operations in future periods should remain relatively consistent with the six months ended June 30, 2004; however, cash flows from investing and financing activities should decrease as the portfolio has generally completed its acquisition and capital raising phase and entered into long-term fixed rate debt facilities.

Long-Term Liquidity and Capital Resources

We expect that our future sources of capital will be derived from net cash flows from property operations, proceeds from secured or unsecured financings from banks and other lenders, shares issued under our dividend reinvestment plan, net of share redemptions, and the selective and strategic sale of properties.

We anticipate our future long-term liquidity requirements will include, but not be limited to, scheduled debt maturities, renovations, expansions and other significant capital improvements at our properties and property acquisitions and investments in real estate ventures. Since our fourth offering of common stock closed, we anticipate real estate acquisition activity to decrease significantly from the pace in 2003.

We expect substantially all net cash from operations will be used to pay dividends after payment of operating expenses and certain capital expenditures at our properties. To the degree that cash flows provided by operations are lower due to lower returns on properties, dividends paid may be lower. We anticipate a substantial portion of proceeds raised from sales of shares under our dividend reinvestment plan will be used to fund redemptions with any excess being utilized for capital improvements or expansion at our properties or to fund or partially fund new property acquisitions. We do not expect any significant increase in our ratio of borrowings to total assets in the future, so we do not expect borrowings to be a significant new source of capital for us. Our cash flow from operations depends significantly on market rents and the ability of tenants to make rental payments. We believe that the diversity of our tenant base and the focus placed on relatively high credit quality tenants helps mitigate the risk of tenant bankruptcies. Conversely, economic downturns in general or in one or more of our core markets could adversely impact the ability of our tenants to make lease payments and our ability to re-lease space on favorable terms when leases expire. In the event of either situation, our cash flow and consequently our ability to meet capital needs and maintain distributions to stockholders at current levels would be adversely affected.

All of our debt outstanding at June 30, 2004 is long-term debt with fixed interest rates and maturities ranging from 2007 to 2028. Our secured line of credit with SouthTrust Bank (no amounts outstanding at June 30, 2004) was extended through September 2004. In the second quarter of 2005, the \$50.0 million (no amounts outstanding at June 30, 2004) secured line of credit, also with Bank of America N.A., will expire. We are currently investigating opportunities to replace or extend these facilities to provide cash on a short-term basis as needed for future periods that exceed our current borrowings.

Results of Operations

As of June 30, 2004, we owned interests in 112 real estate properties that were approximately 97% leased. Our results of operations have changed significantly for each period presented primarily as a result of the additional properties acquired during the periods subsequent to December 31, 2002. We expect virtually all components of the statement of income will increase in 2004 as compared to 2003 as a result of owning real estate assets acquired during the year ended December 31, 2003 for a full year, but relationships, as noted below, between the components should remain comparable. However, we do not anticipate results of operations in future periods to change significantly from the three and six months ended June 30, 2004 at this time, unless identified below. We do not expect that the operating results of individual properties will change significantly in the near term, as the rental revenues are generally based on long-term leases that do not allow for significant increases in rental income and the majority of our in-place leases do not expire in the near term. Additionally, we generally do not expect a significant increase in operating expenses at existing properties, but to the extent that operating expenses do increase, the majority of our in-place leases have clauses that require the tenants to bear the substantial majority of the burden of such increases.

Comparison of the three months ended June 30, 2004 vs. the three months ended June 30, 2003

Rental income increased by \$53.1 million during the three months ended June 30, 2004 to \$121.6 million from \$68.5 million for the three months ended June 30, 2003. Of this increase, \$52.0 million relates to properties acquired or developed subsequent to March 31, 2003. Tenant reimbursements increased by \$15.2 million, during the three months ended June 30, 2004 to \$31.4 million from \$16.2 million for the three months ended June 30, 2003. Substantially all of this increase relates to properties acquired or developed subsequent to March 31, 2003. Tenant reimbursements were equivalent to 67% and 66% of the property operating expenses for the three months ended June 30, 2004 and 2003, respectively.

Lease termination income was \$7.7 million for the three months ended June 30, 2004. The income primarily relates to one transaction, the termination of a portion of the Metris Direct, Inc. lease at the 10900 Wayzata Boulevard Building (f/k/a the Metris Minnesota Building). At the time of the lease termination, a new long-term lease was executed with Siemens Real Estate, Inc. for all the vacated space. There were no termination fees recorded during the three months ended June 30, 2003. Lease termination income for the three months ended June 30, 2004 is not expected to be comparable to future periods as such income will be dependent upon the execution of such agreements that are deemed in the best interest of the portfolio over the long-term.

Property operating expenses increased by \$21.9 million during the three months ended June 30, 2004 to \$46.2 million from \$24.3 million for the three months ended June 30, 2003. Of this increase, \$21.5 million relates to properties acquired or developed subsequent to March 31, 2003. Property operating costs represented approximately 30% and 29% of the sum of the rental income and tenant reimbursements revenue for the three months ended June 30, 2004 and 2003, respectively.

Asset and property management fees increased by \$2.8 million during the three months ended June 30, 2004 to \$5.9 million from \$3.1 million for the three months ended June 30, 2003. Of this increase, \$2.5 million relates to properties acquired or developed subsequent to March 31, 2003. Asset and property management fees as a percentage of the sum of rental income and tenant reimbursements revenue amounts for the three months ended June 30, 2004 and 2003, were equivalent to approximately 4% for both periods.

General and administrative expense increased by \$2.3 million during the three months ended June 30, 2004 to \$4.3 million from \$2.0 million for the three months ended June 30, 2003. This increase is primarily attributable to an increase in stockholders and related reporting costs, as well as an increase in administrative salary reimbursements related to a larger portfolio as compared to prior year. General and administrative expense represents approximately 3% and 2% of total property revenues (excluding lease termination income) for the three months ended June 30, 2004 and 2003, respectively.

Depreciation expense decreased by \$0.6 million during the three months ended June 30, 2004 to \$24.3 million from \$24.9 million for the three months ended June 30, 2003. This decrease is primarily due to the change in depreciable lives of real estate assets effective January 1, 2004, partially offset by the acquisition of properties since March 31, 2003. The change

[Table of Contents](#)

in depreciable lives during the current period resulted in approximately \$13.7 million less depreciation than if no change in depreciable lives had occurred, as discussed in Note 1 of the accompanying consolidated financial statements. The depreciation for properties acquired after March 31, 2003 would have increased by \$13.2 million, absent any change in depreciable lives from 25 years to 40 years. Depreciation expense represented approximately 20% and 36% of rental income for the three months ended June 30, 2004 and 2003, respectively, with the change primarily due to the change in depreciable lives.

Amortization increased by \$16.0 million during the three months ended June 30, 2004 to \$16.3 million from \$0.3 million for the three months ended June 30, 2003. This increase is primarily due to the adoption of Statement of Financial Accounting Standards No. 141, "*Business Combinations*" ("FAS 141"), resulting in more acquired assets being classified as intangible lease assets and lease origination assets compared to prior periods resulting in additional amortization expense, as well as the signing of certain second-generation leases at some of our properties and initial leases at recently developed properties. It is expected that amortization of deferred lease costs and intangible lease assets will increase during the remainder of 2004 compared to the same periods in 2003 as a full period of amortization expense is recognized relating to our 2003 property acquisitions and as more second-generation leases are entered into in future periods.

Interest expense increased by \$7.3 million during the three months ended June 30, 2004 to \$11.6 million from \$4.3 million for the three months ended June 30, 2003. Interest expense on the bonds related to the Ingram Micro Building and ISS Atlanta Buildings and amortization expense for the three months ended June 30, 2004 and June 30, 2003 were comparable. Interest expense related to third parties for the three months ended June 30, 2004 increased as compared to the three months ended June 30, 2003, due to significantly higher average amounts of borrowings outstanding and comparable interest rates during the two periods. Interest expense in the future will be dependent upon the amount of borrowings outstanding, current interest rates, and the deferred financing costs associated with obtaining debt facilities. Interest expense in future quarters is expected to be somewhat higher than the three months ended June 30, 2004 as we entered into certain long-term debt facilities that have higher interest rates than the rates that we experienced for the first part of the quarter under our lines of credit in order to mitigate our exposure to rising interest rates.

Interest and other income increased by \$0.5 million during the three months ended June 30, 2004 to \$1.7 million from \$1.2 million for the three months ended June 30, 2003. Interest income of \$1.1 million in each period was attributable to interest on the bonds related to the Ingram Micro Building and ISS Atlanta Buildings for the three months ended June 30, 2004 and 2003, respectively, which is offset by the related interest expense associated with the bonds resulting in no net impact to our net income. The remainder in each period represents interest earned on cash generated from operations between distribution payments. The level of interest income in future periods will primarily be dependent upon the amount of operating cash on hand and is not expected to be significant or change significantly from the amount earned during the three months ended June 30, 2004. In addition to interest income, during the three months ended June 30, 2004, we earned approximately \$0.4 million of take out fees related to our participation in the Advisor's 1031 Program which may not be indicative of amounts earned in future periods as such income is dependent upon the continuation and growth of the program and our continued involvement.

Equity in income of unconsolidated joint ventures was \$1.1 million during the three months ended June 30, 2004 and June 30, 2003 and is not expected to change significantly in future periods absent any additional investment in unconsolidated joint ventures or unexpected changes in the operations of the underlying properties.

Loss on extinguishment of debt increased by \$1.2 million during the three months ended June 30, 2004 to \$1.7 million from \$0.5 million for the three months ended June 30, 2003. In May 2004, we repaid in full and terminated our \$500 million credit facility with Bank of America, N.A. and charged \$1.7 million in associated unamortized deferred financing costs to earnings. In April 2003, we terminated our \$110.0 million credit facility with Bank of America, N.A. and charged \$0.5 million in associated unamortized deferred financing costs to earnings. Loss on extinguishment of debt for the three months ended June 30, 2004 and June 30, 2003 is not expected to be indicative of amounts in future periods as such costs are generally dependent upon altering our financing structure and we have no plans for significantly changing our current financing structure.

Discontinued operations for the three months ended June 30, 2004 were \$11.9 million, consisting entirely of operations and the disposition of the Eisenhower Boulevard Building as discussed in Note 2 of the accompanying consolidated financial statements. Net operations for the period from April 1, 2004 through the date of sale, June 3, 2004, and the three months ended June 30, 2003 were \$0.3 million and \$0.2 million, respectively. The gain recognized on the sale of the property was \$11.6 million. There were no dispositions for the three months ended June 30, 2003.

[Table of Contents](#)

Earnings per share for the three months ended June 30, 2004 was \$0.14 compared to \$0.10 for the three months ended June 30, 2003. This increase is primarily a result of the recognition of lease termination income related to the Metris lease termination, and the gain on sale of the Eisenhower Boulevard Building occurring in the second quarter 2004, which together generated approximately \$0.04 net income per share. Earnings per share for the three months ended June 30, 2004 reflects the change in depreciable lives of real estate assets from 25 years to 40 years which resulted in an increase in earnings of approximately \$0.03 per share, that was essentially offset by the impact of the increased amortization of \$0.03 per share during the three months ended June 30, 2004 as a result of FAS 141 adoption. Other than these items, operations remained relatively consistent on a per share basis and would not be expected to change significantly from earnings of \$0.10 per share per quarter.

Comparison of the six months ended June 30, 2004 vs. the six months ended June 30, 2003

Rental income increased by \$119.8 million during the six months ended June 30, 2004 to \$241.1 million from \$121.3 million for the six months ended June 30, 2003. Of this increase, \$119.1 million relates to properties acquired or developed subsequent to December 31, 2002. Tenant reimbursements increased by \$38.0 million, during the six months ended June 30, 2004 to \$63.4 million from \$25.4 million for the six months ended June 30, 2003. Substantially all of this increase relates to properties acquired or developed subsequent to December 31, 2002. Tenant reimbursements were equivalent to 69% and 65% of the property operating expenses for the six months ended June 30, 2004 and 2003, respectively.

Lease termination income was \$7.9 million for the six months ended June 30, 2004. The income primarily relates to one transaction, the termination of a portion of the Metris Direct, Inc. lease at the 10900 Wayzata Boulevard Building (f/k/a the Metris Minnesota Building). At the time of the lease termination, a new long-term lease was executed with Siemens Real Estate, Inc. for all the vacated space. No lease termination events occurred during the six months ended June 30, 2003. Lease termination for the six months ended June 30, 2004 is not expected to be comparable to future periods as such income will be dependent upon the execution of such agreements that are deemed in the best interest of the portfolio over the long-term.

Property operating expenses increased by \$52.8 million during the six months ended June 30, 2004 to \$91.5 million from \$38.7 million for the six months ended June 30, 2003. Of this increase, \$52.3 million relates to properties acquired or developed subsequent to December 31, 2002. Property operating costs represented 30% and 26% of the sum of the rental income and tenant reimbursements revenue for the six months ended June 30, 2004 and 2003, respectively. The increase in property operating costs as a percentage of the sum of rental income and tenant reimbursements is primarily due to the acquisition of certain full-service multi-tenant properties in 2003 that have a significantly higher ratio of property operating costs to revenues.

Asset and property management fees increased by \$5.9 million during the six months ended June 30, 2004 to \$11.4 million from \$5.5 million for the six months ended June 30, 2003. Of this increase, \$5.5 million relates to properties acquired or developed subsequent to December 31, 2002. Asset and property management fees as a percentage of the sum of rental income and tenant reimbursements revenue for the six months ended June 30, 2004 and 2003, were equivalent to approximately 4% for both periods.

General and administrative expense increased by \$3.7 million during the six months ended June 30, 2004 to \$7.6 million from \$3.9 million for the six months ended June 30, 2003. This increase is primarily attributable to an increase in stockholders and related reporting costs, as well as an increase in administrative salary reimbursements related to a larger portfolio as compared to prior year. General and administrative expense represents approximately 2% and 3% of total property revenues (excluding lease termination income) for the six months ended June 30, 2004 and 2003, respectively.

Depreciation expense increased by \$4.4 million during the six months ended June 30, 2004 to \$48.3 million from \$43.9 million for the six months ended June 30, 2003. This increase is primarily due to the acquisition of properties since December 31, 2002, partially offset by the change in depreciable lives of real estate assets effective January 1, 2004. The change in depreciable lives during the current period resulted in approximately \$27.7 million less depreciation than if no

[Table of Contents](#)

change in depreciable lives had occurred, as discussed in Note 1 of the accompanying consolidated financial statements. The depreciation for properties acquired after December 31, 2002 would have increased by \$32.1 million, absent any change in depreciable lives from 25 years to 40 years. Depreciation expense represented approximately 20% and 36% of rental income for the three months ended June 30, 2004 and 2003, respectively, with the change primarily due to the change in depreciable lives.

Amortization increased by \$31.5 million during the six months ended June 30, 2004 to \$31.8 million from \$0.3 million for the six months ended June 30, 2003. The increase is primarily due to the adoption of FAS 141, resulting in more acquired assets being classified as intangible lease assets and lease origination assets compared to prior periods resulting in additional amortization expense, as well as the signing of second-generation leases at some of our properties and initial leases at recently developed properties. It is expected that amortization of deferred leasing costs and intangible lease assets will increase during the remainder of 2004 compared to the same periods in 2003 as a full period of amortization expense is recognized relating to our 2003 property acquisitions and as more second-generation leases are entered into in future periods.

Interest expense increased by \$12.4 million during the six month period ended June 30, 2004 to \$19.3 million from \$6.9 million for the six months ended June 30, 2003. Interest expense on the bonds related to the Ingram Micro Building and ISS Atlanta Buildings and amortization expense for the six months ended June 30, 2004 and June 30, 2003 are comparable. Interest expense related to third parties for the six months ended June 30, 2004 increased as compared to the six months ended June 30, 2003, due to significantly higher average amounts of borrowings outstanding and comparable interest rates during the two periods. Interest expense in future quarters is expected to be somewhat higher than the six months ended June 30, 2004 as we entered into certain long-term debt facilities that have higher interest rates than the rates that we experienced for the part of the year under our lines of credit in order to mitigate our exposure to rising interest rates.

Interest and other income increased \$0.7 million during the six months ended June 30, 2004 to \$3.0 million from \$2.3 million for the six months ended June 30, 2003. Interest income of approximately \$2.2 million in each period was attributable to interest on the bonds related to the Ingram Micro Building and ISS Atlanta Buildings for the six months ended June 30, 2004 and 2003, respectively, which is offset by the related interest expense associated with the bonds resulting in no net impact to our net income. The remainder in each period represents interest earned on cash generated from operations between distribution payments. The level of interest income in future periods will primarily be dependent upon the amount of operating cash on hand and is not expected to be significant or change significantly from the amount earned during the six months ended June 30, 2004. In addition to interest income, during the six months ended June 30, 2004, we earned approximately \$0.4 million of take out fees related to our participation in the Advisor's 1031 Program which may not be indicative of amounts earned in future periods as such income is dependent upon the continuation and growth of the program and our continued involvement.

Equity in income of unconsolidated joint ventures was \$2.3 million and \$2.4 million during the six months ended June 30, 2004 and June 30, 2003, respectively, and is not expected to change significantly in future periods absent any additional investment in unconsolidated joint ventures or unexpected changes in the operations of the underlying properties.

Loss on extinguishment of debt increased by \$1.6 million during the six months ended June 30, 2004 to \$2.1 million from \$0.5 million for the six months ended June 30, 2003. In May 2004, we repaid in full and terminated our \$500 million credit facility with Bank of America, N.A. and charged \$1.7 million in associated unamortized financing costs to earnings. In addition, \$0.4 million of unamortized loan costs associated with the Nestle debt were charged to earnings as the debt was repaid in full. In April 2003, we terminated our \$110 million credit facility with Bank of America, N.A. and charged \$0.5 million in associated unamortized deferred financing costs to earnings. Loss on extinguishment of debt for the six months ended June 30, 2004 and June 30, 2003 is not expected to be indicative of amounts in future periods as such costs are generally dependent upon altering our financing structure and we have no plans for significantly changing our current financing structure.

Discontinued operations for the six months ended June 30, 2004 were \$12.3 million, consisting entirely of operations and the disposition of the Eisenhower Boulevard Building as discussed in Note 2 of the accompanying consolidated financial statements. Net operations for the period from January 1, 2004 through the date of sale, June 3, 2004, and the six months ended June 30, 2003 were \$0.7 million and \$0.6 million, respectively. The gain recognized on the sale of the property was \$11.6 million. There were no dispositions for the six months ended June 30, 2003.

[Table of Contents](#)

Earnings per share for the six months ended June 30, 2004 was \$0.25 compared to \$0.20 for the six months ended June 30, 2003. This increase is primarily a result of the recognition of lease termination income related to the Metris lease termination, and the gain on sale of the Eisenhower Boulevard Building occurring in the second quarter 2004, which together generated approximately \$0.04 net income per share. Earnings per share for the six months ended June 30, 2004 reflects the change in depreciable lives of real estate assets from 25 years to 40 years which resulted in an increase in earnings of approximately \$0.06 per share, that was essentially offset by the impact of the increased amortization of \$0.07 per share during the six months ended June 30, 2004 as a result of the adoption of FAS 141. Other than these items, operations remained relatively consistent on a per share basis and would not be expected to change significantly from earnings of \$0.20 per share per quarter.

Funds From Operations

Funds From Operations (“FFO”), as defined by the National Association of Real Estate Investment Trusts (“NAREIT”), generally means net income, computed in accordance with accounting principles generally accepted in the United States (“GAAP”) excluding extraordinary items (as defined by GAAP) and gains (or losses) from sales of property, plus depreciation and amortization on real estate assets, and after adjustments for unconsolidated partnerships, joint ventures and subsidiaries. We believe that FFO may be helpful to investors as a measure of the performance of an equity REIT. However, our calculation of FFO, while consistent with NAREIT’s definition, may not be comparable to similarly titled measures presented by other REITs. FFO does not represent cash generated from operating activities in accordance with GAAP and should not be considered as an alternative to net income as an indication of our performance or to cash flows as a measure of liquidity or ability to make distributions.

The following table reflects, in thousands, the calculation of FFO for the periods indicated:

	For the three months ended June 30,		For the six months ended June 30,	
	2004	2003	2004	2003
Net income	\$ 65,045	\$ 27,985	\$ 117,669	\$ 52,349
Add:				
Depreciation of real assets	24,316	25,060	48,442	44,278
Amortization of lease related costs	16,357	271	31,915	349
Depreciation and amortization – unconsolidated partnerships	1,173	779	2,423	1,565
Subtract:				
Gain on sale of properties	11,629	—	11,629	—
FFO	\$ 95,262	\$ 54,095	\$ 188,820	\$ 98,541
Weighted average shares outstanding	464,441	283,903	463,917	258,575

Through the first quarter 2004, we (and our unconsolidated joint ventures) have reported the amortization of the fair values of in-place leases, including opportunity costs associated with lost rentals that are avoided by acquiring in-place leases and tenant relationships, as an adjustment to rental income in our consolidated statements of income. Beginning with the second quarter 2004, we (and our unconsolidated joint ventures) present this amortization as amortization expense in our consolidated statements of income, and have reclassified such amortization from rental income to amortization expense for all periods previously presented. The period of amortization continues to be the term of the respective lease and results in no change in previously reported net income, but does result in an increase in Funds From Operations of approximately \$10.3 million and \$20.0 million for the three and six months ended June 30, 2004, respectively. The primary purpose of this change is to more closely align our presentation of such costs with similar costs as classified by other companies in the real estate industry.

[Table of Contents](#)

Set forth below is additional information (often considered in conjunction with FFO) that may be helpful in assessing our operating results:

- In accordance with GAAP, we recognized straight-line rental revenue of \$7.7 million and \$4.3 million during the three months ended June 30, 2004 and 2003, respectively, and \$12.9 million and \$5.1 million for the six months ended June 30, 2004 and June 30, 2003, respectively.
- The amortization of deferred financing costs in the accompanying consolidated statements of income totaled approximately \$0.7 million and \$0.6 million for the three months ended June 30, 2004 and 2003, respectively, and \$1.5 million and \$1.1 million for the six months ended June 30, 2004 and June 30, 2003, respectively. Additionally, the loss on extinguishment of debt in the accompanying consolidated statements of income totaled approximately \$1.7 million and \$0.5 million for the three months ended June 30, 2004 and 2003, respectively, and \$2.1 million and \$0.5 million for the six months ended June 30, 2004 and June 30, 2003, respectively.
- The amount of deferred financing costs paid totaled approximately \$9.3 million and \$4.4 million for the three months ended June 30, 2004 and 2003, respectively, and \$9.4 million and \$4.4 million for the six months ended June 30, 2004 and June 30, 2003, respectively.
- The amortization of intangible lease assets and intangible lease liabilities in the accompanying consolidated statements of income totaled approximately \$1.1 million and \$0.6 million for the three months ended June 30, 2004 and 2003, respectively, and \$1.9 million and \$1.1 million for the six months ended June 30, 2004 and June 30, 2003, respectively.

REIT Qualification

We have elected to be taxed as a REIT under the Internal Revenue Code of 1986, as amended, and have operated as such beginning with the taxable year ended December 31, 1998. As a REIT, we are generally not subject to federal income tax. If we were to fail to qualify as a REIT in any taxable year, we would become subject to federal income taxes on taxable income for four years following the year during which qualification is lost, unless the Internal Revenue Service were to grant us relief under certain statutory provisions. Such an event could materially adversely affect our financial condition, results of operations, and net cash available for distribution to stockholders. However, we believe that we are currently organized and currently operate in such a manner as to qualify for treatment as a REIT and intend to continue to operate in the foreseeable future in such a manner that will permit us to remain qualified as a REIT for federal income tax purposes for the current tax year. Accordingly, no provision for federal income taxes has been made in the accompanying consolidated financial statements. We are subject to certain state and local taxes related to the operations of properties in certain locations, which have been provided for in the accompanying consolidated financial statements.

Inflation

The real estate market has not been affected significantly by inflation in the past three years due to the relatively low inflation rate. However, there are provisions in the majority of tenant leases, which would protect us from the impact of inflation. These provisions include reimbursement billings for operating expense pass-through charges, real estate tax and insurance reimbursements on a per-square-foot basis, or in some cases, annual reimbursement of operating expenses above a certain per-square-foot allowance. However, due to the long-term nature of the leases, the leases may not re-set frequently enough to cover inflation.

Application of Critical Accounting Policies

Our accounting policies have been established to conform to GAAP. The preparation of financial statements in conformity with GAAP requires management to use judgment in the application of accounting policies, including making estimates and assumptions. These judgments affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the dates of the financial statements and the reported amounts of revenue and expenses during the reporting periods. If management's judgment or interpretation of the facts and circumstances relating to various transactions had been different, it is possible that different accounting policies would have been applied, thus, resulting in a different presentation of the financial statements. Additionally, other companies may utilize different estimates that may impact comparability of our results of operations to those of companies in similar businesses.

[Table of Contents](#)

Investment in Real Estate Assets

We are required to make subjective assessments as to the useful lives of our depreciable assets. We consider the period of future benefit of the asset to determine the appropriate useful lives. These assessments have a direct impact on net income. The estimated useful lives of our assets by class are as follows:

Buildings	40 years
Building improvements	10-25 years
Land improvements	20-25 years
Tenant improvements	Lease term
Intangible lease assets	Lease term

During the first quarter of 2004, we completed a review of our real estate related depreciation by performing an analysis of the components of each property type in an effort to determine weighted average composite useful lives of our real estate assets. As a result of this review, we changed our estimate of the weighted average composite useful lives for building assets. Effective January 1, 2004, for all building assets, we extended the weighted average composite useful life to 40 years from 25 years. This change resulted in an increase to net income of approximately \$13.7 million or \$0.03 per share for the three months ended June 30, 2004, and \$27.7 million or \$0.06 per share for the six months ended June 30, 2004. We believe the change reflects the estimated useful lives of the assets and is consistent with prevailing industry practice. In the event that inappropriate useful lives or methods are used for depreciation, our net income would be misstated.

Allocation of Purchase Price of Acquired Assets

Upon the acquisition of real properties, it is our policy to allocate the purchase price of properties to acquired tangible assets, consisting of land and building, and identified intangible assets and liabilities, consisting of the value of above-market and below-market leases, and the value of in-place leases, based in each case on their estimated fair values.

The fair values of the tangible assets of an acquired property (which includes land and building) are determined by valuing the property as if it were vacant, and the "as-if-vacant" value is then allocated to land and building based on our determination of the relative fair value of these assets. We determine the as-if-vacant fair value of a property using methods similar to those used by independent appraisers. Factors considered by us in performing these analyses include an estimate of carrying costs during the expected lease-up periods considering current market conditions and costs to execute similar leases. In estimating carrying costs, we include real estate taxes, insurance, and other operating expenses during the expected lease-up periods based on current market demand. We estimate costs to execute similar leases including leasing commissions and other related costs.

The fair values of above-market and below-market in-place leases are recorded based on the present value (using an interest rate which reflects the risks associated with the leases acquired) of the difference between (i) the contractual amounts to be paid pursuant to the in-place leases and (ii) our estimate of fair market lease rates for the corresponding in-place leases, measured over a period equal to the remaining terms of the leases. The capitalized above-market and below-market lease values are recorded as intangible lease assets or liabilities and amortized as an adjustment to rental income over the remaining terms of the respective leases.

The fair values of in-place leases include direct costs associated with obtaining a new tenant, opportunity costs associated with lost rentals that are avoided by acquiring an in-place lease, and tenant relationships. Direct costs associated with obtaining a new tenant include commissions, tenant improvements and other direct costs and are estimated based on management's consideration of current market costs to execute a similar lease. These direct costs are included in deferred lease costs in the accompanying consolidated balance sheets and are amortized to expense over the remaining terms of the respective leases. The value of opportunity costs is calculated using the contractual amounts to be paid pursuant to the in-place leases over a market absorption period for a similar lease. Customer relationships are valued based on expected renewal of a lease or the likelihood of obtaining a particular tenant for other locations. These lease intangibles are

[Table of Contents](#)

included in intangible lease assets in the accompanying consolidated balance sheets and are amortized to expense over the remaining terms of the respective leases. Prior to the three months ended June 30, 2004, these lease intangibles were amortized as an adjustment to rental income rather than to expense. As such, the related amortization has been reclassified from an adjustment to rental income to expense in the consolidated statements of income for the three and six months ended June 30, 2004.

Estimates of the fair values of the tangible and intangible assets require us to estimate market lease rates, property operating expenses, carrying costs during lease-up periods, discount rates, market absorption periods and the number of years the property is held for investment. The use of inappropriate estimates would result in an incorrect assessment of our purchase price allocations, which could impact the amount of our reported net income.

Impairment of Real Estate Assets

We continually monitor events and changes in circumstances that could indicate that the carrying amounts of the real estate and related intangible assets, both operating properties and properties under construction, in which we have an ownership interest, either directly or through investments in joint ventures, may not be recoverable. When indicators of potential impairment are present which indicate that the carrying amounts of real estate and related intangible assets may not be recoverable, we assess the recoverability of these assets by determining whether the carrying value will be recovered through the undiscounted future operating cash flows expected from the use of the asset and its eventual disposition. In the event that such expected undiscounted future cash flows do not exceed the carrying value, we adjust the real estate and related intangible assets to the fair value and recognize an impairment loss.

Projections of expected cash flows require that we estimate future market rental income amounts subsequent to the expiration of current lease agreements, property operating expenses, discount rates, the number of months it takes to re-lease the property and the number of years the property is held for investment, among other factors. The use of cash flows and fair value could result in the misstatement of the carrying value of our real estate and related intangible assets and our net income. We have determined that there has been no impairment in the carrying value of real estate assets held by us or any unconsolidated joint ventures at June 30, 2004.

Commitments and Contingencies

We are subject to certain contingent liabilities and commitments with regard to certain transactions. Refer to Note 5 of our consolidated financial statements for further explanation. Examples of such commitments and contingencies include:

- Properties Under Construction
- Properties Under Contract
- Commitments Under Existing Lease Agreements
- Earn-out Agreements
- Leasehold Property Obligation
- Take-out Purchase and Escrow Agreement
- Litigation

Related-Party Transactions and Agreements

We have entered into agreements with our Advisor and its affiliates, whereby we pay certain fees or reimbursements to our Advisor or its affiliates for acquisition and advisory fees and expenses, organization and offering costs, sales commissions, dealer manager fees, asset and property management fees and reimbursement of operating costs. See Note 6 of our consolidated financial statements included in this report for a discussion of the various related-party transactions, agreements and fees.

[Table of Contents](#)

Conflicts of Interest

Our Advisor is also a general partner of or advisor to various entities including another REIT and several syndicated real estate limited partnerships. As such, there are instances where our Advisor, while serving in the capacity as general partner or advisor for these entities, may be in competition with us in connection with property acquisitions or for tenants in similar geographic markets. The compensation arrangements with our Advisor and its affiliates could influence our Advisor's and its affiliates' advice to us.

Additionally, certain members of our board of directors also serve on the board of directors of another REIT sponsored by our Advisor. These directors may face situations where decisions that benefit one entity may be detrimental to the other entity.

Subsequent Events

Certain significant events occurred from July 1, 2004 through the date of this report. Refer to Note 8 of our consolidated financial statements for further explanation.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISKS

We are exposed to market risk from changes in interest rates on our indebtedness, which could impact our financial condition and results of operations. We manage our exposure to these market risks through our regular operating and financing activities. Our interest rate risk management objectives are to limit the impact of interest rate changes on earnings and cash flow, primarily through a low to moderate level of overall borrowings. Additionally, we manage our ratio of fixed to floating rate debt with the objective of achieving a mix that we believe is appropriate. We have and may from time to time enter into interest rate swap agreements or interest rate cap agreements to hedge our exposure to fluctuating interest rates. We do not anticipate any material changes in our exposure to interest rate fluctuations or in our management thereof. We intend to use derivative financial instruments as risk management tools and not for speculative or trading purposes.

All of our debt was entered into for other than trading purposes, and the fair value of our debt approximates its carrying amount.

Approximately \$816.0 million of our total debt outstanding as of June 30, 2004 is subject to fixed rates, with an average interest rate of approximately 4.9% with expirations ranging from 2007 to 2028. A change in the market interest rate impacts the net financial instrument position of our fixed rate debt portfolio but has no impact on interest incurred or cash flows. Such agreements may result in higher fixed interest rates in certain periods of lower variable interest rates, but are intended to decrease our exposure to potential increases in interest rates.

None of our debt outstanding as of June 30, 2004 is based on variable interest rates except for \$6.8 million outstanding under the \$21.1 million term loan payable, with respect to which we have entered into an interest rate swap that results in a fixed rate of 2.75% for this debt. To the extent that we borrow funds in the future under our variable rate lines of credit, we would have exposure to increases in interest rates, which would increase our cost of debt.

We do not believe that there is any exposure to increases in interest rate risk related to the obligations under capital leases of \$64.5 million at June 30, 2004, as the obligations are at fixed interest rates and we own the related bonds.

ITEM 4. CONTROLS AND PROCEDURES

We carried out an evaluation, under the supervision and with the participation of management, including our Principal Executive Officer and Principal Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures as of the end of the period covered by this report pursuant to the Securities Exchange Act of 1934. Based upon that evaluation, our Principal Executive Officer and Principal Financial Officer concluded that our disclosure controls and procedures were effective.

There were no significant changes in our internal control over financial reporting that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

In the ordinary course of business, we or our subsidiaries may become subject to litigation or claims. Except as disclosed below, there are no other material pending legal proceedings or proceedings known to be contemplated by governmental authorities involving us or our subsidiaries during the year ended December 31, 2003, requiring disclosure under Item 103 of Regulation S-K.

On October 9, 2003, Stephen L. Flood, the Luzerne County, Pennsylvania, Controller, and the Luzerne County Retirement Board ("Luzerne Board") on behalf of the Luzerne County Employee Retirement System ("Plan") filed a lawsuit in the U.S. District Court, Middle District of Pennsylvania against 26 separate defendants WIS, our dealer manager, Wells Real Estate Funds, Inc., the parent company of both the Advisor and WIS and us ("Wells Defendants"). The complaint alleges, among other things, (1) that certain former members of the Luzerne Board named as defendants invested \$10 million in our common stock on behalf of the Plan, (2) that certain former board members defendants breached their fiduciary duties to the Plan by, among other things, permitting the investment of the Plan's funds in investments not suitable for the Plan because they were long-term illiquid investments, permitting the Plan to pay excessive fees and commissions to co-defendants, and accepting political contributions in exchange for awarding advisory and management agreements, (3) that the Wells Defendants and others knew or should have known that the investment, and the fees and commissions associated with the investment, was not a proper investment for the Plan because it was a long-term illiquid investment, (4) that the Wells Defendants and others knew or should have known that certain Luzerne Board members and certain investment advisors and managers were breaching their fiduciary duties to the Plan, (5) that the defendants engaged in and conspired to engage in an improper scheme to intentionally defraud the Plan and (6) that the investment was not approved by a majority of the Luzerne Board at a public meeting and, consequently, the investment was an inappropriate and void action. The Plan is seeking damages of not less than \$25 million, treble damages and punitive damages from all defendants on a joint and several liability basis. We believe that this lawsuit is without merit with respect to the Wells Defendants. While it is premature to determine the likely outcome of this lawsuit, we do not believe that a reserve for a loss contingency is necessary.

ITEM 2. CHANGE IN SECURITIES AND USE OF PROCEEDS

No equity securities that are not registered under the Securities Act of 1933 have been sold by us.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

There have been no defaults with respect to any of our indebtedness.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

No matters were submitted to a vote of our stockholders during the second quarter of 2004.

ITEM 5. OTHER INFORMATION

As our stock is currently not listed on a national exchange, there is no significant public trading market for our stock. Consequently, there is the risk that a stockholder may not be able to sell our stock at a time or price acceptable to the stockholder. Our board of directors has authorized a share redemption program for investors who have held their shares for more than one year, subject to the limitation that (i) during any calendar year, we will not redeem in excess of 3% of the weighted average common shares outstanding during the prior calendar year, and (ii) funding for the redemption of shares will come exclusively from the sale of shares pursuant to our dividend reinvestment plan such that in no event shall the aggregate amount of redemptions under our share redemption program exceed aggregate proceeds received from the sale of shares pursuant to our dividend reinvestment plan. Our board of directors may modify or terminate our share redemption program at any time in its discretion upon 30 days' notice.

In order for NASD members and their associated persons to have participated in the offering and sale of shares of common stock pursuant to the fourth offering or to participate in any future offering of our shares, we are required pursuant to NASD Rule 2710(c)(6) to disclose in each annual report distributed to stockholders a per share estimated

[Table of Contents](#)

value of the shares, the method by which it was developed and the date of the data used to develop the estimated value. In addition, our Advisor must prepare annual statements of estimated share values to assist fiduciaries of retirement plans subject to the annual reporting requirements of ERISA in the preparation of their reports relating to an investment in our shares. For these purposes, the estimated value of the shares was deemed to be \$10 per share as of December 31, 2003. The basis for this valuation is the fact that we had recently completed a public offering of our shares at the price of \$10 per share. However, as set forth below, there is no significant public trading market for the shares at this time, and there can be no assurance that stockholders could receive \$10 per share if such a market did exist and they sold their shares or that they will be able to receive such amount for their shares in the future. Moreover, we have not performed an evaluation of our properties; as such, this valuation is not based upon the value of the properties, nor does it represent the amount stockholders would receive if our properties were sold and the proceeds distributed to our stockholders in a liquidation, which amount would most likely be less than \$10 per share, because at the time we were purchasing our properties, the amount of funds available for investment in properties was reduced by approximately 14% of offering proceeds raised, which were used to pay selling commissions and dealer manager fees, organization and offering costs and acquisition and advisory fees and expenses, as described in more detail in the notes to our consolidated financial statements included in this report. As a result, it would be expected that, in the absence of other factors affecting property values, our aggregate net asset value would be less than the proceeds of our offerings and may not be the best indicator of the value of shares purchased as a long-term income-producing investment. Instead, we believe that, for a certain period after significant amounts of shares are sold to investors, the price paid by such investors may better reflect the estimated value of the shares. Accordingly, for a period of three full fiscal years after we have ceased to sell significant amounts of shares, we expect to continue to use the latest offering price of our shares (\$10 per common share) as the estimated per share value reported in our Annual Reports on Form 10-K. Because of this, we expect that the first estimated per share value will not be provided until after December 31, 2006.

ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K

- (a) The Exhibits required to be filed with this report are set forth on the Exhibit Index to Second Quarter Form 10-Q attached hereto.
- (b) We filed the following Current Report on Form 8-K during the second quarter of 2004:
 - (i) On June 3, 2004, we filed a Current Report on Form 8-K, dated June 3, 2004 relating to the disposition of the Eisenhower Boulevard Building.

SIGNATURES

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

WELLS REAL ESTATE INVESTMENT TRUST, INC.
(Registrant)

Dated: August 2, 2004

By: /s/ DOUGLAS P. WILLIAMS

Douglas P. Williams
Executive Vice President, Treasurer and
Principal Financial Officer

**EXHIBIT INDEX
TO
SECOND QUARTER FORM 10-Q
OF
WELLS REAL ESTATE INVESTMENT TRUST, INC.**

Exhibit Number	Description of Document
10.174	\$200 Million Promissory Note dated April 20, 2004 between Wells REIT-Chicago Center Owner, LLC and Metropolitan Life Insurance Company.
10.175	Mortgage, Security Agreement and Fixture Filing dated April 20, 2004 between Wells REIT-Chicago Center Owner, LLC and Metropolitan Life Insurance Company.
10.176	\$175.7 Million Loan Agreement dated May 21, 2004 among Wells REIT-Austin, TX, L.P., Wells REIT - Multi-State Owner, LLC, Wells REIT-Nashville, TN, LLC and Wells REIT – Bridgewater, NJ, LLC; and Morgan Stanley Mortgage Capital Inc.
10.177	\$163.6 Million Loan Agreement dated May 21, 2004 between Wells REIT-Independence Square, LLC and Morgan Stanley Mortgage Capital Inc.
10.178	\$10.7 Million Loan Agreement dated May 21, 2004 between Wells REIT-Orange County, CA, LP and Morgan Stanley Mortgage Capital Inc.
31.1	Certification of Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2	Certification of Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1	Certification of Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

PROMISSORY NOTE**DEFINED TERMS**

Execution Date: April 20, 2004 City and State of Signing: Chicago, Illinois
 Loan Amount: \$200,000,000.00 Interest Rate: 4.87% per annum

BORROWER: WELLS REIT-CHICAGO CENTER OWNER, LLC, a Delaware limited liability company

Borrower's Address: 6200 The Corners Parkway, Suite 250, Norcross, Georgia 30092

Holder: METROPOLITAN LIFE INSURANCE COMPANY, A NEW YORK CORPORATION

Holder's Address: Metropolitan Life Insurance Company
 10 Park Avenue
 Morristown, New Jersey 07962
 Attention: Senior Vice-President
 Real Estate Investments

and

Metropolitan Life Insurance Company
 2021 Spring Road, Suite 100
 Oak Brook, IL 60523
 Attention: Officer In Charge

Maturity Date: May 1, 2014

Interest Only Period: The period from the Advance Date until the Maturity Date.

Monthly Installment: Equal monthly installments of interest at the Interest Rate each in the amount of \$811,666.67.

Advance Date: The date funds are disbursed to Borrower.

Principal and Interest Installment Date: Not Applicable

Permitted Prepayment Period: During the 90 day period prior to the Maturity Date, Borrower may prepay the Loan without a Prepayment Fee on 30 days prior written notice. In addition, commencing on the first day of the 43rd month following the Advance Date, Borrower may prepay the Loan with a Prepayment Fee on 60 days prior written notice.

Liable Parties: None

Addresses of Liable Parties: N/A

Late Charge: An amount equal to four cents (\$.04) for each dollar that is overdue.

Default Rate: An annual rate equal to the Interest Rate plus four percent (4%).

Note: This Promissory Note. Mortgage: Mortgage, Security Agreement, and Fixture Filing dated as of the Execution Date granted by Borrower to Holder.

Loan Documents: This Note, the Mortgage and any other documents related to this Note and/or the Mortgage and all renewals, amendments, modifications, restatements and extensions of these documents. Indemnity Agreement: Unsecured Indemnity Agreement dated as of the Execution Date and executed by Borrower in favor of Holder. The Indemnity Agreement is not a Loan Document and shall survive repayment of the Loan or other termination of the Loan Documents but shall not apply to events arising solely after foreclosure.

FOR VALUE RECEIVED, Borrower promises to pay to the order of Holder, at Holder's Address or such other place as Holder may from time to time designate in writing, the Loan Amount with interest payable in the manner described below, in money of the United States of America that at the time of payment shall be legal tender for payment of all obligations.

Capitalized terms which are not defined in this Note shall have the meanings set forth in the Mortgage.

1. Payment of Principal and Interest. Principal and interest under this Note shall be payable as follows:

(a) Interest on the funded portion of the Loan Amount shall accrue from the Advance Date at the Interest Rate and shall be paid on the first day of the first calendar month following the Advance Date;

(b) Commencing on the first day of the second calendar month following the Advance Date and on the first day of each calendar month thereafter, to and including the first day of the calendar month immediately preceding the Maturity Date, Borrower shall pay the Monthly Installment; and

(c) On the Maturity Date, a final payment in the aggregate amount of the unpaid principal sum evidenced by this Note, all accrued and unpaid interest, and all other sums evidenced by this Note or secured by the Mortgage and/or any other Loan Documents as well as any future advances under the Mortgage that may be made to or on behalf of Borrower by Holder following the Advance Date (collectively, the "**Aggregate Indebtedness**"), shall become immediately payable in full.

Borrower acknowledges and agrees that the original Loan Amount shall be outstanding and due on the Maturity Date.

Interest shall be calculated on the basis of a thirty (30) day month and a three hundred sixty (360) day year, except that (i) if the Advance Date occurs on a date other than the first day of a calendar month, interest payable for the period commencing on the Advance Date and ending on the last day of the month in which the Advance Date occurs shall be calculated on the basis of the actual number of days elapsed over a 365 day or 366 day year, as applicable, and (ii) if the Maturity Date occurs on a date other than the last day of the month, interest payable for the period commencing on the first day of the month in which the Maturity Date occurs and ending on the Maturity Date shall be calculated on the basis of the actual number of days elapsed over a 365 day or 366 day year, as applicable.

2. Application of Payments. At the election of Holder, and to the extent permitted by law, all payments shall be applied in the order selected by Holder to any expenses, prepayment fees, late charges, escrow deposits and other sums due and payable under the Loan Documents, and to unpaid interest at the Interest Rate or at the Default Rate, as applicable. The balance of any payments shall be applied to reduce the then unpaid Loan Amount.

3. Security. The covenants of the Mortgage are incorporated by reference into this Note. This Note shall evidence, and the Mortgage and other Loan Documents shall secure the Aggregate Indebtedness.

4. Late Charge. If any payment of interest, any payment of a Monthly Installment or any payment of a required escrow deposit is not paid within 7 days of the due date, Holder shall have the option to charge Borrower the Late Charge. The Late Charge is for the purpose of defraying the expenses incurred in connection with handling and processing delinquent payments and is payable in addition to any other remedy Holder may have. Unpaid Late Charges shall become part of the Aggregate Indebtedness and shall be added to any subsequent payments due under the Loan Documents.

5. Acceleration Upon Default. At the option of Holder, if Borrower fails to pay any sum specified in this Note when due after giving effect to any grace periods, or if an Event of Default occurs, the Aggregate Indebtedness, and all other sums evidenced and/or secured by the Loan Documents, including without limitation any applicable prepayment fees (collectively, the “**Accelerated Loan Amount**”) shall become immediately due and payable.

6. Interest Upon Default. The Accelerated Loan Amount shall bear interest at the Default Rate which shall never exceed the maximum rate of interest permitted to be contracted for under the laws of the State. The Default Rate shall commence upon the occurrence of an Event of Default and shall continue until all defaults are cured.

7. Limitation on Interest. The agreements made by Borrower with respect to this Note and the other Loan Documents are expressly limited so that in no event shall the amount of interest received, charged or contracted for by Holder exceed the highest lawful amount of interest permissible under the laws applicable to the Loan. If at any time performance of any provision of this Note or the other Loan Documents results in the highest lawful rate of interest permissible under applicable laws being exceeded, then the amount of interest received, charged or contracted for by Holder shall automatically and without further action by any party be deemed to have been reduced to the highest lawful amount of interest then permissible under applicable laws. If Holder shall ever receive, charge or contract for, as interest, an amount which is unlawful, at Holder’s election, the amount of unlawful interest shall be refunded to Borrower (if actually paid) or applied to reduce the then unpaid Loan Amount. To the fullest extent permitted by applicable laws, any amounts contracted for, charged or received under the Loan Documents included for the purpose of determining whether the Interest Rate would exceed the highest lawful rate shall be calculated by allocating and spreading such interest to and over the full stated term of this Note.

8. Prepayment. Borrower shall not have the right to prepay all or any portion of the Loan Amount at any time during the term of this Note except as expressly set forth in the Defined Terms hereof. If Borrower provides notice of its intention to prepay, the Accelerated Loan Amount shall become due and payable on the date specified in the prepayment notice.

(a) Prepayment Fee. Any tender of payment by Borrower or any other person or entity of the Aggregate Indebtedness, other than as expressly provided in the Loan Documents, shall constitute a prohibited prepayment. If a prepayment of all or any part of the Aggregate Indebtedness is made following (i) an Event of Default and an acceleration of the Maturity Date, or (ii) in connection with a purchase of the Property or a repayment of the Aggregate Indebtedness at any time before, during or after, a judicial or non-judicial foreclosure or sale of the Property, then to compensate Holder for the loss of the investment, Borrower shall pay an amount equal to the Prepayment Fee (as hereinafter defined).

(b) The “**Prepayment Fee**” shall be the greater of (A) the Prepayment Ratio (as hereinafter defined) multiplied by the difference between (x) and (y), where (x) is the present value of all remaining payments of principal and interest including the outstanding principal due on the Maturity Date, discounted at the rate which, when compounded monthly, is equivalent to the Treasury Rate (as defined below) plus one half of one percent (.5%), compounded semi-annually, and (y) is the entire amount of the then outstanding principal balance, or (B) one percent (1%) of the amount of the principal being prepaid.

(c) The “**Treasury Rate**” shall be the annualized yield on securities issued by the United States Treasury having a maturity equal to the remaining stated term of the Note, as quoted in the Federal Reserve Statistical Release [H. 15 (519)] under the heading “U.S. Government Securities - Treasury Constant Maturities” for the date on which prepayment is being made. If this rate is not available as of the date of prepayment, the Treasury Rate shall be determined by interpolating between the yield on securities of the next longer and next shorter maturity. If the Treasury Rate is no longer published, Holder shall select a comparable rate. Holder will, upon request, provide an estimate of the amount of the Prepayment Fee two weeks before the date of the scheduled prepayment.

(d) The “**Prepayment Ratio**” shall be a fraction, the numerator of which shall be the amount of principal being prepaid, and the denominator of which shall be the principal then outstanding.

9. **Waiver of Right to Prepay Note Without Prepayment Fee.** Borrower acknowledges that Holder has relied upon the anticipated investment return under this Note in entering into transactions with, and in making commitments to, third parties and that the tender of any prohibited prepayment, shall, to the extent permitted by law, include the Prepayment Fee. Borrower agrees that the Prepayment Fee represents the reasonable estimate of Holder and Borrower of a fair average compensation for the loss that may be sustained by Holder as a result of a prohibited prepayment of the Note and it shall be paid without prejudice to the right of Holder to collect any other amounts provided to be paid under the Loan Documents.

10. **Liability of Borrower.** Upon the occurrence of an Event of Default, except as provided in this Section 11, Holder will look solely to the Property and the security under the Loan Documents for the repayment of the Loan and will not enforce a deficiency judgment against Borrower. However, nothing contained in this section shall limit the rights of Holder to proceed against Borrower and the general partners of Borrower and/or the Liable Parties, if any, (i) to enforce any leases entered into by Borrower or its affiliates as tenant, guarantees, or other agreements entered into by Borrower in a capacity other than as borrower or under any policies of insurance; (ii) to recover damages for fraud, material misrepresentation, material breach of warranty or waste; (iii) to recover any condemnation proceeds or insurance proceeds or other similar funds which have been misapplied by Borrower or which, under the terms of the Loan Documents, should have been paid to Holder; (iv) to recover any tenant security deposits, tenant letters of credit or other deposits or fees paid to Borrower that are part of the collateral for the Loan or prepaid rents for a period of more than 30 days which have not been delivered to Holder; (v) to recover Rents and Profits received by Borrower after the first day of the month in which an Event of Default occurs and prior to the date Holder acquires title to the Property which have not been applied to the Loan or in accordance with the Loan Documents to operating and maintenance expenses of the Property; (vi) to recover damages, costs and expenses arising from, or in connection with the provisions of the Mortgage pertaining to hazardous materials or the Indemnity Agreement; (vii) to recover all amounts due and payable pursuant to Sections 11.06 and 11.07 of the Mortgage and any amount expended by Holder in connection with the foreclosure of the Mortgage; (viii) to recover damages arising from Borrower's failure to comply with the provisions of the Mortgage pertaining to ERISA; and/or (ix) to recover damages, costs and expenses arising from, or in connection with Borrower's failure to pay any Impositions or Premiums.

The limitation of liability set forth in this Section 11 shall not apply and the Loan shall be fully recourse in the event that (a) there is a violation of Section 10.01 of the Mortgage or Section 10.02 of the Mortgage or (b) prior to the repayment of the Aggregate Indebtedness, Borrower commences a voluntary bankruptcy or insolvency proceeding or an involuntary bankruptcy or insolvency proceeding is commenced against Borrower and is not dismissed within 90 days of filing. In addition, this agreement shall not waive any rights which Holder would have under any provisions of the U.S. Bankruptcy Code to file a claim for the full amount of the Aggregate Indebtedness or to require that the Property shall continue to secure all of the Aggregate Indebtedness.

11. **Waiver by Borrower.** Borrower and others who may become liable for the payment of all or any part of the Note, and each of them, waive diligence, demand, presentment for payment, notice of nonpayment, protest, notice of dishonor and notice of protest, notice of intent to accelerate and notice of acceleration and specifically consent to and waive notice of any amendments, modifications, renewals or extensions of this Note, including the granting of extension of time for payment, whether made to or in favor of Borrower or any other person or persons.

12. **Exercise of Rights.** No single or partial exercise by Holder, or delay or omission in the exercise by Holder, of any right or remedy under the Loan Documents shall waive or limit the exercise of any such right or remedy. Holder shall at all times have the right to proceed against any portion of or interest in the Property in the manner that Holder may deem appropriate, without waiving any other rights or remedies. The release of any party under this Note shall not operate to release any other party which is liable under this Note and/or under the other Loan Documents or under the Indemnity Agreement.

13. Fees and Expenses. If Borrower defaults under this Note, Borrower shall be personally liable for and shall pay to Holder, in addition to the sums stated above, the costs and expenses of enforcement and collection, including a reasonable sum as an attorney's fee. This obligation is not limited by Section 11.

14. No Amendments. This Note may not be modified or amended except in a writing executed by Borrower and Holder. No waivers shall be effective unless they are set forth in a writing signed by the party which is waiving a right. This Note and the other Loan Documents are the final expression of the lending relationship between Borrower.

15. Governing Law. This Note is to be construed and enforced in accordance with the laws of the State.

16. Construction. The words "Borrower" and "Holder" shall be deemed to include their respective heirs, representatives, successors and assigns, and shall denote the singular and/or plural, and the masculine and/or feminine, and natural and/or artificial persons, as appropriate. The provisions of this Note shall remain in full force and effect notwithstanding any changes in the shareholders, partners or members of Borrower. If more than one party is Borrower, the obligations of each party shall be joint and several. The captions in this Note are inserted only for convenience of reference and do not expand, limit or define the scope or intent of any section of this Note.

17. Notices. All notices, demands, requests and consents permitted or required under this Note shall be given in the manner prescribed in the Mortgage.

18. Time of the Essence. Time shall be of the essence with respect to all of Borrower's obligations under this Note.

19. Severability. If any provision of this Note should be held unenforceable or void, then that provision shall be deemed separable from the remaining provisions and shall not affect the validity of this Note, except that if that provision relates to the payment of any monetary sum, then Holder may, at its option, declare the Aggregate Indebtedness (together with the Prepayment Fee) immediately due and payable.

(execution page follows)

IN WITNESS WHEREOF, Borrower has executed this Note as of the Execution Date.

BORROWER:

Wells REIT-Chicago Center Owner, LLC,
a Delaware limited liability company

By: Wells REIT-Chicago Center, Chicago, LLC, a Delaware
limited liability company, its sole member

By: Wells Operating Partnership, L.P., a
Delaware limited partnership, its sole
member

By: Wells Real Estate Investment
Trust, Inc., its sole general partner

By: _____

Name: _____

Its: _____

PREPARED BY AND
RECORDING REQUESTED
BY AND WHEN
RECORDED RETURN TO:

Gregory P.L. Pierce, Esq.
Katten Muchin Zavis Rosenman
525 W. Monroe St., Suite 1600
Chicago, IL 60661-3693

**MORTGAGE, SECURITY AGREEMENT AND
FIXTURE FILING**

by

WELLS REIT-CHICAGO CENTER OWNER, LLC,
a Delaware limited liability company

as Borrower

to

METROPOLITAN LIFE INSURANCE COMPANY,

a New York corporation,

as Lender

April 20, 2004

TABLE OF CONTENTS

ARTICLE I GRANT OF SECURITY	1
Section 1.01 REAL PROPERTY GRANT	1
Section 1.02 PERSONAL PROPERTY GRANT	2
Section 1.03 CONDITIONS TO GRANT	3
ARTICLE II BORROWER COVENANTS	3
Section 2.01 DUE AUTHORIZATION, EXECUTION, AND DELIVERY.	3
Section 2.02 PERFORMANCE BY BORROWER	3
Section 2.03 WARRANTY OF TITLE.	3
Section 2.04 TAXES, LIENS AND OTHER CHARGES.	4
Section 2.05 ESCROW DEPOSITS.	4
Section 2.06 CARE AND USE OF THE PROPERTY.	5
Section 2.07 COLLATERAL SECURITY INSTRUMENTS	6
Section 2.08 SUITS AND OTHER ACTS TO PROTECT THE PROPERTY.	6
Section 2.09 LIENS AND ENCUMBRANCES	7
Section 2.10 SINGLE PURPOSE ENTITY	7
ARTICLE III INSURANCE	7
Section 3.01 REQUIRED INSURANCE AND TERMS OF INSURANCE POLICIES.	7
Section 3.02 ADJUSTMENT OF CLAIMS	10
Section 3.03 ASSIGNMENT TO LENDER	10
ARTICLE IV BOOKS, RECORDS AND ACCOUNTS	10
Section 4.01 BOOKS AND RECORDS	10
Section 4.02 PROPERTY REPORTS	11
Section 4.03 ADDITIONAL MATTERS.	11
ARTICLE V LEASES AND OTHER AGREEMENTS AFFECTING THE PROPERTY	11
Section 5.01 BORROWER’S REPRESENTATIONS AND WARRANTIES.	11
Section 5.02 ASSIGNMENT OF LEASES	11
Section 5.03 PERFORMANCE OF OBLIGATIONS.	12
Section 5.04 SUBORDINATE LEASES	12
Section 5.05 LEASING COMMISSIONS	12
Section 5.06 PROPERTY MANAGER	12
ARTICLE VI ENVIRONMENTAL HAZARDS	13
Section 6.01 REPRESENTATIONS AND WARRANTIES	13
Section 6.02 REMEDIAL WORK	13
Section 6.03 ENVIRONMENTAL SITE ASSESSMENT	13
Section 6.04 UNSECURED OBLIGATIONS	13
Section 6.05 HAZARDOUS MATERIALS.	14
Section 6.06 REQUIREMENTS OF ENVIRONMENTAL LAWS	14
Section 6.07 COVENANTS	15

ARTICLE VII CASUALTY, CONDEMNATION AND RESTORATION	15
Section 7.01 BORROWER’S REPRESENTATIONS.	15
Section 7.02 RESTORATION.	15
Section 7.03 CONDEMNATION.	16
Section 7.04 REQUIREMENTS FOR RESTORATION	17
ARTICLE VIII REPRESENTATIONS OF BORROWER	18
Section 8.01 ERISA	18
Section 8.02 NON-RELATIONSHIP	18
Section 8.03 NO ADVERSE CHANGE.	19
ARTICLE IX EXCULPATION AND LIABILITY	19
Section 9.01 LIABILITY OF BORROWER.	19
ARTICLE X CHANGE IN OWNERSHIP, CONVEYANCE OF PROPERTY	20
Section 10.01 CONVEYANCE OF PROPERTY, CHANGE IN OWNERSHIP AND COMPOSITION.	20
Section 10.02 PROHIBITION ON SUBORDINATE FINANCING	21
Section 10.03 RESTRICTIONS ON ADDITIONAL OBLIGATIONS	21
Section 10.04 STATEMENTS REGARDING OWNERSHIP	22
ARTICLE XI DEFAULTS AND REMEDIES	22
Section 11.01 EVENTS OF DEFAULT	22
Section 11.02 REMEDIES UPON DEFAULT	23
Section 11.03 APPLICATION OF PROCEEDS OF SALE	23
Section 11.04 [INTENTIONALLY DELETED.]	23
Section 11.05 LENDER’S RIGHT TO PERFORM BORROWER’S OBLIGATIONS	23
Section 11.06 LENDER REIMBURSEMENT	23
Section 11.07 FEES AND EXPENSES	24
Section 11.08 WAIVER OF CONSEQUENTIAL DAMAGES	24
ARTICLE XII BORROWER AGREEMENTS AND FURTHER ASSURANCES	24
Section 12.01 PARTICIPATION AND SALE OF LOAN.	24
Section 12.02 REPLACEMENT OF NOTE	24
Section 12.03 BORROWER’S ESTOPPEL	25
Section 12.04 FURTHER ASSURANCES	25
Section 12.05 SUBROGATION	25
ARTICLE XIII SECURITY AGREEMENT	25
Section 13.01 SECURITY AGREEMENT.	25
Section 13.02 REPRESENTATIONS AND WARRANTIES.	26
Section 13.03 CHARACTERIZATION OF PROPERTY	26
Section 13.04 PROTECTION AGAINST PURCHASE MONEY SECURITY INTERESTS	26

ARTICLE XIV MISCELLANEOUS COVENANTS	27
Section 14.01 NO WAIVER	27
Section 14.02 NOTICES	27
Section 14.03 HEIRS AND ASSIGNS; TERMINOLOGY.	27
Section 14.04 SEVERABILITY	27
Section 14.05 APPLICABLE LAW	27
Section 14.06 CAPTIONS	27
Section 14.07 TIME OF THE ESSENCE	27
Section 14.08 NO MERGER	27
Section 14.09 NO MODIFICATIONS	28
ARTICLE XV NON-UNIFORM COVENANTS	28
Section 15.01 USE OF PROCEEDS	28
Section 15.02 LIMITATION ON SECURED INDEBTEDNESS	28
Section 15.03 WAIVER OF HOMESTEAD AND REDEMPTION	28
Section 15.04 WAIVER OF JURY TRIAL	28
Section 15.05 SECURITIES LAWS	28

MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING

DEFINED TERMS

Execution Date: April 20, 2004

Note: The promissory note dated as of the Execution Date made by Borrower to the order of Lender in the principal amount of Two Hundred Million and No/100 Dollars (\$200,000,000.00)

Lender & Address:

Metropolitan Life Insurance Company
10 Park Avenue
Morristown, New Jersey 07962
Attention: Senior Vice-President
Real Estate Investments

and

Metropolitan Life Insurance Company
2021 Spring Road, Suite 100
Oak Brook, IL 60523
Attention: Officer in Charge

Borrower & Address:

Wells REIT – Chicago Center Owner, LLC,
a Delaware limited liability company
6200 The Corners Parkway, Suite 250
Norcross, Georgia 30092
Attn: Finance Department

and

Alston & Bird LLP
One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309-3424
Attn: Steven D. Collier

Liable Parties & Address:

None

County and State in which the Property is located: Cook County, State of Illinois

Use: One 83-story, 2,701,354 square foot office building with 620 underground parking spaces

Insurance:

Full Replacement Cost \$700,000,000 including Personal Property and Boiler and Machinery.
Business Income sufficient to cover one (1) year's Business Income as provided in Section 3.01(a)(2) hereof.
Commercial General Liability Required Liability Limits \$25,000,000.00

Address for Insurance Notification:

Metropolitan Life Insurance Company and/or its successors and assigns
One MetLife Plaza
27-01 Queens Plaza North
Long Island City, New York 11101
Attn.: Risk Management Unit, Area: 7C

Loan Documents: The Note, this Mortgage and any other documents related to the Note and/or Mortgage and all renewals, amendments, modifications, restatements and extensions of these documents. Indemnity Agreement: Unsecured Indemnity Agreement dated as of the Execution Date and executed by Borrower in favor of Lender. The Indemnity Agreement is not a Loan Document and shall not apply to events arising solely after foreclosure.

This **MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING** (this “**Mortgage**”) is entered into as of the Execution Date by Borrower, to and for the benefit of Lender with reference to the following Recitals:

RECITALS

A. This Mortgage secures: (1) the payment of the indebtedness evidenced by the Note with interest at the rate set forth in the Note, together with all renewals, modifications, consolidations and extensions of the Note, all additional advances or fundings made by Lender, and any other amounts required to be paid by Borrower under any of the Loan Documents, (collectively, the “Secured Indebtedness”, and sometimes referred to as the “**Loan**”) and (2) the full performance by Borrower of all of the terms, covenants and obligations set forth in any of the Loan Documents.

B. Borrower makes the following covenants and agreements for the benefit of Lender or any party designated by Lender, including any prospective purchaser of the Loan Documents or participant in the Loan, and their respective officers, employees, agents, attorneys, representatives and contractors (all of which are collectively referred to as “**Lender**”).

NOW, THEREFORE, IN CONSIDERATION of the Recitals and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Borrower agrees as follows:

ARTICLE I GRANT OF SECURITY

Section 1.01 REAL PROPERTY GRANT. Borrower irrevocably mortgages, sells, transfers, grants, conveys, assigns and warrants to Lender, all of Borrower’s present and future estate, right, title and interest in and to the following which are collectively referred to as the “**Real Property**”:

(1) that certain real property located in the County and State which is more particularly described in **Exhibit A** attached to this Mortgage or any portion of the real property; all easements, rights-of-way, gaps, strips and gores of land; streets and alleys; sewers and water rights; privileges, licenses, tenements, and appurtenances appertaining to the real property, and the reversion(s), remainder(s), and claims of Borrower with respect to these items, and the benefits of any existing or future conditions, covenants and restrictions affecting the real property (collectively, the “**Land**”);

(2) all things now or hereafter affixed to or placed on the Land, including all buildings, structures and improvements, all fixtures and all machinery, elevators, boilers, building service equipment (including, without limitation, all equipment for the generation or distribution of air, water, heat, electricity, light, fuel or for ventilating or air conditioning purposes or for sanitary or drainage purposes or for the removal of dust, refuse or garbage), partitions, appliances, furniture, furnishings, building materials, supplies, computers and software, window coverings and floor coverings, lobby furnishings, and other property now or in the future attached, or installed in the improvements and all replacements, repairs, additions, or substitutions to these items (collectively, the “**Improvements**”);

(3) all present and future income, rents, revenue, profits, proceeds, accounts receivable and other benefits from the Land and/or Improvements and all deposits made with respect to the Land and/or Improvements, including, but not limited to, any security given to utility companies by Borrower, any advance payment of real estate taxes or assessments, or insurance premiums made by Borrower and all claims or demands relating to such deposits and other security, including claims for refunds of tax

payments or assessments, and all insurance proceeds payable to Borrower in connection with the Land and/or Improvements whether or not such insurance coverage is specifically required under the terms of this Mortgage (“**Insurance Proceeds**”) (all of the items set forth in this paragraph are referred to collectively as “**Rents and Profits**”);

(4) all damages, payments and revenue of every kind that Borrower may be entitled to receive, from any person owning or acquiring a right to the oil, gas or mineral rights and reservations of the Land;

(5) all proceeds and claims arising on account of any damage to, or Condemnation (as hereinafter defined) of any part of the Land and/or Improvements, and all causes of action and recoveries for any diminution in the value of the Land and/or Improvements;

(6) all licenses, contracts, management agreements, guaranties, warranties, franchise agreements, permits, or certificates relating to the ownership, use, operation or maintenance of the Land and/or Improvements; and

(7) all names by which the Land and/or Improvements may be operated or known, and all rights to carry on business under those names, and all trademarks, trade names and goodwill relating to the Land and/or Improvements.

TO HAVE AND TO HOLD the Real Property, unto Lender, its successors and assigns, its successors and assigns, forever subject to the terms, covenants and conditions of this Mortgage.

Section 1.02 PERSONAL PROPERTY GRANT. Borrower irrevocably sells, transfers, grants, conveys, assigns and warrants to Lender, its successors and assigns, a security interest in Borrower’s interest, if any, in the following personal property which is collectively referred to as “Personal Property”:

(1) any portion of the Real Property which may be personal property, and all other personal property, whether now existing or acquired in the future which is attached to, appurtenant to, or used in the construction or operation of, or in connection with, the Real Property;

(2) all rights to the use of water, including water rights appurtenant to the Real Property, pumping plants, ditches for irrigation, all water stock or other evidence of ownership of any part of the Real Property that is owned by Borrower in common with others and all documents of membership in any owner’s association or similar group;

(3) all plans and specifications prepared for construction of the Improvements; and all contracts and agreements of Borrower relating to the plans and specifications or to the construction of the Improvements;

(4) all equipment, machinery, fixtures, goods, accounts, general intangibles, documents, instruments and chattel paper used in connection with or relating to the Property, and all substitutions, replacements of, and additions to any of the these items;

(5) all sales agreements, deposits, escrow agreements, other documents and agreements entered into with respect to the sale of any part of the Real Property, and all proceeds of the sale; and

(6) all proceeds from the voluntary or involuntary disposition or claim respecting any of the foregoing items (including judgments, condemnation awards or otherwise).

All of the Real Property and the Personal Property are collectively referred to as the “**Property.**”

Section 1.03 CONDITIONS TO GRANT. If Borrower shall pay to Lender the Secured Indebtedness, at the times and in the manner stipulated in the Loan Documents, and if Borrower shall perform and observe each of the terms, covenants and agreements set forth in the Loan Documents, then this Mortgage and all the rights granted by this Mortgage shall be released by Lender in accordance with the laws of the State.

ARTICLE II BORROWER COVENANTS

Section 2.01 DUE AUTHORIZATION, EXECUTION, AND DELIVERY.

(a) Borrower represents and warrants that the execution of the Loan Documents and the Unsecured Indemnity Agreement have been duly authorized and there is no provision in the organizational documents of Borrower requiring further consent for such action by any other entity or person.

(b) Borrower represents and warrants that it is duly organized, validly existing and is in good standing under the laws of the state of its formation and in the State, that it has all necessary licenses, authorizations, registrations, permits and/or approvals to own its properties and to carry on its business as presently conducted.

(c) Borrower represents and warrants that the execution, delivery and performance of the Loan Documents will not result in Borrower’s being in default under any provision of its organizational documents or of any mortgage, lease, credit or other agreement to which it is a party or which affects it or the Property.

(d) Borrower represents and warrants that the Loan Documents and the Unsecured Indemnity Agreement have been duly authorized, executed and delivered by Borrower and constitute valid and binding obligations of Borrower which are enforceable in accordance with their terms.

Section 2.02 PERFORMANCE BY BORROWER. Borrower shall pay the Secured Indebtedness to Lender and shall keep and perform each and every other obligation, covenant and agreement of the Loan Documents.

Section 2.03 WARRANTY OF TITLE.

(a) Borrower warrants that it holds marketable and indefeasible fee simple absolute title to the Real Property, and that it has the right and is lawfully authorized to sell, convey or encumber the Property subject only to those property specific exceptions to title recorded in the real estate records of the County and contained in **Schedule B** of the title insurance policy or policies which have been approved by Lender (the “**Permitted Exceptions**”). The Property is free from all due and unpaid taxes, assessments and mechanics’ and materialmen’s liens.

(b) Borrower further covenants to warrant and forever defend Lender from and against all persons claiming any interest in the Property other than the Permitted Exceptions.

Section 2.04 TAXES, LIENS AND OTHER CHARGES.

(a) Unless otherwise paid to Lender as provided in Section 2.05, Borrower shall pay all real estate and other taxes, assessments, water and sewer charges, vault and other license or permit fees, liens, fines, penalties, interest, and other similar public and private claims which may be payable, assessed, levied, imposed upon or become a lien on or against any portion of the Property (all of the foregoing items are collectively referred to as the "Imposition(s)"). The Impositions shall be paid not later than thirty (30) days prior to the dates on which the particular Imposition would become delinquent, unless Borrower has paid deposits for such amounts to Lender, and Borrower shall produce to Lender receipts of the imposing authority, or other evidence reasonably satisfactory to Lender, evidencing the payment of the Imposition in full. If Borrower elects by appropriate legal action to contest any Imposition, Borrower shall first deposit cash or a letter of credit in form and substance reasonably acceptable to Lender with Lender as a reserve in an amount which Lender determines is sufficient to pay the Imposition plus all fines, interest, penalties and costs which may become due pending the determination of the contest. If Borrower deposits this sum with Lender, Borrower shall not be required to pay the Imposition provided that the contest operates to prevent enforcement or collection of the Imposition, or the sale or forfeiture of, the Property, and is prosecuted with due diligence and continuity. Upon termination of any proceeding or contest, Borrower shall pay the amount of the Imposition as finally determined in the proceeding or contest. Provided that there is not then an Event of Default (as defined in Section 11.01), any monies which have been deposited with Lender pursuant to this Section shall be applied toward such payment and the excess, if any, and any letter of credit shall be returned to Borrower.

(b) In the event of the passage, after the Execution Date, of any law which deducts from the value of the Property, for the purposes of taxation, any lien or security interest encumbering the Property, or changing in any way the existing laws regarding the taxation of mortgages, deeds of trust and/or security agreements or debts secured by these instruments, or changing the manner for the collection of any such taxes, and the law has the effect of imposing payment of any Impositions upon Lender, at Lender's option, the Secured Indebtedness shall upon sixty (60) days' written notice to Borrower become due and payable. Notwithstanding the preceding sentence, the Lender's election to accelerate the Loan shall not be effective if (1) Borrower is permitted by law (including, without limitation, applicable interest rate laws) to, and actually does, pay the Imposition or the increased portion of the Imposition and (2) Borrower agrees in writing to pay or reimburse Lender in accordance with Section 11.06 for the payment of any such Imposition which becomes payable at any time when the Loan is outstanding.

Section 2.05 ESCROW DEPOSITS.

(a) Without limiting the effect of Section 2.04 and Section 3.01 and subject to Sections 2.05(b) and 2.05(c) below, Borrower shall pay to Lender monthly, on the same date the monthly installment is payable under the Note, an amount equal to 1/12th of the amounts Lender reasonably estimates are necessary to pay, on an annualized basis, (1) all Impositions and (2) the premiums for the insurance policies required under this Mortgage (collectively, the "Premiums") until such time as Borrower has deposited an amount equal to the annual charges for these items, and on demand, from time to time, shall pay to Lender any additional amounts necessary to pay the Premiums and Impositions. Borrower will furnish to Lender bills for Impositions and Premiums thirty (30) days before Impositions become delinquent and such Premiums become due for payment. No amounts paid as Impositions or Premiums shall be deemed to be trust funds and these funds may be commingled with the general funds of Lender without any requirement to pay interest to Borrower on account of these funds. If an Event of Default occurs, Lender shall have the right, at its election, to apply any amounts held under this Section 2.05 in reduction of the Secured Indebtedness, or in payment of the Premiums or Impositions for which the amounts were deposited.

(b) Lender agrees not to require deposits for Premiums, unless and until (i) there is an Event of Default under the Loan Documents or the Indemnity Agreement; (ii) Borrower no longer owns the Property; (iii) there has been a change in the Borrower or in the general partners, stockholders or members of Borrower or in the constituent general partners or controlling shareholders or controlling members of any of the entities comprising Borrower not otherwise permitted by the Loan Documents; or (iv) at any time Borrower fails to furnish Lender, not later than thirty (30) days before the dates on which any Premiums would become delinquent, receipts for the payment of such insurance premiums or appropriate proof of issuance of a new policy which continues in force the insurance coverage of the expiring policy. In the event any of these events occur, Lender reserves the right to require Premiums deposits at any time in its absolute discretion notwithstanding the fact that the default may be cured, or that the transfer or change must be approved by Lender.

(c) Lender agrees not to require deposits for Impositions, unless and until (i) there is an Event of Default under the Loan Documents or the Indemnity Agreement; (ii) Borrower no longer owns the Property; or (iii) there has been a change in the Borrower or in the general partners, stockholders or members of Borrower or in the constituent general partners or controlling shareholders or controlling members of any of the entities comprising Borrower not otherwise permitted by the Loan Documents. In the event any of these events occur, Lender reserves the right to require such Impositions deposits at any time in its absolute discretion notwithstanding the fact that the default may be cured, or that the transfer or change be approved by Lender.

Section 2.06 CARE AND USE OF THE PROPERTY.

(a) Borrower's represents and warrants to Lender as follows:

(i) All authorizations, licenses, including without limitation liquor licenses, if any, and operating permits required to allow the Improvements to be operated for the Use have been obtained, paid for and are in full force and effect.

(ii) The Improvements and their Use comply with (and no notices of violation have been received in connection with) all Requirements (as defined in this Section) and Borrower shall at all times comply with all present or future Requirements affecting or relating to the Property and/or the Use. Borrower shall furnish Lender, on request, proof of compliance with the Requirements. Borrower shall not use or permit the use of the Property, or any part thereof, for any illegal purpose. "Requirements" shall mean all laws, ordinances, orders, covenants, conditions and restrictions and other requirements relating to land and building design and construction, use and maintenance, that may now or hereafter pertain to or affect the Property or any part of the Property or the Use, including, without limitation, planning, zoning, subdivision, environmental, air quality, flood hazard, fire safety, handicapped facilities, building, health, fire, traffic, safety, wetlands, coastal and other governmental or regulatory rules, laws, ordinances, statutes, codes and requirements applicable to the Property, including permits, licenses and/or certificates that may be necessary from time to time to comply with any of the these requirements.

(iii) Borrower has complied with all requirements of all instruments and agreements affecting the Property, whether or not of record, including without limitation all covenants and agreements by and between Borrower and any governmental or regulatory agency pertaining to the development, use or operation of the Property. Borrower, at its sole cost and expense, shall keep the Property in good order, condition, and repair, and make all necessary structural and non-structural, ordinary and extraordinary repairs to the Property and the Improvements.

(iv) Borrower shall abstain from, and not permit, the commission of waste to the Property and shall not remove or alter in any substantial manner, the structure or character of any Improvements without the prior written consent of Lender.

(v) The zoning approval for the Property is not dependent upon the ownership or use of any property which is not encumbered by this Mortgage.

(b) Lender shall have the right, at any time and from time to time during normal business hours, and upon reasonable prior notice, to enter the Property in order to ascertain Borrower's compliance with the Loan Documents, to examine the condition of the Property, to perform an appraisal, to undertake surveying or engineering work, and to inspect premises occupied by tenants, subject to the rights of such tenants. Borrower shall cooperate with Lender performing these inspections. A representative of Borrower may accompany Lender's representative on all such inspections. So long as no Event of Default occurs, Lender shall be limited to two (2) inspections per year under this Section 2.06(b); provided, however, to the extent Lender, in its reasonable discretion, has reason to believe that Borrower is not in compliance with this Section 2.06, such limitation shall not apply.

(c) Borrower shall use, or cause to be used, the Property continuously for the Use. Borrower shall not use, or permit the use of, the Property for any other use without the prior written consent of Lender. Borrower shall not file or record a declaration of condominium, master mortgage or mortgage or any other similar document evidencing the imposition of a so-called "condominium regime" whether superior or subordinate to this mortgage and Borrower shall not permit any part of the Property to be converted to, or operated as, a "cooperative apartment house" (or "cooperative" form of ownership) whereby the tenants or occupants participate in the ownership, management or control of any part of the Property.

(d) Without the prior written consent of Lender, Borrower shall not (i) initiate or acquiesce in a change in the zoning classification of and/or restrictive covenants affecting the Property or seek any variance under existing zoning ordinances, (ii) use or permit the use of the Property in a manner which may result in the Use becoming a non-conforming use under applicable zoning ordinances, (iii) subject the Property to restrictive covenants.

Section 2.07 COLLATERAL SECURITY INSTRUMENTS. Borrower covenants and agrees that if Lender at any time holds additional security for any obligations secured by this Mortgage, it may enforce its rights and remedies with respect to the security, at its option, either before, concurrently or after a sale of the Property is made pursuant to the terms of this Mortgage. Lender may apply the proceeds of the additional security to the Secured Indebtedness without affecting or waiving any right to any other security, including the security under this Mortgage, and without waiving any breach or default of Borrower under this Mortgage or any other Loan Document.

Section 2.08 SUITS AND OTHER ACTS TO PROTECT THE PROPERTY.

(a) Borrower shall promptly upon receipt notify Lender of the commencement, or receipt of notice, of any and all actions or proceedings or other material matter or claim affecting the Property and/or the interest of Lender under the Loan Documents (collectively, "**Actions**"). Borrower shall appear in and defend any Actions.

(b) Lender shall have the right, at the cost and expense of Borrower, to institute, maintain and participate in Actions and take such other action, as it may deem appropriate in the good faith exercise of

its discretion to preserve or protect the Property and/or the interest of Lender under the Loan Documents. Any money paid by Lender under this Section shall be reimbursed to Lender in accordance with Section 11.06 hereof.

Section 2.09 LIENS AND ENCUMBRANCES. Without the prior written consent of Lender, to be exercised in Lender's sole and absolute discretion, other than the Permitted Exceptions, Borrower shall not create, place or allow to remain any lien or encumbrance on the Property, including deeds of trust, mortgages, security interests, conditional sales, mechanic liens, tax liens or assessment liens regardless of whether or not they are subordinate to the lien created by this Mortgage (collectively, "**Liens and Encumbrances**"). If any Liens and Encumbrances are recorded against the Property or any part of the Property, Borrower shall obtain a discharge and release of any Liens and Encumbrances within thirty (30) days after receipt of notice of their existence. In lieu of discharge and release, Borrower may post a bond or title indemnity or other security reasonably acceptable to Lender.

Section 2.10 SINGLE PURPOSE ENTITY. Borrower represents and warrants that Borrower is and shall continue to be a single purpose entity and its organizational documents do and shall continue to provide that Borrower shall not: (i) engage in business other than owning and operating the Property; (ii) acquire or own a material asset other than the Property and incidental personal property; (iii) maintain assets in a way difficult to segregate and identify or commingle its assets with the assets of any other person or entity; (iv) fail to hold itself out to the public as a legal entity separate from any other; (v) fail to conduct business solely in its name or fail to maintain records, accounts or bank accounts separate from any other person or entity; (vi) file or consent to a petition pursuant to applicable bankruptcy, insolvency, liquidation or reorganization statutes, or make an assignment for benefit of creditors without unanimous consent of its partners or members, as applicable; (vii) incur additional indebtedness except for trade payables in the ordinary course of business of owning and operating the Property, provided that such indebtedness is paid within 90 days of when incurred; (viii) dissolve, liquidate, consolidate, merge or sell all or substantially all of its assets; or (ix) modify, amend or revise its organizational documents.

ARTICLE III INSURANCE

Section 3.01 REQUIRED INSURANCE AND TERMS OF INSURANCE POLICIES.

(a) During the term of this Mortgage, Borrower at its sole cost and expense must provide insurance policies and certificates of insurance satisfactory to Lender as to amounts, types of coverage and the companies underwriting these coverages. In no event will such policies be terminated, unless simultaneously replaced with other acceptable insurance, or otherwise allowed to lapse. Borrower shall be responsible for its own deductibles. Borrower shall also pay for any insurance, or any increase of policy limits, not described in the Mortgage which Borrower requires for its own protection or for compliance with government statutes. Borrower's insurance shall be primary and without contribution from any insurance procured by Lender.

Policies of insurance shall be delivered to Lender in accordance with the following requirements: All Risk Property insurance on the Improvements and the Personal Property, including contingent liability from Operation of Building Laws, Demolition Costs and Increased Cost of Construction endorsements, in each case (i) in an amount equal to 100% of the "Full Replacement Cost" of the Improvements and Personal Property, which for purposes of this Article III shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation and with a Replacement Cost Endorsement; (ii) containing an agreed amount endorsement with respect to the

Improvements and Personal Property waiving all co-insurance provisions; (iii) providing for no deductible in excess of \$250,000; and (iv) containing an "Ordinance or Law Coverage" or "Enforcement" endorsement if any of the Improvements or the use of the Property shall constitute non-conforming structures or uses. The Full Replacement Cost shall be determined from time to time by an appraiser or contractor designated and paid by Borrower and approved by Lender or by an engineer or appraiser in the regular employ of the insurer.

(1) Commercial General Liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, such insurance (i) to be on the so-called "occurrence" form with a combined single limit of not less than the amount set forth in the Defined Terms; (ii) to continue at not less than this limit until required to be changed by Lender in writing by reason of changed economic conditions making such protection inadequate; and (iii) to cover at least the following hazards: (a) premises and operations; (b) products and completed operations on an "if any" basis; (c) independent contractors; (d) blanket contractual liability for all written and oral contracts; and (e) contractual liability covering the indemnities contained in this Mortgage to the extent available.

(2) Business Income insurance in an amount sufficient to prevent Borrower from becoming a co-insurer within the terms of the applicable policies, and sufficient to recover one (1) year's "**Business Income**" (as hereinafter defined). The amount shown in the Defined Terms is the current estimate of one year's "Business Income". "Business Income" shall mean the sum of (i) the total anticipated gross income from occupancy of the Property, (ii) the amount of all charges (such as, but not limited to, operating expenses, insurance premiums and taxes) which are the obligation of tenants or occupants to Borrower, (iii) the fair market rental value of any portion of the Property which is occupied by Borrower, and (iv) any other amounts payable to Borrower or to any affiliate of Borrower, excluding any leasing commissions that may be payable to any affiliate of Borrower, pursuant to leases.

(3) If Lender determines at any time that any part of the Property is located in an area identified on a Flood Hazard Boundary Map or Flood Insurance Rate Map issued by the Federal Emergency Management Agency as having special flood hazards and flood insurance has been made available, Borrower will maintain a flood insurance policy meeting the requirements of the current guidelines of the Federal Insurance Administration with a generally acceptable insurance carrier, in an amount not less than the lesser of (i) the outstanding principal balance of the Loan or (ii) the maximum amount of insurance which is available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as amended.

(4) During the period of any construction or renovation or alteration of the Improvements, a so-called "Builder's All Risk" insurance policy in non-reporting form for any Improvements under construction, renovation or alteration including, without limitation, for demolition and increased cost of construction or renovation, in an amount approved by Lender including an Occupancy endorsement and Worker's Compensation Insurance covering all persons engaged in the construction, renovation or alteration in an amount at least equal to the minimum required by statutory limits of the State.

(5) Workers' Compensation insurance, subject to the statutory limits of the State, 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 in the aggregate in respect of any work or operations on or about the Property, or in connection with the Property or its operations (if applicable).

(6) Boiler & Machinery insurance covering the major components of the central heating, air conditioning and ventilating systems, boilers, other pressure vessels, high pressure piping and machinery, elevators and escalators, if any, and other similar equipment installed in the Improvements, in an amount equal to one hundred percent (100%) of the full replacement cost of all equipment installed in, on or at the Improvements. These policies shall insure against physical damage to and loss of occupancy and use of the Improvements arising out of an accident or breakdown.

(7) Insurance, on such forms of insurance policies as reasonably required by Lender, from and against all losses, damages, costs, expenses, claims and liabilities related to or arising from acts of terrorism, of such types, in such amounts, with such deductibles, and issued by such companies as may be required by Lender.

(8) Such other insurance as may from time to time be reasonably required by Lender against other insurable hazards, including, but not limited to, vandalism, sinkhole and mine subsidence.

(b) Lender's interest must be clearly stated by endorsement in the insurance policies described in this Section 3.01 as follows:

(1) The policies of insurance referenced in Subsections (a)(1), (a)(3), (a)(4), (a)(5) and (a)(7) of this Section 3.01 shall identify Lender under the New York Standard Mortgagee Clause (non-contributory) endorsement or similar form of endorsement should said endorsement become unavailable.

(2) The insurance policy referenced in Section 3.01 (a)(2) shall name Lender as an additional insured.

(3) All of the policies referred to in Section 3.01 shall provide for at least thirty (30) days' written notice to Lender in the event of policy cancellation and/or material change.

(c) All the insurance companies must be authorized to do business in New York State and the State and be approved by Lender. The insurance companies must have a general policy rating of A or better and a financial class of X or better by A.M. Best Company, Inc. and a claims paying ability of BBB or better according to Standard & Poors. If there are any Securities (as defined in Section 12.01) issued with respect to this Loan which have been assigned a rating by a credit rating agency approved by Lender (a "**Rating Agency**"), the insurance company shall have a claims paying ability rating by such Rating Agency equal to or greater than the rating of the highest class of the Securities. Borrower shall deliver evidence satisfactory to Lender of payment of premiums due under the insurance policies.

(d) Certified copies of the policies, and any endorsements, shall be made available for inspection by Lender upon request. If any policy is canceled before the Loan is satisfied, and Borrower fails to immediately procure replacement insurance, Lender reserves the right but shall not have the obligation immediately to procure replacement insurance at Borrower's cost.

(e) Borrower shall be required during the term of the Loan to continue to provide Lender with original renewal policies or replacements of the insurance policies referenced in Section 3.01 (a). Lender may accept Certificates of Insurance evidencing insurance policies referenced in Subsections (a)(2), (a)(4), and (a)(6) of this Section 3.01 instead of requiring the actual policies. Lender shall be provided with renewal Certificates of Insurance, or Binders, not less than fifteen (15) days prior to each expiration. The failure of Borrower to maintain the insurance required under this Article III shall not constitute a waiver of Borrower's obligation to fulfill these requirements.

(f) All binders, policies, endorsements, certificates, and cancellation notices are to be sent to the Lender's Address for Insurance Notification as set forth in the Defined Terms until changed by notice from Lender.

Section 3.02 ADJUSTMENT OF CLAIMS. Borrower hereby authorizes and empowers Lender to settle, adjust or compromise any claims exceeding \$1,000,000.00 for damage to, or loss or destruction of, all or a portion of the Property, regardless of whether there are Insurance Proceeds available or whether any such Insurance Proceeds are sufficient in amount to fully compensate for such damage, loss or destruction.

Section 3.03 ASSIGNMENT TO LENDER. In the event of the foreclosure of this Mortgage or other transfer of the title to the Property in extinguishment of the Secured Indebtedness, all right, title and interest of Borrower in and to any insurance policy, or premiums or payments in satisfaction of claims or any other rights under these insurance policies and any other insurance policies covering the Property shall pass to the transferee of the Property.

ARTICLE IV BOOKS, RECORDS AND ACCOUNTS

Section 4.01 BOOKS AND RECORDS. Borrower shall keep adequate books and records of account in accordance with generally accepted accounting principles ("GAAP"), or in accordance with other methods acceptable to Lender in its sole discretion, consistently applied and furnish to Lender:

(a) quarterly certified rent rolls signed and dated by Borrower, detailing the names of all tenants of the Improvements and specifically identifying any new tenants, the portion of Improvements occupied by each tenant, the base rent and any other charges payable under each Lease (as defined in Section 5.02) and the term of each Lease, including the expiration date, and any other information as is reasonably required by Lender, within thirty (30) days after the end of each fiscal quarter;

(b) a quarterly operating statement of the Property and year to date operating statements detailing the total revenues received, total expenses incurred, total cost of all capital improvements, total debt service and total cash flow, to be prepared and certified by Borrower in the form required by Lender, and if available, any quarterly operating statement prepared by an independent certified public accountant, within thirty to sixty (30-60) days after the close of each fiscal quarter of Borrower;

(c) an annual balance sheet and profit and loss statement of Borrower in the form required by Lender, prepared and certified by Borrower, as the case may be, or if required by Lender, audited financial statements for Borrower and any Liable Parties prepared by an independent certified public accountant acceptable to Lender within ninety (90) days after the close of each fiscal year of Borrower and the Liable Parties, as the case may be; and

(d) an annual operating budget 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 at least fifteen (15) days prior to the start of each calendar year.

Section 4.02 PROPERTY REPORTS. Upon request from Lender or its representatives and designees, Borrower shall furnish in a timely manner to Lender:

(a) a property management report for the Property, showing leasing activity and inquiries received from tenants or prospective tenants and deposits received from tenants and any other information requested by Lender, in reasonable detail and certified by Borrower (or an officer, general partner, member or principal of Borrower if Borrower is not an individual) under penalty of perjury to be true and complete, but no more frequently than quarterly; and

(b) 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.

Section 4.03 ADDITIONAL MATTERS.

(a) Borrower shall furnish Lender with such other additional financial or management information (including State and Federal tax returns) as may, from time to time, be reasonably required by Lender in form and substance reasonably satisfactory to Lender.

(b) Borrower shall furnish Lender and its agents convenient facilities for the examination and audit of any such books and records.

ARTICLE V LEASES AND OTHER AGREEMENTS AFFECTING THE PROPERTY

Section 5.01 BORROWER'S REPRESENTATIONS AND WARRANTIES.

Borrower represents and warrants to Lender as follows:

(a) There are no leases or occupancy agreements affecting the Property except those leases and amendments listed on **Exhibit B** to the Assignment of Leases, and Borrower has delivered to Lender true, correct and complete copies of all leases, including amendments (collectively, "**Existing Leases**") and all guaranties and amendments of guaranties given in connection with the Existing Leases (the "**Guaranties**").

(b) Except as may be disclosed in a tenant estoppel provided to Lender, Borrower has received no notice of any defaults by Borrower under the Existing Leases and Guaranties and, to the best knowledge of Borrower, there are no defaults by any tenants under the Existing Leases or any guarantors under the Guaranties. The Existing Leases and the Guaranties are in full force and effect.

(c) To the best knowledge of Borrower, none of the tenants now occupying 10% or more of the Property or having a current lease affecting 10% or more of the Property (the leases for such 10% tenants and such 10% leases, collectively, the "**Material Leases**") is the subject of any bankruptcy, reorganization or insolvency proceeding or any other debtor-creditor proceeding.

Section 5.02 ASSIGNMENT OF LEASES. In order to further secure payment of the Secured Indebtedness and the performance of Borrower's obligations under the Loan Documents, Borrower absolutely, presently and unconditionally grants, assigns and transfers to Lender all of Borrower's right, title, interest and estate in, to and under (i) all of the Existing Leases and Guaranties affecting the Property and (ii) all of the future leases and guaranties and (iii) the Rents and Profits. Borrower acknowledges that it

is permitted to collect the Rents and Profits pursuant to a revocable license unless and until an Event of Default occurs. The Existing Leases and Guaranties and all future leases, lease amendments and guaranties are collectively referred to as the "Leases".

Section 5.03 PERFORMANCE OF OBLIGATIONS.

(a) Borrower shall perform all material obligations under any and all Leases. If any of the acts described in this Section which are prohibited or require the consent of Lender are done without the written consent of Lender, at the option of Lender, they shall be of no force or effect and shall constitute a default under this Mortgage.

(b) Borrower agrees to furnish Lender executed copies of all future Leases for 30,000 square feet or more. Borrower agrees to furnish to Lender executed copies of all future Leases for less than 30,000 square feet upon written request. Borrower shall not, without the express written consent of Lender, (i) enter into or extend any Lease greater than 15,000 square feet of leaseable area unless the Lease complies with the Leasing Guidelines. "Leasing Guidelines" shall mean the guidelines approved in writing by Lender, from time to time, with respect to the leasing of the Property, or (ii) cancel or terminate any Leases except in the case of a default unless Borrower has entered into new Leases which comply with the Leasing Guidelines covering all of the premises of the Leases being terminated or surrendered, or (iii) modify or amend any Leases in any material way or reduce the rent, unless thereafter the Leases comply with the Leasing Guidelines or (iv) unless the tenants remain liable under the Leases, or any assignee is of equal or superior creditworthiness, consent to an assignment of the tenant's interest or to a subletting of the demised premises under any Lease, or (v) accept payment of advance rents or security deposits in an amount in excess of one month's rent or (vi) enter into any options to purchase the Property. Lender shall be deemed to approve any Lease or action requiring Lender consent hereunder if Lender has not responded to a written request from Borrower within ten (10) business days.

Section 5.04 SUBORDINATE LEASES. From and after the date hereof, each Lease shall be absolutely subordinate to the lien of this Mortgage and shall also contain a provision, satisfactory to Lender, to the effect that in the event of the judicial or non-judicial foreclosure of the Property, at the election of the acquiring foreclosure purchaser, the particular Lease shall not be terminated and the tenant shall attorn to the purchaser. If requested to do so, the tenant shall agree to enter into a new Lease for the balance of the term upon the same terms and conditions. If Lender requests, Borrower shall cause a tenant or tenants to enter into subordination and attornment agreements or non-disturbance agreements with Lender on forms which have been approved by Lender, subject to reasonable modifications requested by tenants.

Section 5.05 LEASING COMMISSIONS. From and after the date hereof, Borrower covenants and agrees that all contracts and agreements relating to the Property requiring the payment of leasing commissions, management fees or other similar compensation shall (i) provide that the obligation will not be enforceable against Lender and (ii) be subordinate to the lien of this Mortgage. Lender will be provided evidence of Borrower's compliance with this Section upon request.

Section 5.06 PROPERTY MANAGER. Borrower covenants and agrees that any property manager retained by Borrower to manage the Property (the "Property Manager") may be removed by Lender, in its sole discretion, upon an event of default under the management agreement or upon commencement of any foreclosure of this Mortgage. In such case, the replacement Property Manager shall be subject to Lender's approval which may be given or withheld in Lender's reasonable discretion.

ARTICLE VI
ENVIRONMENTAL HAZARDS

Section 6.01 REPRESENTATIONS AND WARRANTIES. Except as may be otherwise disclosed on the environmental reports shown on **Exhibit B** attached hereto and made a part hereof, provided by Borrower to Lender, Borrower hereby represents, warrants, covenants and agrees to and with Lender that (i) neither Borrower nor, to the best of Borrower's knowledge, after due inquiry, any tenant, subtenant or occupant of the Property, has at any time placed, suffered or permitted the presence of any Hazardous Materials (as defined in Section 6.05) at, on, under, within or about the Property in violation of the Requirements of Environmental Laws (as defined in Section 6.06), except as expressly approved by Lender in writing and (ii) all operations or activities upon the Property, and any use or occupancy of the Property by Borrower are presently and shall in the future be in compliance with all Requirements of Environmental Laws.

Section 6.02 REMEDIAL WORK. In the event any investigation or monitoring of site conditions or any clean-up, containment, restoration, removal or other remedial work (collectively, the "**Remedial Work**") is required under any Requirements of Environmental Laws, Borrower shall perform or cause to be performed the Remedial Work in compliance with the applicable law, regulation, order or agreement. All Remedial Work shall be performed by one or more contractors, selected by Borrower and approved in advance in writing by Lender, such approval not to be unreasonably withheld or delayed, and under the supervision of a consulting engineer, selected by Borrower and approved in advance in writing by Lender, such approval not to be unreasonably withheld or delayed. All costs and expenses of Remedial Work shall be paid by Borrower including, without limitation, the charges of the contractor(s) and/or the consulting engineer, and Lender's reasonable attorneys', architects' and/or consultants' fees and costs incurred in connection with monitoring or review of the Remedial Work. In the event Borrower shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, the Remedial Work, Lender may, upon ten (10) days' notice to Borrower, but shall not be required to, cause such Remedial Work to be performed, subject to the provisions of Sections 11.05 and 11.06.

Section 6.03 ENVIRONMENTAL SITE ASSESSMENT. Upon any default under this Article VI, an Event of Default generally, or if any Remedial Work is required, or if Lender has reason to believe that there are Hazardous Materials on, at, under, within or about the Property, Lender shall have the right, at any time and from time to time, to undertake, at the expense of Borrower, an environmental site assessment on the Property, including any testing that Lender may determine, in its sole discretion, is necessary or desirable to ascertain the environmental condition of the Property and the compliance of the Property with Requirements of Environmental Laws. Borrower shall cooperate fully with Lender and its consultants performing such assessments and tests.

Section 6.04 UNSECURED OBLIGATIONS. No amounts which may become owing by Borrower to Lender under this Article VI or under any other provision of this Mortgage as a result of a breach of or violation of this Article VI shall be secured by this Mortgage. The obligations shall continue in full force and effect and any breach of this Article VI, which is not cured within applicable notice and cure periods set forth in Section 11.01(b) below (except for Remedial Work for which applicable notice and cure period is set forth in Section 6.02 above), shall constitute an Event of Default. The lien of this Mortgage shall not secure (i) any obligations evidenced by or arising under the Unsecured Indemnity Agreement ("**Unsecured Obligations**"), or (ii) any other environmental obligations to the extent that they are the same or have the same effect as any of the Unsecured Obligations. The Unsecured Obligations shall continue in full force, and any breach or default of any such obligations shall constitute a breach or default under this Mortgage

but the proceeds of any foreclosure sale shall not be applied against Unsecured Obligations. Nothing in this Section shall in any way limit or otherwise affect the right of Lender to obtain a judgment in accordance with applicable law for any deficiency in recovery of all obligations that are secured by this Mortgage following foreclosure, notwithstanding that the deficiency judgment may result from diminution in the value of the Property by reason of any event or occurrence pertaining to Hazardous Materials or any Requirements of Environmental Laws.

Section 6.05 HAZARDOUS MATERIALS.

“**Hazardous Materials**” shall include without limitation:

(a) Those substances included within the definitions of “**hazardous substances**,” “**hazardous materials**,” “**toxic substances**,” or “**solid waste**” in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended, 42 U.S.C. Sections 9601 *et seq.*, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901 *et seq.*, and the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801 *et seq.*, and in the regulations promulgated pursuant to said laws;

(b) Those substances defined as “hazardous substances,” hazardous waste,” or “hazardous materials” in the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.*, the Uniform Hazardous Substances Act of Illinois, 430 ILCS 35/1 *et seq.*, and the Illinois Hazardous Materials Transportation Act, 430 ILCS 30/1 *et seq.*, and in the regulations promulgated pursuant to such laws;

(c) Those chemicals known to cause cancer or reproductive toxicity, as reported or defined pursuant to the Illinois Health and Hazardous Substance Registry Act, 410 ILCS 525/1 *et seq.* and the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.*, and the regulations promulgated pursuant to such laws;

(d) Those substances listed under Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.*, and the Illinois Responsible Property Transfer Act, 765 ILCS 90/1 *et seq.*;

(e) Those substances listed in the United States Department of Transportation Table (49 CFR 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto);

(f) Any material, waste or substance which is (A) petroleum, (B) asbestos, (C) polychlorinated biphenyls, (D) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act, 33 U.S.C. § 1251 *et seq.* (33 U.S.C. § 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. § 1317); (E) a chemical substance or mixture regulated under the Toxic Substances Control Act of 1976, 15 U.S.C. §§ 2601 *et seq.*; (F) flammable explosives; or (G) radioactive materials; and

(g) Such other substances, materials and wastes which are or become regulated as hazardous or toxic under applicable local, state or federal law, or the United States government, or which are classified as hazardous or toxic under federal, state, or local laws or regulations.

Section 6.06 REQUIREMENTS OF ENVIRONMENTAL LAWS. “Requirements of Environmental Laws” means all requirements of environmental, ecological, health, or industrial hygiene laws or regulations or rules of common law related to the Property, including, without limitation, all requirements

imposed by any environmental permit, law, rule, order, or regulation of any federal, state, or local executive, legislative, judicial, regulatory, or administrative agency, which relate to (i) exposure to Hazardous Materials; (ii) pollution or protection of the air, surface water, ground water, land; (iii) solid, gaseous, or liquid waste generation, treatment, storage, disposal, or transportation; or (iv) regulation of the manufacture, processing, distribution and commerce, use, or storage of Hazardous Materials.

Section 6.07 COVENANTS. All activities or operations upon the Property shall be in compliance with all Requirements of Environmental Laws and Borrower shall use best efforts to assure that any tenant, subtenant or occupant of the Property shall be in compliance with all Requirements of Environmental Laws.

ARTICLE VII CASUALTY, CONDEMNATION AND RESTORATION

Section 7.01 BORROWER'S REPRESENTATIONS.

Borrower represents and warrants as follows:

(a) Except as expressly approved by Lender in writing, no casualty or damage to any part of the Property which would cost more than \$50,000 to restore or replace has occurred which has not been fully restored or replaced.

(b) No part of the Property has been taken in condemnation or other similar proceeding or transferred in lieu of condemnation, nor has Borrower received notice of any proposed condemnation or other similar proceeding affecting the Property.

Section 7.02 RESTORATION.

(a) Borrower shall give prompt written notice of any casualty to the Property to Lender whether or not required to be insured against. The notice shall describe the nature and cause of the casualty and the extent of the damage to the Property.

(b) Borrower assigns to Lender all Insurance Proceeds which Borrower is entitled to receive in connection with a casualty whether or not such insurance is required under this Mortgage, provided, however, so long as an Event of Default does not currently exist, Borrower may receive and use for Restoration Insurance Proceeds for any casualty where the damage is less than \$1,000,000.00. In the event of any damage to or destruction of the Property where the damage exceeds \$1,000,000.00, and provided (1) an Event of Default does not currently exist, and (2) Lender has determined that (i) there has not been an Impairment of the Security (as defined in Section 7.02 (c)), and (ii) the repair, restoration and rebuilding of any portion of the Property that has been partially damaged or destroyed (the "**Restoration**") can be accomplished in full compliance with all Requirements to the same condition, character and general utility as nearly as possible to that existing prior to the casualty and at least equal in value as that existing prior to the casualty, then Borrower shall commence and diligently pursue to completion the Restoration. Lender shall hold and disburse the Insurance Proceeds less (x) the cost, if any, to Lender of recovering the Insurance Proceeds including, without limitation, reasonable attorneys' fees and expenses, and adjusters' fees, and (y) any Business Income Insurance Proceeds received by Lender (the "**Net Insurance Proceeds**") to the Restoration.

(c) For the purpose of this Article, "Impairment of the Security" shall mean any or all of the following: (i) any of the Leases for more than 100,000 square feet, in the aggregate, existing immediately prior to the damage, destruction condemnation or casualty shall have been canceled, or contain any exercisable right to cancel as a result of the damage, destruction or casualty, (ii) the casualty or damage occurs during the last year of the term of the Loan, or (iii) restoration of the Property is estimated to require more than one year to complete from the date of the occurrence.

(d) If the Net Insurance Proceeds are to be used for the Restoration in accordance with this Article, Borrower shall comply with Lender's Requirements For Restoration as set forth in Section 7.04 below. Upon Borrower's satisfaction and completion of the Requirements For Restoration and upon confirmation that there is no Event of Default then existing under the Loan Documents, Lender shall pay any remaining Restoration Funds (as defined in Section 7.04 below) then held by Lender to Borrower.

(e) In the event that the conditions for Restoration set forth in this Section have not been met, Lender may, at its option, apply the Net Insurance Proceeds to the reduction of the Secured Indebtedness in such order as Lender may determine and Lender may declare the entire Secured Indebtedness immediately due and payable. After payment in full of the Secured Indebtedness, any remaining Restoration Funds shall be paid to Borrower.

Section 7.03 CONDEMNATION.

(a) If the Property or any part of the Property is taken by reason of any condemnation or similar eminent domain proceeding, or by a grant or conveyance in lieu of condemnation or eminent domain ("**Condemnation**"), Lender shall be entitled to all compensation, awards, damages, proceeds and payments or relief for the Condemnation ("**Condemnation Proceeds**"), provided, however, Borrower may retain any Condemnation Proceeds where the Condemnation, in Lender's sole discretion, has no material adverse effect on the operation or income of the Property ("**Non-Material Condemnation**"). At its option, Lender shall be entitled to commence, appear in and prosecute in its own name any action or proceeding or to make any compromise or settlement in connection with such Condemnation, other than a Non-Material Condemnation. Borrower hereby irrevocably constitutes and appoints Lender as its attorney-in-fact, which appointment is coupled with an interest, to commence, appear in and prosecute any action or proceeding or to make any compromise or settlement in connection with any such Condemnation, other than a Non-Material Condemnation.

(b) Borrower assigns to Lender all Condemnation Proceeds which Borrower is entitled to receive, provided, however, so long as no Event of Default currently exists, Borrower may retain Condemnation Proceeds relating to a Non-Material Condemnation. In the event of any Condemnation, and provided (1) an Event of Default does not currently exist, and (2) Lender has determined that (i) there has not been an Impairment of the Security, and (ii) the Restoration of any portion of the Property that has not been taken can be accomplished in full compliance with all Requirements to the same condition, character and general utility as nearly as possible to that existing prior to the taking and at least equal in value as that existing prior to the taking, then Borrower shall commence and diligently pursue to completion the Restoration. Lender shall hold and disburse the Condemnation Proceeds less the cost, if any, to Lender of recovering the Condemnation Proceeds including, without limitation, reasonable attorneys' fees and expenses, and adjusters' fees (the "**Net Condemnation Proceeds**") to the Restoration.

(c) In the event the Net Condemnation Proceeds are to be used for the Restoration, Borrower shall comply with Lender's Requirements For Restoration as set forth in Section 7.04 below. Upon Borrower's satisfaction and completion of the Requirements For Restoration and upon confirmation that there is no Event of Default then existing under the Loan Documents, Lender shall pay any remaining Restoration Funds (as defined in Section 7.04 below) then held by Lender to Borrower.

(d) In the event that the conditions for Restoration set forth in this Section have not been met, Lender may, at its option, apply the Net Condemnation Proceeds to the reduction of the Secured Indebtedness in such order as Lender may determine and Lender may declare the entire Secured Indebtedness immediately due and payable. After payment in full of the Secured Indebtedness, any remaining Restoration Funds shall be paid to Borrower.

Section 7.04 REQUIREMENTS FOR RESTORATION. Unless otherwise expressly agreed in a writing signed by Lender, the following are the Requirements For Restoration:

(a) If the Net Insurance Proceeds or Net Condemnation Proceeds are to be used for the Restoration, prior to the commencement of any Restoration work (the “**Work**”), Borrower shall provide Lender for its review and written approval (i) complete plans and specifications for the Work which (A) have been approved by all required governmental authorities, (B) have been approved by an architect reasonably satisfactory to Lender (the “**Architect**”) and (C) are accompanied by Architect’s signed statement of the total estimated cost of the Work (the “Approved Plans and Specifications”); (ii) the amount of money which Lender reasonably determines will be sufficient when added to the Net Insurance Proceeds or Condemnation Proceeds to pay the entire cost of the Restoration (collectively referred to as the “**Restoration Funds**”); (iii) evidence that the Approved Plans and Specifications and the Work are in compliance with all Requirements; (iv) an executed contract for construction with a contractor reasonably satisfactory to Lender (the “**Contractor**”) in a form approved by Lender in writing; and (v) a surety bond and/or guarantee of payment with respect to the completion of the Work. The bond or guarantee shall be reasonably satisfactory to Lender in form and amount and shall be signed by a surety or other entities who are reasonably acceptable to Lender.

(b) Borrower shall not commence the Work, other than temporary work to protect the Property or prevent interference with business, until Borrower shall have complied with the requirements of subsection (a) of this Section 7.04. So long as there does not currently exist an Event of Default and the following conditions have been complied with or, in Lender’s discretion, waived, Lender shall disburse the Restoration Funds in increments to Borrower, from time to time as the Work progresses:

(i) Architect shall be in charge of the Work;

(ii) Lender shall disburse the Restoration Funds directly or through escrow with a title company selected by Borrower and approved by Lender, upon not less than ten (10) days’ prior written notice from Borrower to Lender and Borrower’s delivery to Lender of (A) Borrower’s written request for payment (a “**Request for Payment**”) accompanied by a certificate by Architect in a form reasonably satisfactory to Lender which states that (a) all of the Work completed to that date has been completed in compliance with the Approved Plans and Specifications and in accordance with all Requirements, (b) the amount requested has been paid or is then due and payable and is properly a part of the cost of the Work, and (c) when added to all sums previously paid by Lender, the requested amount does not exceed the value of the Work completed to the date of such certificate; and (B) evidence reasonably satisfactory to Lender that the balance of the Restoration Funds remaining after making the payments shall be sufficient to pay the balance of the cost of the Work. Each Request for Payment shall be accompanied by (x) waivers of liens covering that part of the Work previously paid for, if any (y) a title search or by other evidence satisfactory to Lender that no mechanic’s or materialmen’s liens or other similar liens for labor or materials supplied in connection with the Work have been filed against the Property and not discharged of record, and (z) an endorsement to Lender’s title policy insuring that no encumbrance exists on or affects the Property other than the Permitted Exceptions;

(iii) The final Request for Payment shall be accompanied by (i) a final certificate of occupancy or other evidence of approval of appropriate governmental authorities for the use and occupancy of the Improvements, (ii) evidence that the Restoration has been completed in accordance with the Approved Plans and Specifications and all Requirements, (iii) evidence that the costs of the Restoration have been paid in full, and (iv) evidence that no mechanic's or similar liens for labor or material supplied in connection with the Restoration are outstanding against the Property, including final waivers of liens covering all of the Work and an endorsement to Lender's title policy insuring that no encumbrance exists on or affects the Property other than the Permitted Exceptions.

(c) If (i) within ninety (90) days after the occurrence of any damage, destruction or condemnation requiring Restoration, Borrower fails to submit to Lender and receive Lender's approval of plans and specifications or fails to deposit with Lender the additional amount necessary to accomplish the Restoration as provided in subparagraph (a) above, or (ii) after such plans and specifications are approved by all such governmental authorities and Lender, Borrower fails to commence promptly or diligently continue to completion the Restoration, or (iii) Borrower becomes delinquent in payment to mechanics, materialmen or others for any material portion of the costs incurred in connection with the Restoration, other than in connection with a bona fide dispute with such parties for which Borrower has posted a bond or other security reasonably acceptable to Lender, or (iv) there exists an Event of Default, then, in addition to all of the rights herein set forth and after ten (10) days' written notice of the non-fulfillment of one or more of these conditions, Lender may apply the Restoration Funds to reduce the Secured Indebtedness in such order as Lender may determine, and at Lender's option and in its sole discretion, Lender may declare the Secured Indebtedness immediately due and payable together with the Prepayment Fee.

ARTICLE VIII REPRESENTATIONS OF BORROWER

Section 8.01 ERISA. Borrower hereby represents, warrants and agrees that: (i) it is acting on its own behalf and that it is not an employee benefit plan as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), which is subject to Title 1 of ERISA, nor a plan as defined in Section 4975(e)(1) of the Internal Revenue Code of 1986, as amended (each of the foregoing hereinafter referred to collectively as a "**Plan**"); (ii) Borrower's assets do not constitute "plan assets" of one or more such Plans within the meaning of Department of Labor Regulation Section 2510.3-101; and (iii) it will not be reconstituted as a Plan or as an entity whose assets constitute "plan assets".

Section 8.02 NON-RELATIONSHIP. Borrower hereby represents warrants and agrees that neither Borrower, OP, Wells Chicago Center, nor REIT (all as defined below) is (i) a director or officer of Metropolitan Life Insurance Company ("**MetLife**"), (ii) a parent, son or daughter of a director or officer of MetLife, or a descendent of any of them, (iii) a stepparent, adopted child, stepson or step daughter of a director or officer of MetLife, or (iv) a spouse of a director or officer of MetLife. Borrower also hereby represents warrants and agrees that neither Borrower, nor OP or REIT (as hereinafter defined) is a "foreign person" within the meaning of Sections 1445 and 1701 of the Internal Revenue Code of 1986, and amendments of such Code or regulations promulgated pursuant to such Code.

Section 8.03 NO ADVERSE CHANGE.

Borrower represents and warrants that:

(a) there has been no material adverse change from the conditions shown in the application submitted for the Loan by Borrower (“**Application**”) or in the materials submitted in connection with the Application in the credit rating or financial condition of Borrower, OP, REIT or Wells Chicago Center (all as defined below), respectively as the case may be (collectively, “**Borrower’s Constituents**”).

(b) Borrower has delivered to Lender true and correct copies of all Borrower’s organizational documents and except as expressly approved by Lender in writing, there have been no changes in Borrower’s Constituents since the date that the Application was executed by Borrower.

(c) Neither Borrower, nor any of the Borrower’s Constituents, is involved in any bankruptcy, reorganization, insolvency, dissolution or liquidation proceeding, and to the best knowledge of Borrower, no such proceeding is contemplated or threatened.

**ARTICLE IX
EXCULPATION AND LIABILITY**

Section 9.01 LIABILITY OF BORROWER.

(a) Upon the occurrence of an Event of Default, except as provided in this Section 9.01, Lender will look solely to the Property and the security under the Loan Documents for the repayment of the Loan and will not enforce a deficiency judgment against Borrower. However, nothing contained in this section shall limit the rights of Lender to proceed against Borrower and the general partners of Borrower and/or the Liable Parties, if any, (i) to enforce any leases entered into by Borrower or its affiliates as tenant, guarantees, or other agreements entered into by Borrower in a capacity other than as borrower or any policies of insurance; (ii) to recover damages for fraud or material misrepresentation, material breach of warranty or waste; (iii) to recover any Condemnation Proceeds or Insurance Proceeds or other similar funds which have been misapplied by Borrower or which, under the terms of the Loan Documents, should have been paid to Lender; (iv) to recover any tenant security deposits, tenant letters of credit or other deposits or fees paid to Borrower that are part of the collateral for the Loan or prepaid rents for a period of more than 30 days which have not been delivered to Lender; (v) to recover Rents and Profits received by Borrower after the first day of the month in which an Event of Default occurs and prior to the date Lender acquires title to the Property which have not been applied to the Loan or in accordance with the Loan Documents to operating and maintenance expenses of the Property; (vi) to recover damages, costs and expenses arising from, or in connection with the provisions of this Mortgage pertaining to hazardous materials or the Unsecured Indemnity Agreement; (vii) to recover all amounts due and payable pursuant to Sections 11.06 and 11.07 of this Mortgage and any amounts expended by Lender in connection with the foreclosure of this Mortgage; (viii) to recover damages arising from Borrower’s failure to comply with the provisions of the Mortgage pertaining to ERISA; and/or (ix) to recover damages, costs and expenses arising from, or in connection with Borrower’s failure to pay any Premiums or Impositions.

(b) The limitation of liability set forth in this Section 9.01 shall not apply and the Loan shall be fully recourse in the event that (a) there is a violation of Sections 10.01 or 10.02 of this Mortgage, or (b) prior to the repayment of the Aggregate Indebtedness, that Borrower commences a voluntary bankruptcy or insolvency proceeding or an involuntary bankruptcy or insolvency proceeding is commenced against Borrower and is not dismissed within 90 days of filing. In addition, this agreement shall not waive any rights which Lender would have under any provisions of the U.S. Bankruptcy Code to file a claim for the full amount of the Secured Indebtedness or to require that the Property shall continue to secure all of the Secured Indebtedness.

ARTICLE X
CHANGE IN OWNERSHIP, CONVEYANCE OF PROPERTY

Section 10.01 CONVEYANCE OF PROPERTY, CHANGE IN OWNERSHIP AND COMPOSITION.

(a) Except as expressly permitted in Section 10.01(c) and (d) herein, Borrower shall not cause or permit: (i) any part of the Property or any interest in the Property, to be conveyed, transferred, assigned, encumbered, sold or otherwise disposed of, or (ii) any transfer, assignment or conveyance of any interest in the Borrower or in the parties, or stockholders, or members or beneficiaries of, Borrower or of any of Borrower's Constituents, or (iii) any merger, reorganization, dissolution or other change in the ownership structure of Borrower or any of the general partners of Borrower, including, without limitation, any conversion of the Borrower or any general partner of Borrower from a general partnership to a limited partnership, a limited liability partnership or a limited liability company (collectively, "**Transfers**").

(b) The prohibitions on transfer shall not be applicable to (i) Transfers as a result of the death of a natural person who is one of Borrower's Constituents; or (ii) Transfers in connection with estate planning by a natural person to a spouse, son or daughter or descendant of either, a stepson or stepdaughter or descendant of either.

(c) Transfers of (i) stock in Wells Real Estate Investment Trust, Inc. ("REIT") and/or (ii) partnership interests in Wells Operating Partnership, LP ("OP") shall not be restricted so long as REIT remains the sole general partner holding at least a 90% general partnership interest in OP, OP remains the sole member of Wells REIT-Chicago Center, Chicago, LLC ("Wells Chicago Center") and Wells Chicago Center remains the sole member of Borrower.

(d) Notwithstanding anything contained herein to the contrary, the Borrower shall have a right to transfer the Property up to two (2) times, subject to the following conditions: (i) there being no Event of Default under the Loan Documents or the Indemnity Agreement at the time of the transfer, (ii) Lender's approval of the transferee, said approval not to be unreasonably withheld if the other requirements of this Section 10.1(d) are satisfied, (iii) the transferee shall be able to make and shall make the ERISA representations set forth in Sections 8.1 and 8.2 of this Mortgage, (iv) the cash flow, in the opinion of Lender, derived from the Property shall be no less than 3.5 times the annual payments required under the Loan, (v) the loan to value ratio of the Property at the time of the transfer shall not be greater than 45%, (vi) Borrower or the transferee shall pay a fee equal to (x) one half of one percent (.5%) of the outstanding principal balance of the Note at the time of the assumption together with a processing fee in the amount of \$25,000 for the first such transfer and (y) one percent (1%) of the outstanding principal balance of the Note at the time of the assumption together with a processing fee of \$25,000 for the second such transfer, (vii) the transferee shall expressly assume the Loan Documents and the Indemnity Agreement in a manner satisfactory to Lender, and additional Liable Parties acceptable to Lender shall execute a Guaranty with respect to events arising or occurring under Section 9.01 above from and after the date of the transfer, which additional Liable Parties and transferee must have (in the aggregate if more than one) a net worth of not less than \$500,000,000.00, (viii) the transferee or its affiliates must be experienced in the ownership, management and leasing of properties similar to the Property, and (ix) Borrower or transferee shall pay all costs and expenses incurred by Lender in connection with the transfer, including title insurance premiums, documentation costs and reasonable attorneys' fees. No transfer shall release Borrower or Liable Parties, if any, from their obligations under the Loan Documents or the Indemnity Agreement with respect to events arising or occurring prior to the date of transfer.

Section 10.02 PROHIBITION ON SUBORDINATE FINANCING.

(a) Except as specifically set forth in Section 10.02(b) below, Borrower shall not incur or permit the incurring of (i) any financing in addition to the Loan that is secured by a lien, security interest or other encumbrance of any part of the Property or (ii) any pledge or encumbrance of a partnership, member or shareholder or beneficial interest in Borrower.

(b) As used herein “**Mezzanine Financing**” shall mean any loan to a shareholder, member or partner in Borrower (currently, Wells Chicago Center which is Borrower’s sole member) secured by a pledge of or security interest in such shareholder’s, member’s or partner’s, as applicable, beneficial interest in Borrower. Mezzanine Financing shall be permitted in connection with a permitted Transfer as set forth in Section 10.01(d) if and only if Lender shall have been provided with a first opportunity to offer such Mezzanine Financing and Borrower has otherwise complied with the terms and conditions of this Section 10.02(b). If Borrower desires Mezzanine Financing, then Borrower shall deliver written notice (“**Mezzanine Financing Notice**”) to Lender indicating Borrower’s desire for Mezzanine Financing and a request for proposal. Borrower shall not be permitted to deliver a Mezzanine Financing Notice at any time an Event of Default then exists. During the forty-five (45) day period following Lender’s receipt of the Mezzanine Financing Notice, Lender and Borrower shall negotiate in good faith to arrange Mezzanine Financing. During such forty-five (45) day period, Borrower shall negotiate exclusively and in good faith with Lender with respect to the Mezzanine Financing. If (a) Lender provides written notice to Borrower that Lender will not submit a proposal; or (b) Borrower and Lender are unable to agree upon terms with respect to such Mezzanine Financing within the forty-five (45) day period, then upon written notice to Lender, Borrower may pursue the arrangement of Mezzanine Financing from a third party lender subject to the following conditions: (i) there is no Event of Default under the Loan Documents or the Indemnity Agreement at the time of the Mezzanine Financing; (ii) the total (including the Loan and the amount of the Mezzanine Financing) loan to value ratio, as determined by Lender, at the time of the Mezzanine Financing shall not exceed 65%; (iii) the cash flow, in the opinion of Lender, derived from the Property shall be no less than 2.25 times the annual payments required under the Loan and Mezzanine Financing; (iv) the Mezzanine Financing is not secured by a lien, security interest or other encumbrance on any part of the Property; (v) the lender of the Mezzanine Financing (“**Mezzanine Lender**”) shall be an institutional lender approved by Lender; (vi) an intercreditor agreement, in form satisfactory to Lender, shall be executed by Lender and Mezzanine Lender; (vii) in addition to any transfer fee required under Section 10.01(d), Borrower shall pay a fee equal to one half of one percent (.5%) of the outstanding principal balance of the Note at the time of the Mezzanine Financing; provided, however, if Borrower accepts Lender’s financing proposal, the fee set forth in this subclause (vii) shall be waived; (viii) the Mezzanine Financing shall be fixed rate financing; and (ix) Borrower shall pay all costs and expenses incurred by Lender in connection with the Mezzanine Financing, including title insurance premiums, documentation costs and reasonable attorneys’ fees. This right to Mezzanine Financing shall apply to both transfer rights set forth in Section 10.01 herein.

Section 10.03 RESTRICTIONS ON ADDITIONAL OBLIGATIONS. During the term of the Loan, Borrower shall not, without the prior written consent of Lender, become liable with respect to any indebtedness or other obligation relating to the Property or secured by any interest in Borrower except for (i) the Loan, (ii) Leases entered into in the ordinary course of owning and operating the Property for the Use, (iii) other liabilities incurred in the ordinary course of owning and operating the Property for the Use but excluding any loans or borrowings, (iv) liabilities or indebtedness disclosed in writing to and approved by Lender on or before the Execution Date, and (v) any other single item of indebtedness or liability which does not exceed \$50,000 or, when aggregated with other items or indebtedness or liability, does not exceed \$250,000.

Section 10.04 STATEMENTS REGARDING OWNERSHIP. Borrower agrees to submit or cause to be submitted to Lender within thirty (30) days after December 31st of each calendar year during the term of this Mortgage and ten (10) days after any written request by Lender, a sworn, notarized certificate, signed by an authorized (i) individual who is Borrower or one of the individuals comprising Borrower, (ii) member of Borrower, (iii) partner of Borrower or (iv) officer of Borrower, as the case may be, stating whether (x) any part of the Property, or any interest in the Property, has been conveyed, transferred, assigned, encumbered, or sold, and if so, to whom; (y) any conveyance, transfer, pledge or encumbrance of any interest in Borrower has been made by Borrower, and if so, to whom; or (z) there has been any change in the individual(s) comprising Borrower or in the partners, members, stockholders or beneficiaries of Borrower from those on the Execution Date, and if so, a description of such change or changes.

ARTICLE XI DEFAULTS AND REMEDIES

Section 11.01 EVENTS OF DEFAULT. Any of the following shall be deemed to be a material breach of Borrower's covenants in this Mortgage and shall constitute a default ("Event of Default"):

- (a) The failure of Borrower to pay any installment of principal, interest or principal and interest, any required escrow deposit or any other sum required to be paid under any Loan Document, whether to Lender or otherwise, within seven (7) days of the due date of such payment;
- (b) The failure of Borrower to perform or observe any other term, provision, covenant, condition or agreement under any Loan Document for a period of more than thirty (30) days after receipt of notice of such failure, provided, however, that if such failure requires more than thirty (30) days to remedy, Borrower shall have an additional reasonable time not to exceed a total of ninety (90) days to remedy such failure provided Borrower commences such remedy within the initial thirty (30) days and diligently continues such remedy thereafter;
- (c) The filing by Borrower or one of the Liable Parties of a voluntary petition or application for relief in bankruptcy, the filing against Borrower of an involuntary petition or application for relief in bankruptcy which is not dismissed within ninety (90) days, or Borrower's or Liable Parties' adjudication as a bankrupt or insolvent, or the filing by Borrower or Liable Parties of any petition, application for relief or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law, code or regulation relating to bankruptcy, insolvency or other relief for debtors, or Borrower's seeking or consenting to or acquiescing in the appointment of any trustee, custodian, conservator, receiver or liquidator of Borrower or of all or any substantial part of the Property or of any or all of the Rents and Profits, or the making of any general assignment for the benefit of creditors, or the admission in writing of its inability to pay its debts generally as they become due;
- (d) If any warranty, representation, certification, financial statement or other information made or furnished at any time pursuant to the terms of the Loan Documents by Borrower, or by any person or entity otherwise liable under any Loan Document shall be materially false or misleading when made; or
- (e) If Borrower shall suffer or permit the Property, or any part of the Property, to be used in a manner that might (1) impair Borrower's title to the Property, (2) create rights of adverse use or possession to any material portion of the Property, or (3) constitute an implied dedication of any material part of the Property.

Section 11.02 REMEDIES UPON DEFAULT. Upon the happening of an Event of Default the Secured Indebtedness shall, at the option of Lender, become immediately due and payable, without further notice or demand, and Lender may undertake any one or more of the following remedies:

(a) **Foreclosure.** Institute a foreclosure action in accordance with the law of the State, or take any other action as may be allowed, at law or in equity, for the enforcement of the Loan Documents and realization on the Property or any other security afforded by the Loan Documents. In the case of a judicial proceeding, Lender may proceed to final judgment and execution for the amount of the Secured Indebtedness owed as of the date of the judgment, together with all costs of suit, reasonable attorneys' fees and interest on the judgment at the maximum rate permitted by law from the date of the judgment until paid. If Lender is the purchaser at the foreclosure sale of the Property, the foreclosure sale price shall be applied against the total amount due Lender; and/or

(b) **Power of Sale.** [INTENTIONALLY DELETED]

(c) **Entry.** Enter into possession of the Property, lease the Improvements, collect all Rents and Profits and, after deducting all costs of collection and administration expenses, apply the remaining Rents and Profits in such order and amounts as Lender, in Lender's sole discretion, may elect to the payment of Impositions, operating costs, costs of maintenance, restoration and repairs, Premiums and other charges, including, but not limited to, costs of leasing the Property and fees and costs of counsel and receivers, and in reduction of the Secured Indebtedness; and/or

(d) **Receivership.** Have a receiver appointed to enter into possession of the Property, lease the Property, collect the Rents and Profits and apply them as the appropriate court may direct. Lender shall be entitled to the appointment of a receiver without the necessity of proving either the inadequacy of the security or the insolvency of Borrower or any Liable Parties. Borrower and Liable Parties shall be deemed to have consented to the appointment of the receiver. The collection or receipt of any of the Rents and Profits by Lender or any receiver shall not affect or cure any Event of Default.

Section 11.03 APPLICATION OF PROCEEDS OF SALE. In the event of a sale of the Property pursuant to Section 11.02 of this Mortgage, to the extent permitted by law, the Lender shall determine in its sole discretion the order in which the proceeds from the sale shall be applied to the payment of the Secured Indebtedness, including without limitation, the expenses of the sale and of all proceedings in connection with the sale, including reasonable attorneys' fees and expenses; Impositions, Premiums, liens, and other charges and expenses; the outstanding principal balance of the Secured Indebtedness; any accrued interest; any Prepayment Fee; and any other amounts owed under any of the Loan Documents.

Section 11.04 [INTENTIONALLY DELETED.]

Section 11.05 LENDER'S RIGHT TO PERFORM BORROWER'S OBLIGATIONS. Borrower agrees that, if Borrower fails to perform any act or to pay any money which Borrower is required to perform or pay under the Loan Documents and any such failure is not remedied within any applicable grace, notice or cure period, Lender may make the payment or perform the act at the cost and expense of Borrower and in Borrower's name or in its own name. Any money paid by Lender under this Section 11.05 shall be reimbursed to Lender in accordance with Section 11.06.

Section 11.06 LENDER REIMBURSEMENT. All payments made, or funds expended or advanced by Lender pursuant to the provisions of any Loan Document, shall (1) become a part of the Secured Indebtedness, (2) bear interest at the Interest Rate (as defined in the Note) from the date such payments are

made or funds expended or advanced, (3) become due and payable by Borrower upon demand by Lender, and (4) bear interest at the Default Rate (as defined in the Note) from the date of such demand. Borrower shall reimburse Lender within ten (10) days after receipt of written demand for such amounts.

Section 11.07 FEES AND EXPENSES. If Lender becomes a party (by intervention or otherwise) to any action or proceeding affecting, directly or indirectly, Borrower, the Property or the title thereto or Lender's interest under this Mortgage, or employs an attorney to collect any of the Secured Indebtedness or to enforce performance of the obligations, covenants and agreements of the Loan Documents, Borrower shall reimburse Lender in accordance with Section 11.06 for all expenses, costs, charges and legal fees incurred by Lender (including, without limitation, the fees and expenses of experts and consultants), whether or not suit is commenced.

Section 11.08 WAIVER OF CONSEQUENTIAL DAMAGES. Borrower covenants and agrees that in no event shall Lender be liable for consequential damages, and to the fullest extent permitted by law, Borrower expressly waives all existing and future claims that it may have against Lender for consequential damages.

ARTICLE XII BORROWER AGREEMENTS AND FURTHER ASSURANCES

Section 12.01 PARTICIPATION AND SALE OF LOAN.

(a) Lender may sell, transfer or assign its entire interest or one or more participation interests in the Loan, the Loan Documents and the Indemnity Agreement at any time and from time to time, including, without limitation, its rights and obligations as servicer of the Loan. Lender may not issue mortgage pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement (the "**Securities**"). Lender may forward to each purchaser, transferee, assignee, servicer or participant (collectively, the "**Investor**"), all documents and information which Lender now has or may hereafter acquire relating to the Secured Indebtedness and to Borrower or any Liable Parties and the Property, whether furnished by Borrower, any Liable Parties or otherwise, as Lender determines necessary or desirable.

(b) Borrower will cooperate with the Lender and the Investor in furnishing any information required by the Loan Documents and providing such other assistance, reports and legal opinions as the Lender may reasonably request in connection with any such transaction. In addition, Borrower acknowledges that Lender may release or disclose to potential purchasers or transferees of the Loan, or potential participants in the Loan, originals or copies of the Loan Documents, title information, engineering reports, financial statements, operating statements, appraisals, leases, rent rolls, and all other materials, documents and information in Lender's possession or which Lender is entitled to receive under the Loan Documents, with respect to the Loan, Borrower, Liable Parties or the Property. Borrower shall also furnish to such Investors or such prospective Investors any and all information required by the Loan Documents concerning the Property, the Leases and the financial condition of Borrower or any Liable Parties as may be requested by Lender, any Investor or any prospective Investor in connection with any sale, transfer or participation interest.

Section 12.02 REPLACEMENT OF NOTE. Upon notice to Borrower of the loss, theft, destruction or mutilation of the Note, Borrower will execute and deliver, in lieu of the original Note, a replacement note, identical in form and substance to the Note and dated as of the Execution Date. Upon the execution and delivery of the replacement note, all references in any of the Loan Documents to the Note shall refer to the replacement note.

Section 12.03 BORROWER'S OR LENDER'S ESTOPPEL. Within ten (10) days after a request by Lender, Borrower shall furnish an acknowledged written statement in form satisfactory to Lender (i) setting forth the amount of the Secured Indebtedness, (ii) stating either that no offsets or defenses exist against the Secured Indebtedness, or if any offsets or defenses are alleged to exist, their nature and extent, (iii) whether any default then exists under the Loan Documents or any event has occurred and is continuing, which, with the lapse of time, the giving of notice, or both, would constitute such a default, and (iv) any other matters as Lender may reasonably request. If Borrower does not furnish an estoppel certificate within the 10-day period, Borrower appoints Lender as its attorney-in-fact to execute and deliver the certificate on its behalf, which power of attorney shall be coupled with an interest and shall be irrevocable. Within ten (10) days after a request by Borrower, Lender shall furnish an acknowledged written statement setting forth (i) the amount of the Secured Indebtedness, and (ii) to Lender's knowledge, whether any default then exists under the Loan Documents or any event has occurred and is continuing, which, with the lapse of time, the giving of notice, or both, would constitute such a default.

Section 12.04 FURTHER ASSURANCES. Borrower shall, without expense to Lender, execute, acknowledge and deliver all further acts, deeds, conveyances, mortgages, deeds of trust, assignments, security agreements, and financing statements as Lender shall from time to time reasonably require, to assure, convey, assign, transfer and confirm unto Lender the Property and rights conveyed or assigned by this Mortgage or which Borrower may become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or any of the other Loan Documents, or for filing, refiling, registering, reregistering, recording or re-recording this Mortgage. If Borrower fails to comply with the terms of this Section, Lender may, at Borrower's expense, perform Borrower's obligations for and in the name of Borrower, and Borrower hereby irrevocably appoints Lender as its attorney-in-fact to do so. The appointment of Lender as attorney-in-fact is coupled with an interest.

Section 12.05 SUBROGATION. Lender shall be subrogated to the lien of any and all encumbrances against the Property paid out of the proceeds of the Loan and to all of the rights of the recipient of such payment.

ARTICLE XIII SECURITY AGREEMENT

Section 13.01 SECURITY AGREEMENT.

THIS MORTGAGE CREATES A LIEN ON THE PROPERTY. IN ADDITION, TO THE EXTENT THE PROPERTY IS PERSONAL PROPERTY OR FIXTURES UNDER APPLICABLE LAW, THIS MORTGAGE CONSTITUTES A SECURITY AGREEMENT UNDER THE ILLINOIS UNIFORM COMMERCIAL CODE (THE "U.C.C.") AND ANY OTHER APPLICABLE LAW AND IS FILED AS A FIXTURE FILING. UPON THE OCCURRENCE OF AN EVENT OF DEFAULT, LENDER MAY, AT ITS OPTION, PURSUE ANY AND ALL RIGHTS AND REMEDIES AVAILABLE TO A SECURED PARTY WITH RESPECT TO ANY PORTION OF THE PROPERTY, AND/OR LENDER MAY, AT ITS OPTION, PROCEED AS TO ALL OR ANY PART OF THE PROPERTY IN ACCORDANCE WITH LENDER'S RIGHTS AND REMEDIES WITH RESPECT TO THE LIEN CREATED BY THIS MORTGAGE. THIS FINANCING STATEMENT SHALL REMAIN IN EFFECT AS A FIXTURE FILING UNTIL THIS MORTGAGE IS RELEASED OR SATISFIED OF RECORD.

Section 13.02 REPRESENTATIONS AND WARRANTIES.

Borrower warrants, represents and covenants as follows:

(a) Borrower owns the Personal Property free from any lien, security interest, encumbrance or adverse claim, except as otherwise expressly approved by Lender in writing. Borrower will notify Lender of, and will protect, defend and indemnify Lender against, all claims and demands of all persons at any time claiming any rights or interest in the Personal Property.

(b) The Personal Property has not been used and shall not be used or bought for personal, family, or household purposes, but shall be bought and used solely for the purpose of carrying on Borrower's business.

(c) Borrower will not remove the Personal Property without the prior written consent of Lender, except the items of Personal Property which are consumed or worn out in ordinary usage shall be promptly replaced by Borrower with other Personal Property of value equal to or greater than the value of the replaced Personal Property.

Section 13.03 CHARACTERIZATION OF PROPERTY. The grant of a security interest to Lender in this Mortgage shall not be construed to limit or impair the lien of this Mortgage or the rights of Lender with respect to any property which is real property or which the parties have agreed to treat as real property. To the fullest extent permitted by law, everything used in connection with the production of Rents and Profits is, and at all times and for all purposes and in all proceedings, both legal and equitable, shall be regarded as real property, irrespective of whether or not the same is physically attached to the Land and/or Improvements.

Section 13.04 PROTECTION AGAINST PURCHASE MONEY SECURITY INTERESTS. It is understood and agreed that in order to protect Lender from the effect of U.C.C. Section 9-313, as amended from time to time and as enacted in the State, in the event that Borrower intends to purchase any goods which may become fixtures attached to the Property, or any part of the Property, and such goods will be subject to a purchase money security interest held by a seller or any other party:

(a) Before executing any security agreement or other document evidencing or perfecting the security interest, Borrower shall obtain the prior written approval of Lender. All requests for such written approval shall be in writing and contain the following information: (i) a description of the fixtures (ii) the address at which the fixtures will be located; and (iii) the name and address of the proposed holder and proposed amount of the security interest.

(b) Borrower shall pay all sums and perform all obligations secured by the security agreement. A default by Borrower under the security agreement shall constitute a default under this Mortgage. If Borrower fails to make any payment on an obligation secured by a purchase money security interest in the Personal Property or any fixtures, Lender, at its option, may pay the secured amount and Lender shall be subrogated to the rights of the holder of the purchase money security interest.

(c) Lender shall have the right to acquire by assignment from the holder of the security interest for the Personal Property or fixtures, all contract rights, accounts receivable, negotiable or non-negotiable instruments, or other evidence of indebtedness and to enforce the security interest as assignee.

(d) The provisions of subparagraphs (b) and (c) of this Section 13.04 shall not apply if the goods which may become fixtures are of at least equivalent value and quality as the Personal Property being replaced and if the rights of the party holding the security interest are expressly subordinated to the lien and security interest of this Mortgage in a manner satisfactory to Lender.

ARTICLE XIV MISCELLANEOUS COVENANTS

Section 14.01 NO WAIVER. No single or partial exercise by Lender, or delay or omission in the exercise by Lender, of any right or remedy under the Loan Documents shall preclude, waive or limit the exercise of any other right or remedy. Lender shall at all times have the right to proceed against any portion of, or interest in, the Property without waiving any other rights or remedies with respect to any other portion of the Property. No right or remedy under any of the Loan Documents is intended to be exclusive of any other right or remedy but shall be cumulative and may be exercised concurrently with or independently from any other right and remedy under any of the Loan Documents or under applicable law.

Section 14.02 NOTICES. All notices, demands and requests given or required to be given by, pursuant to, or relating to, this Mortgage shall be in writing. All notices shall be deemed to have been properly given if mailed by United States registered or certified mail, with return receipt requested, postage prepaid, or by United States Express Mail or other comparable overnight courier service to the parties at the addresses set forth in the Defined Terms (or at such other addresses as shall be given in writing by any party to the others) and shall be deemed complete upon receipt or refusal to accept delivery as indicated in the return receipt or in the receipt of such United States Express Mail or courier service.

Section 14.03 HEIRS AND ASSIGNS; TERMINOLOGY.

(a) This Mortgage applies to Lender, and Borrower, and their heirs, legatees, devisees, administrators, executors, successors and assigns. The term "Borrower" shall include both the original Borrower and any subsequent owner or owners of any of the Property.

(b) In this Mortgage, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

Section 14.04 SEVERABILITY. If any provision of this Mortgage should be held unenforceable or void, then that provision shall be separated from the remaining provisions and shall not affect the validity of this Mortgage except that if the unenforceable or void provision relates to the payment of any monetary sum, then, Lender may, at its option, declare the Secured Indebtedness immediately due and payable.

Section 14.05 APPLICABLE LAW. This Mortgage shall be construed and enforced in accordance with the laws of the State.

Section 14.06 CAPTIONS. The captions are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope or intent of any provisions of this Mortgage.

Section 14.07 TIME OF THE ESSENCE. Time shall be of the essence with respect to all of Borrower's obligations under this Mortgage and the other Loan Documents.

Section 14.08 NO MERGER. In the event that Lender should become the owner of the Property, there shall be no merger of the estate created by this Mortgage with the fee estate in the Property.

Section 14.09 NO MODIFICATIONS. This Mortgage may not be changed, amended or modified, except in a writing expressly intended for such purpose and executed by Borrower and Lender.

**ARTICLE XV
NON-UNIFORM COVENANTS**

Section 15.01 USE OF PROCEEDS. The Borrower represents and agrees that the Secured Indebtedness is exempt from the limitation upon the amount of interest that may be charged under 815 ILCS 205/4 for one or more of the reasons set forth in such statute, and the Secured Indebtedness constitutes a business loan which comes within the purview of 815 ILCS 205/4.

Section 15.02 LIMITATION ON SECURED INDEBTEDNESS. It is expressly understood and agreed that the Secured Indebtedness will in no event exceed two hundred percent (200%) of (i) the total face amount of the Note plus (ii) the total interest which may hereafter accrue under the Note on such face amount.

Section 15.03 WAIVER OF HOMESTEAD AND REDEMPTION. To the extent permitted by applicable law, Borrower releases and waives all rights under the homestead and exemption laws of the State of Illinois. Borrower acknowledges that the Property does not include "agricultural real estate" or "residential real estate" as those terms are defined in 735 ILCS 5/15-1201 and 5/15-1219. Pursuant to 735 ILCS 5/15-1601(b) Borrower waives any and all rights of redemption from sale under any order of foreclosure of this Mortgage or other rights of redemption which may run to Borrower or any other "Owner of Redemption", as that term is defined in 735 ILCS 5/15-1212. Borrower waives all rights of reinstatement under 735 ILCS 5/15-1602 to the fullest extent permitted by Illinois law.

Section 15.04 WAIVER OF JURY TRIAL. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER AND LENDER HEREBY WAIVE THEIR RESPECTIVE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING AND/OR HEARING ON ANY MATTER WHATSOEVER ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THE NOTE, THIS MORTGAGE OR ANY OF THE LOAN DOCUMENTS, OR THE ENFORCEMENT OF ANY REMEDY UNDER ANY LAW, STATUTE, OR REGULATION. NEITHER PARTY WILL SEEK TO CONSOLIDATE ANY SUCH ACTION IN WHICH A JURY HAS BEEN WAIVED, WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. EACH PARTY HAS RECEIVED THE ADVICE OF COUNSEL WITH RESPECT TO THIS WAIVER.

Section 15.05 SECURITIES LAWS. The membership interests evidenced by the Borrower's Organizational Documents have been issued in accordance with all applicable federal and state securities laws, or authorized exemptions from such securities laws, including, but not limited to, the Securities Act of 1933, as amended, the Securities and Exchange Act of 1934, and the Illinois Securities Law of 1953, 815 ILCS 5/1 *et seq.*, as amended. The membership interests of Borrower have not been issued in violation of any federal, state or local securities law, and to the extent that these securities have been issued in reliance on exemptions from such federal or state securities law, all necessary steps have been taken to qualify for such exemptions. The members of Borrower have been properly notified of the restrictions on their ability to transfer, sell or otherwise dispose of their membership interests in Borrower. The name of Lender is not and will not be in any of the offering materials provided or to be provided to any person; provided, however, Borrower may disclose in writing the name of Lender to its members provided such disclosure specifically references the name of Lender in a lender's capacity only. There has not been any representation, whether written, oral or otherwise, that Lender in any way has participated or endorsed the offering of the membership interests in Borrower.

[execution page follows]

IN WITNESS WHEREOF, Borrower has executed this Mortgage, or has caused this Mortgage to be executed by its duly authorized representative(s) as of the Execution Date.

BORROWER:

WELLS REIT-Chicago Center Owner, LLC,
a Delaware limited liability company

By: Wells REIT-Chicago Center, Chicago, LLC, a Delaware
limited liability company, its sole member

By: Wells Operating Partnership, L.P. a Delaware
limited partnership, its sole member

By: Wells Real Estate Investment Trust, Inc., its
sole general partner

By: _____

Name: _____

Its: _____

STATE OF GEORGIA)
) ss.
COUNTY OF GWINNETT)

On _____, 2004, before me, _____ a Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature_____ (Seal)

My commission expires:_____

LOAN AGREEMENT (MULTI-STATE)

Dated as of May 21, 2004

Between

**WELLS REIT – AUSTIN, TX, L.P., WELLS REIT – MULTI-STATE OWNER, LLC,
WELLS REIT – NASHVILLE, TN, LLC and WELLS REIT – BRIDGEWATER, NJ, LLC**
as Borrowers

and

MORGAN STANLEY MORTGAGE CAPITAL INC.,
as Lender

TABLE OF CONTENTS

	Page
I. DEFINITIONS; PRINCIPLES OF CONSTRUCTION	
Section 1.1 Definitions	1
Section 1.2 Principles of Construction	22
II. THE LOAN	
Section 2.1 The Loan	22
2.1.1 Agreement to Lend and Borrow	22
2.1.2 Single Disbursement to Borrower	22
2.1.3 The Note	22
2.1.4 Use of Proceeds	22
2.1.5 Modification of the Components.	22
Section 2.2 Interest Rate	23
2.2.1 Interest Rate	23
2.2.2 Default Rate	23
2.2.3 Interest Calculation	23
2.2.4 Usury Savings	23
Section 2.3 Loan Payments	24
2.3.1 Payment Before Maturity Date	24
2.3.2 Payment on Maturity Date	24
2.3.3 Late Payment Charge	24
2.3.4 Method and Place of Payment	24
Section 2.4 Prepayments	24
2.4.1 Voluntary Prepayments	24
2.4.2 Mandatory Prepayments	25
2.4.3 Prepayments After Default	25
Section 2.5 Defeasance	25
2.5.1 Total Defeasance	25
2.5.2 Partial Defeasance	28
2.5.3 Additional Partial Defeasance Collateral	31
2.5.4 Defeasance Collateral Account	32
2.5.5 Successor Borrower	33
Section 2.6 Substitution of Properties	34
III. REPRESENTATIONS AND WARRANTIES	
Section 3.1 Borrower Representations	41
3.1.1 Organization	41
3.1.2 Proceedings	42
3.1.3 No Conflicts	42

3.1.4	Litigation	42
3.1.5	Agreements	42
3.1.6	Consents	42
3.1.7	Title	43
3.1.8	No Plan Assets	43
3.1.9	Compliance	43
3.1.10	Financial Information	44
3.1.11	Condemnation	44
3.1.12	Utilities and Public Access	44
3.1.13	Separate Lots	44
3.1.14	Assessments	44
3.1.15	Enforceability	44
3.1.16	Assignment of Leases	44
3.1.17	Insurance	45
3.1.18	Licenses	45
3.1.19	Flood Zone	45
3.1.20	Physical Condition	45
3.1.21	Boundaries	45
3.1.22	Leases	45
3.1.23	Filing and Recording Taxes	46
3.1.24	Single Purpose	46
3.1.25	Intentionally Deleted.	49
3.1.26	Intentionally Deleted.	49
3.1.27	Tax Filings	49
3.1.28	Solvency	50
3.1.29	Federal Reserve Regulations	50
3.1.30	Organizational Chart	50
3.1.31	Bank Holding Company	50
3.1.32	No Other Debt	50
3.1.33	Investment Company Act	50
3.1.34	Access/Utilities	51
3.1.35	No Bankruptcy Filing	51
3.1.36	Full and Accurate Disclosure	51
3.1.37	Foreign Person	51
3.1.38	No Change in Facts or Circumstances; Disclosure	51
3.1.39	Perfection of Accounts	51
3.1.40	REA	52
Section 3.2	Survival of Representations	52
IV. BORROWER COVENANTS		
Section 4.1	Borrower Affirmative Covenants	52
4.1.1	Existence; Compliance with Legal Requirements	52
4.1.2	Taxes and Other Charges	52
4.1.3	Litigation	53
4.1.4	Access to Individual Properties	53

4.1.5	Further Assurances; Supplemental Mortgage Affidavits	54
4.1.6	Financial Reporting	54
4.1.7	Title to the Individual Properties	56
4.1.8	Estoppel Statement	56
4.1.9	Leases	57
4.1.10	Alterations	58
4.1.11	Intentionally Deleted	59
4.1.12	Material Agreements	59
4.1.13	Performance by Borrower	59
4.1.14	Costs of Enforcement/Remedying Defaults	59
4.1.15	Business and Operations	59
4.1.16	Loan Fees	60
Section 4.2	Borrower Negative Covenants	60
4.2.1	Due on Sale and Encumbrance; Transfers of Interests	60
4.2.2	Liens	60
4.2.3	Dissolution	60
4.2.4	Change in Business	60
4.2.5	Debt Cancellation	60
4.2.6	Affiliate Transactions	61
4.2.7	Zoning	61
4.2.8	Assets	61
4.2.9	No Joint Assessment	61
4.2.10	Principal Place of Business	61
4.2.11	ERISA	61
4.2.12	Material Agreements	62
4.2.13	REA	62
V. INSURANCE, CASUALTY AND CONDEMNATION		
Section 5.1	Insurance.	62
5.1.1	Insurance Policies	62
5.1.2	Insurance Company	67
Section 5.2	Casualty and Condemnation	68
5.2.1	Casualty	68
5.2.2	Condemnation	68
5.2.3	Business Interruption Insurance Proceeds	69
Section 5.3	Delivery of Net Proceeds.	69
5.3.1	Minor Casualty or Condemnation	69
5.3.2	Major Casualty or Condemnation	70
VI. RESERVE FUNDS		
Section 6.1	Required Repair Fund	73
6.1.1	Deposit of Required Repair Funds	73
6.1.2	Release of Required Repair Funds	73
Section 6.2	Tax Funds.	74

6.2.1	Deposits of Tax Funds	74
6.2.2	Release of Tax Funds	74
Section 6.3	Insurance Funds.	74
6.3.1	Deposits of Insurance Funds	74
6.3.2	Release of Insurance Funds	75
Section 6.4	Capital Expenditure Funds	75
6.4.1	Deposits of Capital Expenditure Funds	75
6.4.2	Release of Capital Expenditure Funds	75
Section 6.5	Rollover Funds.	77
6.5.1	Deposits of Rollover Funds	77
6.5.2	Release of Rollover Funds	77
Section 6.6	Lease Termination Rollover Funds.	78
6.6.1	Deposits of Rollover Funds	78
6.6.2	Release of Lease Termination Rollover Funds	78
Section 6.7	Ground Rent Funds.	79
6.7.1	Deposits of Ground Rent Funds.	79
6.7.2	Release of Ground Rent Funds.	79
Section 6.8	Application of Reserve Funds	80
Section 6.9	Security Interest in Reserve Funds	80
6.9.1	Grant of Security Interest	80
6.9.2	Income Taxes	80
6.9.3	Prohibition Against Further Encumbrance	80
Section 6.10	Letters of Credit	80
6.10.1	Delivery of Letters of Credit	80
Section 6.11	Provisions Regarding Letters of Credit	81
6.11.1	Security for Debt	81
6.11.2	Additional Rights of Lender	81
VII. PROPERTY MANAGEMENT		
Section 7.1	The Management Agreement	82
Section 7.2	Prohibition Against Termination or Modification	82
Section 7.3	Replacement of Manager	83
VIII. PERMITTED TRANSFERS		
Section 8.1	Permitted Transfer of the Individual Properties	83
Section 8.2	Permitted Transfers of Interest in Borrowers	83
Section 8.3	Permitted Easements.	84
IX. SALE AND SECURITIZATION OF MORTGAGE		
Section 9.1	Sale of Mortgage and Securitization	84
Section 9.2	Securitization Indemnification	85

X. DEFAULTS

Section 10.1	Event of Default	88
Section 10.2	Remedies	91
Section 10.3	Right to Cure Defaults	92
Section 10.4	Remedies Cumulative	92

XI. MISCELLANEOUS

Section 11.1	Successors and Assigns	93
Section 11.2	Lender's Discretion	93
Section 11.3	Governing Law	93
Section 11.4	Modification, Waiver in Writing	95
Section 11.5	Delay Not a Waiver	95
Section 11.6	Notices	95
Section 11.7	Trial by Jury	96
Section 11.8	Headings	96
Section 11.9	Severability	96
Section 11.10	Preferences	97
Section 11.11	Waiver of Notice	97
Section 11.12	Remedies of Borrower	97
Section 11.13	Expenses; Indemnity	97
Section 11.14	Schedules Incorporated	98
Section 11.15	Offsets, Counterclaims and Defenses	98
Section 11.16	No Joint Venture or Partnership; No Third Party Beneficiaries	99
Section 11.17	Publicity.	99
Section 11.18	Cross Default; Cross-Collateralization; Waiver of Marshalling of Assets	99
Section 11.19	Waiver of Offsets/Defenses/Counterclaims	100
Section 11.20	Conflict; Construction of Documents; Reliance	100
Section 11.21	Brokers and Financial Advisors	101
Section 11.22	Exculpation	101
Section 11.23	Prior Agreements	103
Section 11.24	Servicer	103
Section 11.25	Joint and Several Liability	104
Section 11.26	Creation of Security Interest	104
Section 11.27	Assignments and Participations	104
Section 11.28	Set-Off	105

SCHEDULES

Schedule I	–	Rent Roll
Schedule II	–	Required Repairs
Schedule III	–	Organizational Chart
Schedule IV	–	Form of Subordination, Non-Disturbance and Attornment Agreement
Schedule V	–	Individual Properties
Schedule VI	–	Reserved
Schedule VII	–	Description of REA
Schedule VIII	–	Allocated Loan Amounts
Schedule IX	–	The Other Loans
Schedule X	–	Managers and Management Agreements
Schedule XI	–	Exceptions to Representations and Warranties
Schedule XII	–	Form of Estoppel Letter
Schedule XIII	–	Form of Ground Lessor Estoppel

LOAN AGREEMENT

THIS LOAN AGREEMENT (MULTI-STATE), dated as of May 21, 2004 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this "Agreement"), between MORGAN STANLEY MORTGAGE CAPITAL INC., a New York corporation, having an address at 1221 Avenue of the Americas, 27th Floor, New York, New York 10020 ("Lender"), and WELLS REIT – AUSTIN, TX, L.P., a Delaware limited partnership, WELLS REIT – MULTI-STATE OWNER, LLC, WELLS REIT – NASHVILLE, TN, LLC and WELLS REIT – BRIDGEWATER, NJ, LLC, each a Delaware limited liability company and each of the foregoing having an address at c/o Wells Real Estate Funds, 6200 The Corners Parkway, Norcross, Georgia 30092-6040 (individually a "Borrower" and collectively, the "Borrowers").

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

W I T N E S S E T H:

WHEREAS, Borrowers desire to obtain the Loan from Lender; and

WHEREAS, Lender is willing to make the Loan to Borrowers, subject to and in accordance with the conditions and terms of this Agreement and the other Loan Documents.

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

I. DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1 Definitions.

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

"Acquired Properties" shall have the meaning set forth in Section 9.1(c)

"Acquired Property Statements" shall have the meaning set forth in Section 9.1(c).

"Additional Partial Defeasance Collateral" shall mean, in connection with an Additional Partial Defeasance Event, U.S. Obligations which provide payments (i) on or prior to, but as close as possible to, the Business Day immediately preceding all Monthly Payment Dates and other scheduled payment dates, if any, under the Defeased Note issued in connection with such Additional Partial Defeasance Event after the Defeasance Date and up to and including the Maturity 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.

“Additional Partial Defeasance Date” shall have the meaning set forth in Section 2.5.3(a)(i).

“Additional Partial Defeasance Event” shall have the meaning set forth in Section 2.5.3(a).

“Affiliate” shall mean, as to any Person, any other Person that, directly or indirectly, owns more than forty percent (40%) 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. As used in this definition, the term **“control”** means the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise.

“Agent” shall mean LaSalle Bank, National Association and any successor Eligible Institution thereto.

“Allocated Loan Amount” shall mean the portion of the Loan allocated to each Individual Property as set forth on Schedule VIII attached hereto. The Allocated Loan Amount of each Individual Property shall be reduced by the principal amount that the Loan is prepaid pursuant to this Agreement in connection with a Condemnation or Casualty affecting such Individual Property and the Allocated Loan Amount of any Individual Property that is the subject of an Additional Partial Defeasance Event shall be reduced by the amount of the Defeased Note attributable to such Individual Property and created in connection with such Additional Partial Defeasance Event. In addition, and subject to Section 2.5.2(a)(iv), the Allocated Loan Amounts of the Individual Properties securing the Undeferred Note after a Partial Defeasance Event shall be reduced by the amount of the Excess Release Amount that is allocated to the Loan pursuant to Section 2.5.2(a)(iv); provided, however, that the amount of such reduction with respect to each such Individual Property and the Individual Properties that are affected shall be determined by Lender in its reasonable discretion (after consultation with the Borrowers).

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

“Alteration Threshold” shall mean with respect to each Individual Property, three percent (3%) of the Allocated Loan Amount for that Individual Property.

“Annual Budget” shall mean the operating and capital budget for all Individual Properties on a combined basis and for each Individual Property setting forth the related Borrower’s good faith estimate of Gross Revenue, Operating Expenses, and Capital Expenditures for the applicable Fiscal Year.

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

“Assignment of Leases” shall mean, collectively, the First Assignment of Leases and the Second Assignment of Leases.

“Assignment of Management Agreement” shall mean, with respect to each Individual Property and collectively as to the Individual Properties, those certain Assignments of Management Agreement and Subordination of Management Fees dated the date hereof each among the applicable Borrower, the Manager named therein and Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Aventis Lease” shall mean, with respect to the Individual Property located in Bridgewater, New Jersey, that certain lease dated December 22, 2000 between Wells Bridgewater I, LLC, as landlord, and Aventis Inc. (successor to Aventis Pharmaceuticals, Inc.), as tenant, as amended and assigned prior to the date hereof.

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

“Bankruptcy 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.

“Basic Carrying Costs” shall mean, with respect to an Individual Property, the sum of the following costs associated with such Individual Property for the relevant Fiscal Year or payment period: (i) Taxes and (ii) Insurance Premiums.

“Borrower” shall mean, any of the following in its individual capacity: WELLS REIT – AUSTIN, TX, L.P., a Delaware limited partnership, WELLS REIT – MULTI-STATE OWNER, LLC, a Delaware limited liability company, WELLS REIT – NASHVILLE, TN, LLC, a Delaware limited liability company, and WELLS REIT – BRIDGEWATER, NJ, LLC, a Delaware limited liability company, each together with its permitted successors and permitted assigns.

“Borrowers” shall mean, collectively, WELLS REIT – AUSTIN, TX, L.P., a Delaware limited partnership, WELLS REIT – MULTI-STATE OWNER, LLC, a Delaware limited liability company, WELLS REIT – NASHVILLE, TN, LLC, a Delaware limited liability company, and WELLS REIT – BRIDGEWATER, NJ, LLC, a Delaware limited liability company, together with their permitted successors and permitted assigns.

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

“Cap Ex Amount” shall mean, as to each Individual Property, an annual amount equal to the product of (a) \$0.25 multiplied by (b) the number of square feet in the Improvements at such Individual Property.

“Capital Expenditures” for any period shall mean amounts expended for replacements and alterations to the Individual Properties and required to be capitalized according to GAAP.

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

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

“Cash Management Agreement” shall mean that certain Portfolio Cash Management Agreement of even date herewith among Lender, the Borrowers, Wells REIT – Orange County, CA, L.P., Manager, the Other Manager and Agent.

“Casualty” shall mean the occurrence of any casualty, damage or injury, by fire or otherwise, to any of the Individual Properties or any part thereof.

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

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

“Citicorp Lease” shall mean, with respect to the Individual Property located in Englewood Cliffs, New Jersey, that certain Agreement of Lease between MSGW Real Estate Fund, L.L.C., as landlord and Citicorp North America, Inc., as tenant, dated October 24, 1997, as amended by letter dated November 12, 1997, as amended by that certain First Amendment to Lease dated March 26, 1998, as amended that certain Second Amendment to Lease, dated June 3, 1998 and as amended by that certain Third Amendment to Lease, undated but executed May 7, 1999.

“Clearing Account Agreement” shall mean that certain Clearing Account Agreement (Multi-State) dated as of the date hereof, among the Borrowers, Wells REIT – Orange County, CA, L.P., the Lender and the Clearing Bank (as defined therein).

“Clearing Account” shall mean the “Clearing Account” as defined in the Clearing Account Agreement.

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

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

“Component A1” shall mean that portion of the Loan in the amount of Fifty Million Two Hundred Thousand and No/100 Dollars (\$50,200,000.00) made by Lender to Borrowers pursuant to this Agreement.

“Component A1 Rate” shall mean a rate per annum equal to four and eighty-four hundredths percent (4.84%).

“Component A2” shall mean that portion of the Loan in the amount of Forty Million One Hundred Sixty Thousand and No/100 Dollars (\$40,160,000.00) made by Lender to Borrowers pursuant to this Agreement.

“Component A2 Rate” shall mean a rate per annum equal to four and eighty-four hundredths percent (4.84%).

“Component A3” shall mean that portion of the Loan in the amount of Thirty-Five Million One Hundred Forty Thousand and No/100 Dollars (\$35,140,000.00) made by Lender to Borrowers pursuant to this Agreement.

“Component A3 Rate” shall mean a rate per annum equal to four and eighty-four hundredths percent (4.84%).

“Component A4” shall mean that portion of the Loan in the amount of Twenty-Five Million One Hundred Thousand and No/100 Dollars (\$25,100,000.00) made by Lender to Borrowers pursuant to this Agreement.

“Component A4 Rate” shall mean a rate per annum equal to four and eighty-four hundredths percent (4.84%).

“Component A5” shall mean that portion of the Loan in the amount of Fifteen Million Sixty Thousand and No/100 Dollars (\$15,060,000.00) made by Lender to Borrowers pursuant to this Agreement.

“Component A5 Rate” shall mean a rate per annum equal to four and eighty-four hundredths percent (4.84%).

“Component A6” shall mean that portion of the Loan in the amount of Ten Million Forty Thousand and No/100 Dollars (\$10,040,000.00) made by Lender to Borrowers pursuant to this Agreement.

“Component A6 Rate” shall mean a rate per annum equal to four and eighty-four hundredths percent (4.84%).

“Component Rates” means, collectively, the Component A1 Rate, Component A2 Rate, Component A3 Rate, Component A4 Rate, Component A5 Rate and the Component A6 Rate.

“Components” shall mean, collectively, Component A1, Component A2, Component A3, Component A4, Component A5 and Component A6.

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

“Debt” shall mean the outstanding principal amount of the Loan together with all interest accrued and unpaid thereon (including, without limitation, any interest that would accrue on the outstanding principal amount of the Loan through and including the end of any applicable Interest Period) and all other sums (including the Yield Maintenance Premium) due to Lender in respect of the Loan under the Note, this Agreement, the Mortgage, the Environmental Indemnity, the Guaranty of Other Loans, any other Loan Document or any Guaranty Security Document.

“Debt Service” shall mean, with respect to any particular period of time, scheduled principal, if any, and interest payments under the Note.

“Debt Service Coverage Ratio” shall mean (a) with respect to all Individual Properties and the Other Properties, the ratio of (i) Underwritable Cash Flow for the Individual Properties and the Other Properties (to the extent then subject to the liens of the Other Mortgages) for the twelve (12) calendar month period immediately preceding the date of calculation to (ii) the projected Debt Service that would be due for the twelve (12) calendar month period immediately following such calculation under the Note and each “Note” (as defined in the Other Loan Agreements) (to the extent not theretofore prepaid) evidencing the Other Loans, assuming an annual loan constant of nine percent (9.0%) of the aggregate outstanding principal balance of the Loan and the Other Loans as of the date of such calculation and (b) with respect to an Individual Property, the ratio of (y) Underwritable Cash Flow for the subject Individual Property for the immediately preceding twelve (12) calendar month period to (z) the projected Debt Service that would be due with respect to the Allocated Loan Amount applicable to the subject Individual Property for the twelve (12) month period immediately following such calculation based upon an assumed loan constant for such period equal to nine percent (9%) of the Allocated Loan Amount with respect to such Individual Property as of the date of such calculation.

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

“Default Rate” shall mean, with respect to the Loan, a rate per annum equal to the lesser of (i) the maximum rate permitted by applicable law, or (ii) four percent (4.0%) above the Interest Rate.

“Defeasance Collateral Account” shall have the meaning set forth in Section 2.5.3.

“Defeased Note” shall have the meaning set forth in Section 2.5.2(a)(v).

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

“Disclosure Document” shall have the meaning set forth in Section 9.2(a).

“Disclosure Document Date” shall have the meaning set forth in Section 9.1(c)(iv).

“Eligible Account” shall mean an identifiable and separate account which is separate from all other funds held by the holding institution that is either (a) an account or accounts maintained with a federal or state-chartered depository institution or trust company which complies with the definition of Eligible Institution or (b) a segregated trust account or accounts maintained with the corporate trust department of a federal or state chartered depository institution or trust company acting in its fiduciary capacity which, in the case of a 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 federal or state chartered depository institution or trust company insured by the Federal Deposit Insurance Corporation the short term unsecured debt obligations or commercial paper of which are rated at least A-1 by S&P, P-1 by Moody’s and F-1+ by Fitch in the case of accounts in which funds are held for thirty (30) days or less or, in the case of Letters of Credit or accounts in which funds are held for more than thirty (30) days, the long term unsecured debt obligations of which are rated at least “AA” by Fitch and S&P and “Aa2” by Moody’s.

“Environmental Indemnity” shall mean that certain Environmental Indemnity Agreement, dated as of the date hereof, executed by Borrowers 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.

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

“ERISA” shall have the meaning set forth in Section 3.1.8.

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

“Excess Release Amount” shall mean the amount by which the Release Amount exceeds the Allocated Loan Amount of the applicable Individual Property or Individual Properties on the Total Defeasance Date or the Partial Defeasance Date, as the case may be.

“Exchange Act” shall have the meaning set forth in Section 9.2(a).

“Exchange Act Filing” shall have the meaning set forth in Section 9.1(c)(vi).

“Excusable Delay” shall mean a delay due to acts of God, governmental restrictions, stays, judgments, orders, decrees, enemy actions, civil commotion, fire, casualty, strikes, work stoppages, shortages of labor or materials or other causes beyond the reasonable control of Borrowers, but lack of funds in and of itself shall not be deemed a cause beyond the control of Borrowers.

“Extraordinary Expense” shall have the meaning set forth in Section 4.1.6(e).

“First Assignment of Leases” shall mean, with respect to each Individual Property, and collectively as to the Individual Properties, that certain first priority Assignment of Leases and Rents, dated as of the date hereof, executed and delivered by each Borrower, as assignor, as security for its obligations under this Agreement and the Note and encumbering such Individual Property, or collectively encumbering such Individual Properties, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“First Mortgage” shall mean, with respect to each Individual Property, and collectively as to the Individual Properties, a first priority Mortgage (or Deed of Trust, as applicable) and Security Agreement, dated as of the date hereof, executed and delivered each Borrowers as security for its obligations under this Agreement and the Note, and encumbering such Individual Property, or collectively encumbering the Individual Properties, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Fiscal Year” shall mean each twelve month period commencing on January 1 and ending on December 31 during each year of the term of the Loan.

“Fitch” shall mean Fitch, Inc.

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

“Gemini Lease” shall mean, with respect to the Individual Property located in Parsippany, New Jersey, that certain lease dated July 7, 2000, between Wells Operating Partnership, L.P., as landlord, and Exodus Communications, Inc., as tenant, as amended and assigned prior to the date hereof.

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

“Gross Revenue” shall mean all revenue, derived from the ownership and operation of the Individual Properties from whatever source, including, but not limited to, Rents, but excluding sales, use and occupancy or other taxes on receipts required to be accounted for by Borrowers to any Governmental Authority, non-recurring revenues as determined by Lender, proceeds from the sale or refinancing of any Individual Property, security deposits (except to the extent determined by Lender to be properly utilized to offset a loss of Rent), refunds and uncollectible accounts, proceeds of casualty insurance and Awards (other than business interruption or other loss of income insurance related to business interruption or loss of income for the period in question), and any disbursements to Borrowers from the Reserve Funds or any other fund established by the Loan Documents.

“Ground Lease” shall mean any ground lease with a Borrower as the tenant which now or at any time during the term of the Loan becomes a part of the collateral for the Loan in accordance with this Agreement, together with any amendments, restatements, supplements, extensions or other modifications thereto.

“Ground Rent” shall mean any rent, additional rent or other charge payable by the tenant under a Ground Lease.

“Ground Rent Funds” shall have the meaning set forth in Section 6.7.1.

“Guarantor” shall mean Wells Operating Partnership, L.P., a Delaware limited partnership.

“Guarantees” shall mean, collectively, the Guaranty and each other Guaranty of Recourse Carveouts of even date herewith executed by Guarantor for the benefit of the Other Lenders with respect to the Other Loans, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Guaranty” shall mean that certain Guaranty of Recourse Carveouts of even date herewith executed by Guarantor for the benefit of Lender with respect to the Loan, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Guaranty of Other Loans” shall mean those certain Guarantees as to Other Loans executed by each Borrower for the benefit of Lender of even date herewith, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Guaranty Security Documents” shall mean, collectively, the Second Mortgage, the Second Assignment of Leases, the Guaranty of Other Loans, the Subordination of Management Agreement and all other documents now or hereafter executed and/or delivered by each Borrower in connection with, and/or as security for, the Guaranty of Other Loans.

“Harcourt Lease” shall mean, with respect to the Individual Property located in Austin, Texas, that certain Lease, dated December 21, 1999, between Carr Development and Construction, L.P., a Delaware limited partnership, as landlord (successor-in-interest to CarrAmerica Realty, L.P., a Delaware limited partnership, and Harcourt, Inc., a Delaware corporation) and Harcourt, Inc., a Delaware corporation, as tenant, as amended and assigned prior to the date hereof.

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

“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, and (vi) all obligations of such Person under interest rate swaps, caps, floors, collars and other interest hedge agreements, in each case whether such Person is liable contingently or otherwise, as obligor, guarantor or otherwise, or in respect of which obligations such Person otherwise assures a creditor against loss.

“Indemnified Liabilities” shall have the meaning set forth in Section 11.13(b).

“Independent Director” shall have the meaning set forth in Section 3.1.24(p).

“Individual Property” shall mean each parcel of real property, the improvements thereon and all personal property owned by a Borrower and encumbered by a Mortgage, together with all rights pertaining to such property and improvements, as more particularly described in the granting clauses of such Mortgages. The location of each Individual Property is set forth on Schedule V attached hereto.

“Insurance Funds” shall have the meaning set forth in Section 6.3.1.

“Insurance Premiums” shall have the meaning set forth in Section 5.1.1(b).

“Interest Period” shall mean for each interest period commencing June 7, 2004, the period commencing on (and including) the seventh (7th) day of each calendar month and ending on (and including) the sixth (6th) day of the following calendar month. Each Interest Period shall be a full month and shall not be shortened by reason of any payment of the Loan prior to the expiration of such Interest Period.

“Interest Rate” shall mean a rate per annum equal to the applicable Component Rate or the weighted average of all Component Rates, as the context requires.

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

“Lease Termination Fee” shall have the meaning set forth in Section 6.6.1.

“Lease Termination Rollover Funds” shall have the meaning set forth in Section 6.6.1.

“Legal Requirements” shall mean, with respect to a Borrower and each Individual Property, all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting such Borrower or such Individual Property or any part thereof or the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, 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 such Borrower, at any time in force affecting such Individual Property or any part thereof, including, without limitation, any which may (i) require repairs, modifications or alterations in or to such Individual Property or any part thereof, or (ii) in any way limit the use and enjoyment thereof.

“Lender” shall mean Morgan Stanley Mortgage Capital Inc., a New York corporation, together with its successors and assigns and Participants.

“Lender Indemnitees” shall have the meaning set forth in Section 11.13(b).

“Letter of Credit” shall mean an irrevocable, unconditional, transferable, clean sight draft letter of credit acceptable to Lender and the Rating Agencies (either an evergreen letter of credit or one which does not expire until at least thirty (30) Business Days after the Maturity Date) in favor of Lender and entitling Lender to draw thereon in New York, New York, issued by a domestic Eligible Institution or the U.S. agency or branch of a foreign Eligible Institution which shall provide that if at any time the bank issuing any such Letter of Credit shall cease to be an Eligible Institution, Lender shall have the right immediately to draw down the same in full and hold the proceeds of such draw in accordance with the applicable provisions hereof.

“Liabilities” shall have the meaning set forth in Section 9.2(b).

“Lien” shall mean, with respect to each Individual Property, any mortgage, deed of trust, lien, pledge, hypothecation, assignment, security interest, or any other encumbrance, charge or transfer of, on or affecting such Individual Property or any portion thereof or any interest therein, or any interest in a Borrower, including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and mechanic’s, materialmen’s and other similar liens and encumbrances.

“Loan” shall mean the loan in the original principal amount of One Hundred Seventy-Five Million Seven Hundred Thousand and No/100 Dollars (\$175,700,000.00) made by Lender to Borrowers pursuant to this Agreement, which loan is comprised of the Components.

“Loan Documents” shall mean, collectively, this Agreement, the Note, the First Mortgage, the First Assignment of Leases, the Cash Management Agreement, the Clearing Account Agreement, the Environmental Indemnity, the Guarantees, the Assignment of Management Agreement and any other document pertaining to the Individual Properties as well as all other documents now or hereafter executed and/or delivered in connection with the Loan, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Major Lease” shall mean any Lease (i) covering more than 20,000 square feet at any Individual Property or (ii) made with a Tenant that is a Tenant under another Lease at such Individual Property or that is an Affiliate of any other Tenant under a Lease at such Individual Property, if the Leases together cover more than 20,000 square feet.

“Management Agreement” shall mean, with respect to each Individual Property, and collectively as to the Individual Properties, as the context may require, the management agreements entered into by and between a Borrower and the Manager, pursuant to which the Manager is to provide management and other services with respect to said Individual Property or Individual Properties, as the context may require.

“Manager” shall, with respect to each Individual Property, have the meaning set forth on Schedule X attached hereto or any other manager approved in accordance with the terms and conditions of the Loan Documents.

“Manager Termination Ratio” shall have the meaning set forth in Section 7.3.

“Material Agreements” means, with respect to each Individual Property, each contract and agreement relating to the ownership, management, development, use, operation, leasing, maintenance, repair or improvement of such Individual Property, other than the Management Agreement and the Leases, under which there is an obligation of a Borrower to pay more than \$1,000,000.00 per annum.

“Maturity Date” shall mean June 7, 2014 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; provided, however, (i) if a Total Defeasance Event occurs, the Maturity Date shall mean the Permitted Prepayment Date, or (ii) if a Partial Defeasance Event or Additional Partial Defeasance Event occurs, the Maturity Date of the Defeased Note relating to such Partial Defeasance Event or Additional Partial Defeasance Event shall mean the Permitted Prepayment Date.

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

“Minimum Disbursement Amount” shall mean Fifty Thousand and No/100 Dollars (\$50,000).

“Monthly Payment Date” shall mean the seventh (7th) day of every calendar month occurring during the term of the Loan.

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

“Morgan Stanley” shall have the meaning set forth in Section 9.2(b).

“Morgan Stanley Group” shall have the meaning set forth in Section 9.2(b).

“Mortgage” or “Mortgages” shall mean, individually or collectively, as the case may be, the First Mortgage and the Second Mortgage.

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

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

“Non-Consolidation Opinion” shall mean that certain bankruptcy nonconsolidation opinion letter dated the date hereof delivered by Alston & Bird LLP in connection with the Loan.

“Note” shall mean, collectively, Note A1, Note A2, Note A3, Note A4, Note A5 and Note A6. The definition of Note shall also include any Undeferred Notes, but shall not include any Deferred Notes.

“Note A1” shall mean that certain Promissory Note A1 dated the date hereof in the original principal amount of Component A1 from Borrowers for the benefit of Lender, as the same may hereafter be amended, supplemented, split, restated, increased, extended or consolidated from time to time.

“Note A2” shall mean that certain Promissory Note A2 dated the date hereof in the original principal amount of Component A2 from Borrowers for the benefit of Lender, as the same may hereafter be amended, supplemented, split, restated, increased, extended or consolidated from time to time.

“Note A3” shall mean that certain Promissory Note A3 dated the date hereof in the original principal amount of Component A3 from Borrowers for the benefit of Lender, as the same may hereafter be amended, supplemented, split, restated, increased, extended or consolidated from time to time.

“Note A4” shall mean that certain Promissory Note A4 dated the date hereof in the original principal amount of Component A4 from Borrowers for the benefit of Lender, as the same may hereafter be amended, supplemented, split, restated, increased, extended or consolidated from time to time.

“Note A5” shall mean that certain Promissory Note A5 dated the date hereof in the original principal amount of Component A5 from Borrowers for the benefit of Lender, as the same may hereafter be amended, supplemented, split, restated, increased, extended or consolidated from time to time.

“Note A6” shall mean that certain Promissory Note A6 dated the date hereof in the original principal amount of Component A6 from Borrowers for the benefit of Lender, as the same may hereafter be amended, supplemented, split, restated, increased, extended or consolidated from time to time.

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

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

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

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

“Operating Expenses” shall mean all costs and expenses relating to the operation, maintenance and management of the Individual Properties, including, without limitation, utilities, repairs and maintenance, insurance, property taxes and assessments, advertising expenses, payroll and related taxes, equipment lease payments, a management fee equal to the greater of three percent (3%) of annual rents or the actual management fee, \$0.25 per rentable square foot of the Improvements per annum with respect to capital costs and \$1.25 per rentable square foot of the Improvements per annum with respect to tenant rollover expenses, but excluding actual Capital Expenditures, depreciation, amortization, Extraordinary Expenses and deposits required to be made to the Reserve Funds; provided, however such costs and expenses shall be subject to adjustment by Lender to normalize such costs and expenses.

“Other Assignment of Leases” shall mean, individually and collectively, the Assignment of Leases (as defined in the Other Loan Agreements).

“Other Assignments of Management Agreements” shall mean, individually and collectively, the Assignments of Management Agreements (as defined in the Other Loan Agreements).

“Other Borrowers” shall mean, individually and collectively, the borrowers under any or all of the Other Loans as more particularly set forth on Schedule IX attached hereto.

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

“Other Guarantees” shall mean, individually and collectively, each “Guaranty of Other Loans” (as defined in the other Loan Agreements) executed by each of the Other Borrowers, to the extent applicable.

“Other Lenders” shall mean Morgan Stanley Mortgage Capital Inc., a New York corporation, as the lender under the Other Loan Agreements, together with its successors and assigns.

“Other Loan Agreements” shall mean, individually and collectively, the loan agreements dated as of the date hereof pursuant to which Lender has made the Other Loans to the Other Borrowers, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Other Loan Documents” shall mean, individually and collectively, the “Loan Documents” (as defined in the Other Loan Agreements), including, without limitation, the Other Loan Agreements.

“Other Loans” shall mean, individually and collectively, those loans made by the Other Lender to the Other Borrowers contemporaneously herewith, as more particularly set forth on Schedule IX attached hereto.

“Other Manager” shall mean, the “Manager” (as defined in the Other Loan Agreement entered into among the Other Lender and Wells REIT – Orange County, CA, L.P.) of the Other Property located in Brea, California.

“Other Mortgages” shall mean, individually and collectively, the Mortgages (as defined in the Other Loan Agreements) encumbering the Other Properties.

“Other Properties” shall mean, individually and collectively, the properties owned by the Other Borrowers, as more particularly set forth on Schedule IX attached hereto.

“Otherwise Rated Insurer” shall have the meaning set forth in Section 5.1.2.

“Partial Defeasance Collateral” shall mean, in connection with a Partial Defeasance Event, U.S. Obligations which provide payments (i) on or prior to, but as close as possible to, the Business Day immediately preceding all Monthly Payment Dates and other scheduled payment dates, if any, under the Defeased Note issued in connection with such Partial Defeasance Event after the Defeasance Date and up to and including the Maturity 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.

“Partial Defeasance Date” shall have the meaning set forth in Section 2.5.2(a)(i).

“Partial Defeasance Event” shall have the meaning set forth in Section 2.5.2(a).

“Participant” shall mean any Person that has purchased a participation in this Loan Agreement pursuant to Section 11.27.

“Permitted Encumbrances” shall mean, collectively, (i) the Liens and security interests created by the Loan Documents and the Guaranty Security Documents, (ii) all Liens, encumbrances and other matters disclosed in the Title Insurance Policy, (iii) Liens, if any, for Taxes imposed by any Governmental Authority not yet due or delinquent, (iv) such other title and survey exceptions as Lender has approved or may approve in writing in Lender’s sole discretion, and (v) any Leases permitted hereunder.

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

“Permitted Prepayment Date” shall mean March 7, 2014.

“Permitted Transferee” shall mean a corporation, partnership or limited liability company (i) acceptable to Lender in its reasonable discretion based on then current underwriting and credit requirements for commercial mortgage loans in the secondary market secured by similar properties, (ii) that qualifies as a single purpose, bankruptcy remote entity under criteria established by the Rating Agencies and (iii) whose counsel has delivered to Lender a non-consolidation opinion acceptable to Lender and the Rating Agencies in their sole discretion.

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

“**Plan Assets Regulation**” shall have the meaning set forth in Section 3.1.8.

“**Policies**” shall have the meaning specified in Section 5.1.1(b).

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

“**Prescribed Laws**” shall mean, collectively, (a) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56) (the USA PATRIOT Act), (b) Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, (c) the International Emergency Economic Power Act, 50 U.S.C. §1701 et seq. and (d) all other Legal Requirements relating to money laundering or terrorism.

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

“**Rating Agency Confirmation**” shall mean a written affirmation from each of the Rating Agencies 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.

“**REA**” shall mean, collectively, as the same may be amended, restated, supplemented or otherwise modified from time to time, those certain [Construction, Operation and Reciprocal Easement Agreements] more specifically described on Schedule VII attached hereto and made a part hereof.

“**Registration Statement**” shall have the meaning set forth in Section 9.2(b).

“**REIT**” shall mean Wells Real Estate Investment Trust, Inc., a Maryland corporation.

“**Related Party**” or “**Related Parties**” shall have the meaning set forth in Section 3.1.26.

“**Release Amount**” shall mean (a) in connection with a Total Defeasance Event (as defined herein and in each of the Other Loan Agreements) of the Loan and all the Other Loans, an amount equal to one hundred percent (100%) of the Allocated Loan Amount for all of

the Individual Properties, (b) in connection with a Total Defeasance Event (as defined herein and in each of the Other Loan Agreements) of the Loan and less than all of the Other Loans, an amount equal to one hundred twenty percent (120%) of the Allocated Loan Amounts for the Individual Properties, and (c) in connection with a Partial Defeasance Event, an amount equal to one hundred twenty percent (120%) of the Allocated Loan Amounts for the Individual Properties being defeased; provided, however, that the Borrower shall be permitted to increase the Release Amount under (b) or (c) above in order to satisfy the debt service coverage ratio tests set forth in Sections 2.5.1(a)(xiii) and 2.5.2(a)(vii) hereof and Section 2.5.1(a)(xii) of the Other Loan Agreement entered into by Wells REIT – Orange County, CA, L.P.

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

“**Release Property**” shall have the meaning set forth in Section 2.5.2(a)(i).

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

“**Rent Deficiency**” shall have the meaning set forth in Section 6.6.2.

“**Rents**” shall mean, with respect to each Individual Property, all rents, moneys payable as damages or in lieu of rent, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrowers or its agents or employees from any and all sources arising from or attributable to such Individual Property.

“**Replacement Lease**” shall have the meaning set forth in Section 6.6.2.

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

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

“**Reserve Funds**” shall mean, collectively, the Capital Expenditure Funds, the Insurance Funds, the Tax Funds, the Required Repair Funds, the Rollover Funds and to the extent required hereunder, Ground Rent Funds.

“**Restoration**” shall have the meaning set forth in Section 5.2.1.

“**Restoration Threshold**” shall mean ten percent (10%) of the Allocated Loan Amount for the affected Individual Property.

“**Rollover Amount**” shall mean, as to each Individual Property, an annual amount equal to the product of (a) \$1.25 multiplied by (b) the number of square feet in the Improvements at such Individual Property.

“Rollover Funds” shall have the meaning set forth in Section 6.5.1.

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

“Scheduled Defeasance Payments” shall mean (a) in connection with a Total Defeasance Event, 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 Maturity Date (including the outstanding principal balance on the Note as of the Maturity Date), (b) in connection with a Partial Defeasance Event, scheduled payments of interest and principal under the Defeased Note created in connection with such Partial Defeasance Event for all Monthly Payment Dates occurring after the Defeasance Date and up to and including the Maturity Date (including the outstanding principal balance on the Defeased Note as of the Maturity Date), and (c) in connection with an Additional Partial Defeasance Event, scheduled payments of interest and principal under the Defeased Note created in connection with such Additional Partial Defeasance Event for all Monthly Payment Dates occurring after the Defeasance Date and up to and including the Maturity Date (including the outstanding principal balance on such Defeased Note as of the Maturity Date), and, in each case, all payments required after the Defeasance Date under the Loan Documents for servicing fees and other similar charges.

“Second Assignment of Leases” shall mean, with respect to each Individual Property, and collectively with respect to the Individual Properties, that certain second priority Assignment of Leases and Rents, dated as of the date hereof, executed and delivered by each Borrower, as assignor, to Lender, as assignee, as security for such Borrower’s obligations under the Guaranty of Other Loans and encumbering such Individual Property, or collectively encumbering such Individual Properties, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Second Mortgage” shall mean, with respect to each Individual Property, and collectively with respect to the Individual Properties, a second priority Mortgage (or Deed of Trust, as applicable) and Security Agreement, dated as of the date hereof, executed and delivered by each Borrower as security for such Borrower’s obligations under the Guaranty of Other Loans and encumbering each Individual Property, or collectively encumbering such Individual Properties, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Secondary Market Transaction” shall have the meaning set forth in Section 9.1(a).

“Securities” shall have the meaning set forth in Section 9.1(a).

“Securities Act” shall have the meaning set forth in Section 9.2(a).

“Securitization” shall have the meaning set forth in Section 9.1(a).

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

“Servicer” shall have the meaning set forth in Section 11.24.

“Servicing Agreement” shall have the meaning set forth in Section 11.24.

“Severed Loan Documents” shall have the meaning set forth in Section 10.2(c).

“SPC Party” shall have the meaning set forth in Section 3.1.24(o).

“Standard Statement” shall have the meaning set forth in Section 9.1(c).

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

“State Street Lease” shall mean, with respect to the Individual Property located in Quincy, Massachusetts, that certain lease dated November 30, 2000, between Wells Operating Partnership, L.P., as landlord and SSB Realty LLC, as tenant, as amended prior to the date hereof.

“Subordination of Management Agreement” shall mean, with respect to each Individual Property, that certain Subordination of Management Agreement and Management Fees dated the date hereof among the related Borrower, Manager and Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Substitute Property” and **“Substitute Properties”** shall have the meaning set forth in Section 2.6.

“Substitute Property Loan Amount” shall have the meaning set forth in Section 2.6(k).

“Substituted Property” and **“Substituted Properties”** shall have the meaning set forth in Section 2.6.

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

“Survey” shall mean a survey of the Individual Property in question prepared by a surveyor licensed in the State and satisfactory to Lender and the company or companies issuing the Title Insurance Policies, and containing a certification of such surveyor satisfactory to Lender.

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

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

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

“**Termination Space**” shall have the meaning set forth in Section 6.6.1.

“**Terrorism Insurance Premium Limit**” shall mean the aggregate amount of \$500,000 which shall be reasonably allocated by Borrowers and the Other Borrowers to each of the Individual Properties and the Other Properties.

“**Threshold DSCR**” shall mean 1:65 to 1:00.

“**Title Insurance Policies**” shall mean, with respect to each Individual Property, an ALTA mortgagee title insurance policy in the form acceptable to Lender issued with respect to such Individual Property and insuring the lien of the Mortgage encumbering such Individual Property.

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

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

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

“**Treasury Rate**” shall mean, as of the Maturity Date, 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 noncallable 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.

“**TRIA**” shall mean the Terrorism Risk Insurance Act of 2002, Public Law 107-297.

“**Trigger Event**” shall mean the occurrence of either of the following: (a) an Event of Default or (b) Lender’s determination that the Debt Service Coverage Ratio with respect to all of the Individual Properties and the Other Properties combined is less than 1.50 to 1.00.

“Trigger Period” shall mean the period commencing on the date upon which a Trigger Event occurs and ending on the date that Lender determines that (a) if the Trigger Event is of the type described in clause (a) of the definition thereof, the Event of Default that such Trigger Event relates to has been cured and no longer exists, or (b) if the Trigger Event is of the type described in clause (b) of the definition thereof and provided no Event of Default has occurred and is continuing, the Debt Service Coverage Ratio with respect to all of the Individual Properties and the Other Properties combined, as calculated by Lender for each of the immediately preceding six (6) calendar months, is equal to or greater than 1.50 to 1.00.

“Trustee” shall mean any trustee holding the Loan in a Securitization.

“UCC” or **“Uniform Commercial Code”** shall mean the Uniform Commercial Code as in effect in the applicable State or Commonwealth in which the related Individual Property is located; provided, however, that when used in connection with the Accounts, UCC or Uniform Commercial Code shall mean the Uniform Commercial Code as in effect in the state of New York.

“Undeclared Note” shall have the meaning set forth in Section 2.5.2(a)(v) hereof.

“Underwritable Cash Flow” shall mean the excess of Gross Revenue over Operating Expenses. Lender’s calculation of Underwritable Cash Flow (including determination of items that do not qualify as Gross Revenue or Operating Expenses) shall be calculated by Lender based upon Lender’s determination of Rating Agency criteria and shall be final absent manifest error.

“Underwriter Group” shall have the meaning set forth in Section 9.2(b).

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

“U.S. Obligations” shall mean direct full faith and credit obligations of the United States of America that are not subject to prepayment, call or early redemption.

“Yield Maintenance Premium” shall mean an amount equal to the greater of: (i) one percent (1%) of the principal amount of the Loan being prepaid or (ii) the present value as of the Prepayment Date of the Calculated Payments from the Prepayment Date through the Maturity Date determined by discounting such payments at the Discount Rate. As used in this definition, the term **“Prepayment Date”** shall mean the date on which prepayment is made. As used in this definition, the term **“Calculated Payments”** shall mean the monthly payments of interest only which would be due based on the principal amount of the Loan being prepaid on the Prepayment Date and assuming an interest rate per annum equal to the difference (if such difference is greater than zero) between (y) the Interest Rate and (z) the Yield Maintenance Treasury Rate. As used in this definition, the term **“Discount Rate”** shall mean the rate which, when compounded monthly, is equivalent to the Yield Maintenance Treasury Rate, when compounded semi-annually. As used in this definition, the term **“Yield Maintenance Treasury Rate”** shall mean the yield calculated by Lender by the linear interpolation of the yields, as reported in the Federal Reserve Statistical Release H.15-Selected Interest Rates under the heading U.S. Government Securities/Treasury Constant Maturities for the week ending prior to

the Prepayment Date, of U.S. Treasury Constant Maturities with maturity dates (one longer or one shorter) most nearly approximating the Maturity Date. In the event Release H.15 is no longer published, Lender shall select a comparable publication to determine the Yield Maintenance Treasury Rate. In no event, however, shall Lender be required to reinvest any prepayment proceeds in U.S. Treasury obligations or otherwise.

Section 1.2 Principles of Construction. All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined.

II. THE LOAN

Section 2.1 The Loan.

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

2.1.2 Single Disbursement to Borrower. Borrowers shall 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 reborrowed.

2.1.3 The Note. The Loan shall be evidenced by the Note in the aggregate stated principal amount of One Hundred Seventy-Five Million Seven Hundred Thousand and No/100 Dollars (\$175,700,000.00) and shall be repaid in accordance with the terms of this Agreement and the Note.

2.1.4 Use of Proceeds. Borrowers shall use proceeds of the Loan to (i) pay and discharge any existing loans relating to the Individual Properties, (ii) pay all past due Basic Carrying Costs, if any, in respect of the Individual Properties, (iii) deposit the Reserve Funds, (iv) pay costs and expenses incurred in connection with the closing of the Loan, as approved by Lender, (v) fund any working capital requirements of the Individual Properties, as approved by Lender and (vi) retain the balance, if any.

2.1.5 Modification of the Components. Lender shall have the right, at any time prior to a Securitization, to modify the Loan in order to create additional Components, reduce the number of Components, reallocate the principal balances of the Components or eliminate the Component structure of the Loan provided that (a) the total principal balance of the Loan as of the effective date of such modification equals the outstanding principal balance of the Loan immediately prior to such modification, (b) the weighted average interest rate of all such Components on the date created shall equal the weighted average interest rate that was applicable to the Components immediately prior to the modification of such Components and (c) any voluntary or required prepayment of the Loan shall be applied, provided no Event of Default has

occurred and is continuing, on a prorata basis as to all Components. Lender shall have the right to modify the Components in accordance with this Section 2.1.5 upon notice to Borrowers in which event such modification shall then be deemed effective. If requested by Lender, Borrowers shall promptly execute an amendment to this Agreement, the Note, the Loan Documents and the Guaranty Security Documents to evidence such modification. Borrowers shall, at Lender's expense, cooperate with all reasonable requests of Lender in order to establish the "component" notes and shall execute and deliver such documents as shall reasonably be required by Lender and any Rating Agency in connection therewith.

Section 2.2 Interest Rate.

2.2.1 Interest Rate. Interest on the outstanding principal balance of the Loan shall accrue from the Closing Date up to but excluding the Maturity Date at the Interest Rate.

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

2.2.3 Interest Calculation. Interest on the outstanding principal balance of each Component of the Loan shall be calculated by multiplying (a) the actual number of days elapsed in the period for which the calculation is being made by (b) a daily rate based on a three hundred sixty (360) day year (that is, the Interest Rate or the Default Rate, as then applicable, expressed as an annual rate divided by 360) by (c) the outstanding principal balance. The accrual period for calculating interest due on each Monthly Payment Date shall be the Interest Period immediately prior to such Monthly Payment Date.

2.2.4 Usury Savings. This Agreement and the other Loan Documents are subject to the express condition that at no time shall Borrowers 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 Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under the Loan, shall, to the extent permitted by 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 2.3 Loan Payments.

2.3.1 Payment Before Maturity Date Borrowers shall make a payment to Lender of interest only on the Closing Date for the period from the Closing Date through June 6, 2004. On the Monthly Payment Date occurring in July 2004 and on each Monthly Payment Date thereafter to and including the Maturity Date, Borrowers shall make a payment to Lender of interest accruing hereunder during the entire Interest Period in which such Monthly Payment Date occurs, calculated in the manner set forth herein. Provided no Event of Default shall have occurred, each payment shall be applied (a) first to accrued and unpaid interest on all of the Components on a pari passu basis and (b) on the Maturity Date, to the principal balance of the Components in the following order of priority: pro rata and pari passu according to the principal amount of Note A1, Note A2, Note A3, Note A4, Note A5 and Note A6.

2.3.2 Payment on Maturity Date. Borrowers 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 Mortgages and the other Loan Documents.

2.3.3 Late Payment Charge. If any principal, interest or any other sum due under the Loan Documents, other than the payment of principal due on the Maturity Date, is not paid by Borrowers on the date on which it is due, Borrowers 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 Mortgages and the other Loan Documents.

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

(b) Whenever any payment to be made hereunder or under any other Loan Document shall be stated to be due on a day which is not a Business Day, the due date thereof shall be the preceding Business Day.

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

Section 2.4 Prepayments.

2.4.1 Voluntary Prepayments. Except as otherwise provided herein, Borrower shall not have the right to prepay the Loan in whole or in part. On and after the Permitted Prepayment Date, Borrower may, provided no Event of Default has occurred, at its option and upon ten (10) 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 only on any date without payment of the Yield Maintenance Premium. 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 and such amounts (i.e., principal and interest prepaid by Borrower) shall be held by Lender as collateral security for the Loan in an interest bearing account at an Eligible Institution, with interest accruing on such amounts to the benefit of Borrower; such amounts prepaid shall be applied to the Loan on the next Monthly Payment Date, with any interest on such funds paid to Borrower on such date provided no Event of Default then exists.

2.4.2 Mandatory Prepayments. On each date on which Lender actually receives a distribution of Net Proceeds, and if Lender does not make such Net Proceeds available to Borrower for Restoration of the related Individual Property, Borrower shall, at Lender's option, prepay the outstanding principal balance of the Note in an amount equal to one hundred percent (100%) of such Net Proceeds together with interest that would have accrued on such amounts through the next Monthly Payment Date. No Yield Maintenance Premium shall be due in connection with any prepayment made pursuant to this Section 2.4.2. Any prepayment received by Lender pursuant to this Section 2.4.2 on a date other than a Monthly Payment Date shall be held by Lender as collateral security for the Loan in an interest bearing account, with such interest accruing to the benefit of Borrower, and shall be applied by Lender on the next Monthly Payment Date. Any prepayment made under this Section 2.4.2(a) shall be applied to the Allocated Loan Amount with respect to such Individual Property which will be reduced in an amount equal to any such prepayment made pursuant to this Section 2.4.2 and (b) shall be applied to the outstanding principal balance of the Components in the following order of priority: pro rata and pari passu according to the principal balance of Note A1, Note A2, Note A3, Note A4, Note A5 and Note A6.

2.4.3 Prepayments After Default. If after an Event of Default, payment of all or any part of the principal of the Loan is tendered by Borrowers, a purchaser at foreclosure or any other Person, such tender shall be deemed an attempt to circumvent the prohibition against prepayment set forth in Section 2.4.1 and Borrowers, such purchaser at foreclosure or other Person shall pay the Yield Maintenance Premium, in addition to the outstanding principal balance, all accrued and unpaid interest and other amounts payable under the Loan Documents. Any amounts received by Lender while any Event of Default exists may be applied by Lender toward the payment of interest and/or principal of any of the Components and/or any other amounts due under the Loan Documents and the Guaranty Security Documents in such order, priority and proportions as Lender in its sole discretion shall deem proper.

Section 2.5 Defeasance.

2.5.1 Total Defeasance. (a) Provided no Event of Default shall have occurred and remain uncured, Borrowers shall have the right at any time after the Release Date and prior to the Permitted Prepayment Date, to voluntarily defease the entire Loan and obtain a release of the lien of the Mortgage encumbering all Individual Properties by providing Lender with the Total Defeasance Collateral (hereinafter, a "Total Defeasance Event"), subject to the satisfaction of the following conditions precedent:

(i) Borrowers shall provide Lender not less than thirty (30) days notice (or such shorter period of time if permitted by Lender in its sole discretion) specifying a date (the "Total Defeasance Date") on which the Total Defeasance Event is to occur;

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- (ii) Borrowers shall pay to Lender (A) all payments of principal and interest due on the Loan to and including the Total Defeasance Date and (B) all other sums, then due under the Note, this Agreement, the Mortgage and the other Loan Documents;
- (iii) Borrowers shall deposit the Total Defeasance Collateral into the Defeasance Collateral Account and otherwise comply with the provisions of Sections 2.5.4 and 2.5.5 hereof;
- (iv) Borrowers shall execute and deliver to Lender a Security Agreement in respect of the Defeasance Collateral Account and the Total Defeasance Collateral;
- (v) Borrowers shall deliver to Lender an opinion of counsel for Borrowers 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, the REMIC Trust formed pursuant to such Securitization will not fail to maintain its status as a “real estate mortgage investment conduit” within the meaning of Section 860D of the Code as a result of a Total Defeasance Event pursuant to this Section 2.5.1, (C) the Total Defeasance Event will not result in a deemed exchange for purposes of the Code and will not adversely affect the status of the Note as indebtedness for federal income tax purposes, (D) delivery of the Total Defeasance Collateral and the grant of a security interest therein to Lender shall not constitute an avoidable preference under Section 547 of the Bankruptcy Code or applicable state law and (E) a non-consolidation opinion with respect to the Successor Borrower;
- (vi) Borrowers shall deliver to Lender a Rating Agency Confirmation as to the Total Defeasance Event;
- (vii) Borrowers shall deliver an Officer’s Certificate certifying that the requirements set forth in this Section 2.5.1 have been satisfied;
- (viii) Borrowers shall deliver a certificate of a “big four” or other nationally recognized public accounting firm acceptable to Lender certifying that the Total Defeasance Collateral will generate monthly amounts equal to or greater than the Scheduled Defeasance Payments;
- (ix) Borrowers shall deliver such other certificates, opinions, documents and instruments as Lender may reasonably request;
- (x) Borrowers shall pay all costs and expenses of Lender incurred in connection with the Total Defeasance Event, including Lender’s reasonable attorneys’ fees and expenses and Rating Agency fees and expenses;

(xi) Intentionally Deleted;

(xii) If all of the Other Borrowers have not elected to voluntarily defease the entire amount of all of the Other Loans and obtain a release of the lien of the Other Mortgages encumbering all the Other Properties, or the Other Borrowers have not satisfied all of the conditions for a "Total Defeasance Event" (as defined in the Other Loan Agreements) set forth in Section 2.5.1 of the Other Loan Agreements, then Borrowers shall cause the Other Borrowers to deposit with the Other Lenders the Additional Partial Defeasance Collateral into the "Defeasance Collateral Account" (as defined in the Other Loan Agreements) and shall cause the Other Borrowers to satisfy the conditions set forth in Section 2.5.3 of the Other Loan Agreements. Borrowers acknowledge and agree that Lender and the Other Lenders shall determine, in their reasonable discretion (after consultation with the Borrowers), which of the Other Borrowers that Borrowers are required to cause to comply with this subsection (xii) and Section 2.5.3 of the Other Loan Documents and which of the Other Loans shall be affected;

(xiii) If all of the Other Borrowers have not elected to voluntarily defease the entire amount of all of the Other Loans and obtain a release of the lien of the Other Mortgages encumbering all the Other Properties, or the Other Borrowers have not satisfied all of the conditions for a "Total Defeasance Event" (as defined in the Other Loan Agreements) set forth in Section 2.5.1 of the Other Loan Agreements, then, after giving effect to the Total Defeasance of the Loan, the Debt Service Coverage Ratio with respect to the remaining Other Properties shall not be less than the greater of (A) the Debt Service Coverage Ratio of all Individual Properties encumbered by the Mortgage and the Other Properties encumbered by the Other Mortgages prior to the release and (B) the Threshold DSCR; and

(xiv) With respect to the matters referred to in clause (xiii), Borrowers shall have delivered to Lender, and the Rating Agencies shall have received from Borrowers, (A) statements of the Underwritable Cash Flow and Debt Service (both on a consolidated basis and separately for the applicable Individual Properties or Other Properties to be released) for the applicable measuring period and (B) based on the foregoing statements of Underwritable Cash Flow and Debt Service, calculations of the Debt Service Coverage Ratio both with and without giving effect to the proposed Total Defeasance Event and any "Total Defeasance Event" under any of the Other Loan Agreements, and (C) calculations of the ratios referred to in such clause (xiii), accompanied by an Officer's Certificate stating that such statements, calculations and information are true, correct and complete in all material respects.

(b) If Borrowers have elected to defease the entire Note and the requirements of this Section 2.5 have been satisfied, all of the Individual Properties shall be released from the lien of their respective First Mortgage and security agreements or pledges entered into as, or in connection with, the other Loan Documents and their respective Second Mortgage and the other security agreements or pledges entered into as, or in connection with, the other Guaranty Security Documents and the Total Defeasance Collateral pledged pursuant to the Security Agreement shall be the sole source of collateral securing the Note. In connection with the

release of the Liens, Borrowers shall submit to Lender, not less than thirty (30) days prior to the Defeasance Date (or such shorter time as is acceptable to Lender in its sole discretion), a release of Lien (and related Loan Documents) for execution by Lender. Such release shall be in a form appropriate in each jurisdiction in which the Individual Property is located and that contains standard provisions protecting the rights of the releasing lender. In addition, Borrowers shall provide all other documentation Lender reasonably requires to be delivered by Borrowers in connection with such release, together with an Officer's Certificate certifying that such documentation (i) is in compliance with all Legal Requirements, and (ii) will effect such releases in accordance with the terms of this Agreement. Borrowers shall pay all costs, taxes and expenses associated with the releases of the lien of each Mortgage, including Lender's reasonable attorneys' fees. Except as set forth in this Section 2.5, 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 any Mortgage on any of the Individual Properties.

2.5.2 Partial Defeasance. (a) Provided no Event of Default shall have occurred and remain uncured, Borrowers shall have the right at any time after the Release Date and prior to the Permitted Prepayment Date, to voluntarily defease a portion of the Loan and obtain a release of the lien of the related Mortgage encumbering one or more Individual Properties by providing Lender with the Partial Defeasance Collateral (hereinafter, a "Partial Defeasance Event") upon satisfaction of the following conditions precedent:

(i) Borrowers shall provide Lender not less than thirty (30) days prior written notice (or a shorter period of time if permitted by Lender in its sole discretion) specifying (A) a Monthly Payment Date (the "Partial Defeasance Date") on which the Partial Defeasance is to occur, and (B) the Individual Property or Individual Properties proposed to be released from the lien of the applicable Mortgage (individually a "Release Property" and collectively the "Release Properties");

(ii) Borrowers shall pay to Lender (A) all payments of principal and interest due on the Loan to and including the Partial Defeasance Date and (B) all other sums then due under the Note, this Agreement, the applicable Mortgage and the other Loan Documents with respect to such Release Property or Release Properties, as applicable;

(iii) Except to the extent that all or any portion of the Excess Release Amount is allocated to any of the Other Loans and the Other Properties pursuant to subsection (iv) below, Borrowers shall deposit the Partial Defeasance Collateral into the Defeasance Collateral Account and otherwise comply with the provisions of Sections 2.5.4 and 2.5.5 hereof;

(iv) The Excess Release Amount shall be allocated to the Loan and/or the Other Loans as determined by Lender and the Other Lenders, in their reasonable discretion (after consultation with the Borrowers) (and the reduction of the Allocated Loan Amounts of such affected Individual Properties or Other Properties shall be reduced in accordance with the definition of Allocated Loan Amount set forth herein and the Other Loan Agreements, as applicable). If the Excess Release Amount is allocated to the Loan, then Borrower shall comply with the provisions of this Section 2.5.2. To the extent that all or any portion of the Excess Release Amount is allocated to any Other Loan (it

being understood that any portion of the Excess Release Amount that exceeds the outstanding principal balance of the Note must be allocated to the Other Loans), then Borrowers shall cause the Other Borrowers to deposit with the Other Lenders "Additional Partial Defeasance Collateral" (as defined in the Other Loan Agreements) into the "Defeasance Collateral Account" (as defined in the Other Loan Agreements) and shall otherwise cause the Other Borrowers to satisfy the conditions set forth in Section 2.5.3. Borrowers acknowledge and agree that Lender and the Other Lenders shall determine, in their reasonable discretion (after consultation with the Borrowers), which of the Other Borrowers are required to comply with this subsection (iv) and Section 2.5.3 of the Other Loan Agreements, and which of the Other Loans and the Other Properties shall be affected.

(v) Borrowers shall prepare all necessary documents to modify this Agreement and to amend and restate the Note and issue two substitute notes (or, if the Note consists of separate component notes, two groups of component notes), one note (or one group of component notes) having an aggregate principal balance equal to the Release Amount (excluding the portion of the Excess Release Amount allocated to any of the Other Loans in accordance with subsection (iv) above) (the "Defeased Note"), and the other note (or group of component notes) having an aggregate principal balance equal to the outstanding principal balance of the Note immediately prior to the Partial Defeasance Event, minus the outstanding principal balance of the Defeased Note created in connection with the Partial Defeasance Event (the "Undefeased Note"). The Defeased Note and Undefeased Note shall have identical terms as the Note except for the principal balance and the monthly payment amount. The Defeased Note and the Undefeased Note shall be cross defaulted and cross collateralized unless the Rating Agencies shall require otherwise or unless a Successor Borrower that is not an Affiliate of the Borrowers is established pursuant to Section 2.5.5. A Defeased Note may not be the subject of any further defeasance;

(vi) Borrowers shall execute and deliver to Lender a Security Agreement in respect of the Defeasance Collateral Account and the Partial Defeasance Collateral;

(vii) After giving effect to the release of the lien of the related Mortgage encumbering the Release Property or Release Properties, as applicable, proposed by Borrower to be released, the Debt Service Coverage Ratio with respect to the remaining Individual Properties and the Other Properties is not less than the greater of (A) the Debt Service Coverage Ratio of all Individual Properties encumbered by the Mortgage and the Other Properties encumbered by the Other Mortgages prior to the release and (B) the Threshold DSCR;

(viii) With respect to the matters referred to in clause (vii), Borrowers shall have delivered to Lender, and the Rating Agencies shall have received from Borrowers, (A) statements of the Underwritable Cash Flow and Debt Service (both on a consolidated basis and separately for the applicable Individual Property or Individual Properties to be released) for the applicable measuring period and (B) based on the foregoing statements of Underwritable Cash Flow and Debt Service, calculations of the Debt Service Coverage Ratio both with and without giving effect to the proposed Partial Defeasance Event, and

(C) calculations of the ratios referred to in such clause (vii), accompanied by an Officer's Certificate stating that such statements, calculations and information are true, correct and complete in all material respects;

(ix) Borrowers shall deliver to Lender an opinion of counsel for Borrowers 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 Partial Defeasance Collateral, (B) if a Securitization has occurred, the REMIC Trust formed pursuant to such Securitization will not fail to maintain its status as a "real estate mortgage investment conduit" within the meaning of Section 860D of the Code as a result of the Partial Defeasance Event pursuant to this Section 2.5.2, (C) the Partial Defeasance Event will not result in a deemed exchange for purposes of the Code and will not adversely affect the status of the Defeased Note and the Undeleased Note as indebtedness for federal income tax purposes, (D) delivery of the Partial Defeasance Collateral and the grant of a security interest therein to Lender shall not constitute an avoidable preference under Section 547 of the Bankruptcy Code or applicable state law and (E) a non-consolidation opinion with respect to the Successor Borrower;

(x) Borrowers shall deliver to Lender a Rating Agency Confirmation as to the Partial Defeasance Event;

(xi) Borrowers shall deliver to Lender a certificate of a "Big Four" or other nationally recognized public accounting firm acceptable to Lender certifying that the Partial Defeasance Collateral will generate monthly amounts equal to or greater than the Scheduled Defeasance Payments;

(xii) Borrowers shall deliver to Lender an Officer's Certificate certifying that the requirements set forth in this Section 2.5.2(a) have been satisfied; and

(xiii) Borrowers shall pay all costs and expenses of Lender incurred in connection with the Partial Defeasance Event, including Lender's reasonable attorneys' fees and expenses.

(b) If Borrowers have elected to make a partial defeasance and the requirements of this Section 2.5.2 have been satisfied, the Release Property or Release Properties, as applicable, shall be released from the Liens of their respective First Mortgage and the other Loan Documents (other than the Note and the other Loan Documents and only to the extent that such Loan Documents are not expressly stated to survive) and their respective Second Mortgage and the other Guaranty Security Documents (but only to the extent that such Loan Documents are not expressly stated to survive). In connection with the release of the Lien, Borrower shall submit to Lender, not less than thirty (30) days prior to the Partial Defeasance Date (or such shorter time as is acceptable to Lender in its sole discretion), a release of Lien (and related Loan Documents and Guaranty Security Documents) for execution by Lender. Such release shall be in a form appropriate in the jurisdiction in which such Individual Property is located and that contains standard provisions protecting the rights of the releasing lender. In addition, Borrowers shall provide all other documentation Lender reasonably requires to be

delivered by Borrowers in connection with such release, together with an Officer's Certificate certifying that such documentation (i) is in compliance with all Legal Requirements, and (ii) will effect such releases in accordance with the terms of this Agreement. Borrowers shall pay all costs, taxes and expenses associated with the release of the Lien of any Mortgage and Second Mortgage, including Lender's reasonable attorneys' fees. Borrowers shall cause title to the Release Property(ies) so released from the Lien of the Mortgage and the Second Mortgage to be transferred to and held by a Person other than a Borrower, provided, that if such transfer is to an Affiliate of Borrowers, an updated non-consolidation opinion acceptable to Lender and the Rating Agencies must be delivered in connection therewith. Except as set forth in this Section 2.5, 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 any Mortgage or Second Mortgage on any of the Individual Properties.

2.5.3 Additional Partial Defeasance Collateral. (a) If (1) a "Total Defeasance Event" (as defined in the Other Loan Documents) or a "Partial Defeasance Event" (as defined in the Other Loan Agreements) has occurred, and (2) the Lender and the Other Lenders have determined, in their reasonable discretion (after consultation with the Borrowers and the Other Borrowers) that all or a portion of the "Excess Release Amount" (as defined in the Other Loan Agreements) with respect to the Other Loans that are being defeased shall be allocated to one or more Individual Properties and subject to the terms and provisions of this Section 2.5.3 (an "Additional Partial Defeasance Event"), then Borrowers shall satisfy each of the following provisions:

(i) Borrowers shall pay to Lender (A) all payments of principal and interest due on the Loan to and including the Monthly Payment Date on which the "Total Defeasance Event" (as defined in the Other Loan Agreements) or the "Partial Defeasance Event" (as defined in the Other Loan Agreements) of the applicable Other Loan is to occur (the "Additional Partial Defeasance Date") and (B) all other sums then due under the Note, this Agreement, the applicable Mortgage and the other Loan Documents with respect to the Individual Property or Individual Properties which Lender and the Other Lenders have selected as the Individual Properties to be subject to this Section 2.5.3;

(ii) Borrowers shall deposit the Additional Partial Defeasance Collateral relating to the Excess Release Amount (as defined in the Other Loan Agreement pursuant to which the Other Loans were defeased) which Lender and the Other Lenders have allocated to one or more of the Individual Properties into the Defeasance Collateral Account and otherwise comply with the provisions of Sections 2.5.4 and 2.5.5 hereof;

(iii) Borrowers shall prepare all necessary documents to modify this Agreement and to amend and restate the Note and issue a Defeased Note having an aggregate principal balance equal to the portion of the "Excess Release Amount" (as defined in the Other Loan Agreements) that is allocated to the Loan and the subject Individual Property or Individual Properties, as the case may be, and an Undefeased Note having an aggregate principal balance equal to the outstanding principal balance of the Note immediately prior to the Additional Partial Defeasance Event minus the principal amount of the Defeased Note executed in connection with such Additional Partial Defeasance Event. The Defeased Note and Undefeased Note shall have, provided no

Event of Default exists during the term of the Loan, identical terms as the Note except for the principal balance and the monthly payment amount. The Defeased Note and the Undefeased Note shall be cross defaulted and cross collateralized unless the Rating Agencies shall require otherwise or unless a Successor Borrower that is not an Affiliate of the Borrowers is established pursuant to Section 2.5.4. A Defeased Note may not be the subject of any further defeasance;

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

(v) Borrowers shall deliver to Lender an opinion of counsel for Borrowers 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 Additional Partial Defeasance Collateral, (B) if a Securitization has occurred, the REMIC Trust formed pursuant to such Securitization will not fail to maintain its status as a "real estate mortgage investment conduit" within the meaning of Section 860D of the Code as a result of the Additional Partial Defeasance Event pursuant to this Section 2.5.3, (C) the Additional Partial Defeasance Event will not result in a deemed exchange for purposes of the Code and will not adversely affect the status of the Defeased Note and the Undefeased Note as indebtedness for federal income tax purposes, (D) delivery of the Additional Partial Defeasance Collateral and the grant of a security interest therein to Lender shall not constitute an avoidable preference under Section 547 of the Bankruptcy Code or applicable state law and (E) a non-consolidation opinion with respect to the Successor Borrower;

(vi) Borrowers shall deliver to Lender a Rating Agency Confirmation as to the Additional Partial Defeasance Event;

(vii) Borrowers shall deliver to Lender a certificate of a "Big Four" or other nationally recognized public accounting firm acceptable to Lender certifying that the Additional Partial Defeasance Collateral will generate monthly amounts equal to or greater than the Scheduled Defeasance Payments;

(viii) Borrowers shall deliver to Lender an Officer's Certificate certifying that the requirements set forth in this Section 2.5.3(a) have been satisfied; and

(ix) Borrowers shall pay all costs and expenses of Lender incurred in connection with the Additional Partial Defeasance Event, including Lender's reasonable attorneys' fees and expenses.

(b) No defeasance of all or any portion of the Note pursuant to this Section 2.5.3 shall cause, give rise to a right to require, or otherwise result in, the release of the Lien of any Mortgage or Second Mortgage on any of the Individual Properties.

2.5.4 Defeasance Collateral Account. On or before the date on which Borrower delivers the Total Defeasance Collateral, Partial Defeasance Collateral or Additional

Partial Defeasance Collateral, Borrower shall open at any Eligible Institution the defeasance collateral account (the “Defeasance Collateral Account”) which shall at all times be an Eligible Account. The Defeasance Collateral Account shall contain only (i) Total Defeasance Collateral, Partial Defeasance Collateral or Additional Partial Defeasance Collateral, and (ii) cash from interest and principal paid on the Total Defeasance Collateral, Partial Defeasance Collateral or Additional Partial Defeasance Collateral. All cash from interest and principal payments paid on the Total Defeasance Collateral, Partial Defeasance Collateral or Additional Partial Defeasance Collateral shall be paid over to Lender on each Monthly Payment Date and applied to accrued and unpaid interest and on the Maturity Date, shall be first applied to accrued and unpaid interest and then to principal. Any cash from interest and principal paid on the Total Defeasance Collateral, Partial Defeasance Collateral or Additional Partial Defeasance Collateral not needed to pay the Scheduled Defeasance Payments shall be retained in the Defeasance Collateral Account and applied to payments due on subsequent Monthly Payment Dates or released to Borrowers upon the payment and satisfaction in full of the Debt. Borrower shall cause the Eligible Institution at which the Total Defeasance Collateral, Partial Defeasance Collateral or Additional Partial Defeasance Collateral is deposited to enter an agreement with Borrowers and Lender, satisfactory to Lender in its reasonable discretion, pursuant to which such Eligible Institution shall agree to hold and distribute the Total Defeasance Collateral, Partial Defeasance Collateral or Additional Partial Defeasance Collateral in accordance with this Agreement. The Borrowers or Successor Borrower, as applicable, shall be the owner of the Defeasance Collateral Account and shall report all income accrued on Total Defeasance Collateral, Partial Defeasance Collateral or Additional Partial Defeasance Collateral for federal, state and local income tax purposes in its income tax return. Borrowers 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.

2.5.5 Successor Borrower. In connection with a Total Defeasance Event, Partial Defeasance Event or Additional Partial Defeasance Event under this Section 2.5, Borrower shall, if required by the Rating Agencies or if Borrowers elect to do so, establish or designate a successor entity (the “Successor Borrower”) which shall be a single purpose bankruptcy remote entity and which shall be approved by the Rating Agencies. Any such Successor Borrower may, at Borrowers’ option, be an Affiliate of the Borrowers unless the Rating Agencies shall require otherwise. Borrowers shall transfer and assign all obligations, rights and duties under and to the Note or the Defeased Note, as applicable, together with the Total Defeasance Collateral, Partial Defeasance Collateral or Additional Partial Defeasance Collateral, as applicable, to such Successor Borrower. Such Successor Borrower shall assume the obligations under the Note or the Defeased Note, as applicable, and the Security Agreement and Borrower that owned the Individual Property released pursuant to Section 2.5 hereof shall be relieved of its obligations under such documents except to the extent of any cross-collateralization required hereunder. Borrowers 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, as applicable, and the Security Agreement. Borrowers shall pay all costs and expenses incurred by Lender, including Lender’s attorney’s fees and expenses, incurred in connection therewith.

Section 2.6 Substitution of Properties

Subject to the terms and conditions set forth in this Section 2.6, on and after the Release Date, a Borrower may obtain a release of the Lien of a Mortgage (and the related Loan Documents) encumbering an Individual Property (a "Substituted Property"), by substituting therefor one or more properties of like kind and quality acquired by Borrower (individually, a "Substitute Property" and collectively, the "Substitute Properties"), provided that no such substitution may occur after the date that is eight (8) years after the date of this Agreement. In addition, any such substitution shall be subject, in each case, to the satisfaction of the following conditions precedent:

(a) Lender shall have received at least thirty (30) days prior written notice requesting the substitution and identifying the Substitute Property and the Substituted Property;

(b) The Substitute Property must be a property as to which a Borrower will hold indefeasible fee or ground leasehold title free and clear of any lien or other encumbrance except for Permitted Encumbrances, Leases and easements, restrictive covenants and other title exceptions which do not have a material adverse effect on the utility or value of such property for its current use.

(c) Lender and the Rating Agencies shall have received a copy of a deed conveying all of such Borrower's right, title and interest in and to the Substituted Property to an entity other than a Borrower or an Affiliate of the Borrowers (such transferee, the "Buyer") in an arms' length transaction together with a copy of a fully executed contract of sale between the Buyer and the related Borrower which contract of sale (i) at the time of substitution, is not subject to any unsatisfied contingencies, except for the payment of the purchase price by the purchaser and the delivery of title by such Borrower and (ii) evidence that any good-faith deposit required under such contract of sale has been deposited into escrow.

(d) Lender and the applicable Rating Agencies shall have received an MAI appraisal of the Substitute Property dated no more than thirty (30) days prior to the substitution by an appraiser acceptable to such Rating Agencies, indicating an appraised value of the Substitute Property that is at least equal to the greater of the appraised value of the Substituted Property determined by Lender as of the date hereof or determined by an Independent Appraiser within thirty (30) days of the encumbrance of the Substitute Property by the related Mortgage.

(e) The Debt Service Coverage Ratio for the Substitute Property shall be equal to the greater of (i) the Threshold DSCR and (ii) the Debt Service Coverage Ratio, as determined by Lender in its sole and absolute discretion, immediately prior to such substitution.

(f) The Underwritten Cash Flow for the Substitute Property either (i) does not show a successive decrease over the three (3) years immediately prior to the date of substitution, or (ii) if the Substitute Property has been substantially renovated within such three (3) year period, the Underwritten Cash Flow shall not show a successive decrease for such a period of not less than twelve (12) months.

(g) The Underwritten Cash Flow for the twelve (12) month period immediately preceding the substitution for the Substitute Property shall not be less than the Underwritten Cash Flow for the twelve (12) month period immediately preceding the substitution for the Substituted Property.

(h) The Person transferring the Substitute Property is solvent and the Substitute Property was transferred to Borrower in an arm's length transaction, which may include a transfer by an Affiliate of Borrower to Borrower as long as Borrower is giving a reasonably equivalent value (as determined by the appraisal obtained pursuant to clause (d) above) for the Substitute Property.

(i) If the Loan is part of a Securitization, Lender shall have received a Rating Agency Confirmation with respect to such substitution.

(j) No Event of Default shall have occurred and be continuing and Lender and the Rating Agencies shall have received an Officer's Certificate certifying as to such absence of an Event of Default.

(k) The applicable Borrower shall have executed, acknowledged and delivered to Lender (A) a First Mortgage and a Second Mortgage, a First Assignment of Leases and a Second Assignment of Leases and UCC Financing Statements with respect to the Substitute Property, together with a letter from such Borrower countersigned by a title insurance company acknowledging receipt of such documents and agreeing to record or file, as applicable, such documents in the real estate records for the county in which the Substitute Property is located and to file one of the UCC-1 Financing Statements in the office of the Secretary of State of the state in which such Borrower is organized, 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 required under local law), subject only to the Permitted Encumbrances and such other liens as are permitted pursuant to the Loan Documents, (B) an Environmental Indemnity Agreement with respect to the Substitute Property, and (C) written confirmation and acceptance from each Guarantor and the Other Borrowers of such substitution and a reaffirmation by such Guarantor, the Borrowers and Other Borrowers with respect to guarantees executed by such Guarantor and Other Borrowers which relate to the Loan. The Mortgage, UCC-1 Financing Statements and Environmental Indemnity Agreement 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 the Substitute Property as the Individual 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 shall be recommended by the counsel admitted to practice in such state and delivering the opinion as to the enforceability of such documents required pursuant to clause (p) below. The First Mortgage 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 First Mortgage shall be equal to one hundred twenty-five percent (125%) of the amount of the Loan allocated to the Substitute Property. The amount of the Loan allocated to the Substitute Property (such amount being hereinafter referred to as the "Substitute Property Loan Amount") shall equal the Allocated Loan Amount of the related Substituted Property.

(l) Lender shall have received (i) a “tie-in” or similar endorsement to each Title Insurance Policy insuring the lien of an existing Mortgage as of the date of the substitution available with respect to the Title Insurance Policy insuring the lien of the Mortgage with respect to the Substitute Property and (ii) a Title Insurance Policy (or a marked, signed and redated commitment to issue such Title Insurance Policy) insuring the lien of the Mortgage encumbering the Substitute Property, issued by the title company that issued the Title Insurance Policies insuring the lien of the existing Mortgages and dated as of the date of the substitution, with reinsurance and direct access agreements that replace such agreements issued in connection with the Title Insurance Policy insuring the lien of the Mortgage encumbering the Substituted Property, to the extent such agreements are available in the jurisdiction in which the Substitute Property is located. 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 twenty-five percent (125%) of the Allocated Loan Amount, (2) insure Lender that the relevant Mortgage creates a valid first lien on the Substitute Property encumbered thereby, free and clear of all exceptions from coverage other than Permitted Encumbrances and standard exceptions and exclusions from coverage (as modified by the terms of any endorsements), (3) contain such endorsements and affirmative coverages as are contained in the Title Insurance Policies insuring the liens of the existing Mortgage, to the extent available in the jurisdiction in which the Substitute Property is located and (4) name Lender as the insured. Lender also shall have received copies of paid receipts or a closing statement showing that all premiums in respect of such endorsements and Title Insurance Policies have been paid or will be paid at closing of the purchase of the Substitute Property.

(m) Lender shall have received a current title survey for each Substitute Property, certified to the title company and Lender and their successors and assigns, in the same form and having the same content as the certification of the Survey of the Substituted Property prepared by a professional land surveyor licensed in the state in which the Substitute Property is located and acceptable to the Rating Agencies in accordance with the 1997 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys, including items 1, (if readily available) 2, 3, 4, 6, 7 (a) (b) (c), 8, 9, 10, 11 and 13 from Table A, or in accordance with similar successor standards typically accepted by prudent lenders in similar transactions. 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. The surveyor’s seal shall be affixed to each survey and each survey shall certify that the Improvements located on the surveyed property is not located in an area identified by the Federal Emergency Management Agency as a “special flood hazard area”.

(n) 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.

(o) Lender shall have received a Phase I environmental report and, if recommended under the Phase I environmental report, a Phase II environmental report from a nationally recognized environmental consultant approved by the Rating Agencies (if applicable),

not less than thirty (30) days prior to such release and substitution, which conclude that the Substitute Property does not contain any Hazardous Materials (except for cleaning and other products used in connection with the routine maintenance or repair of the Substitute Property or the operation thereof as an office building and in full compliance with Hazardous Materials Laws) and is not subject to any risk of contamination from any off-site Hazardous Materials. If any such report discloses the presence of any Hazardous Materials (except for cleaning and other products used in connection with the routine maintenance or repair of the Substitute Property or the operation thereof as an office building, in full compliance with Hazardous Materials Laws) or the risk of contamination from any off-site Hazardous Materials, such report shall include an estimate of the cost of any related remediation and Borrower shall deposit with Lender an amount equal to one hundred twenty-five percent (125%) of such estimated cost, which deposit shall constitute additional security for the Loan and shall be released to Borrowers upon the delivery to Lender of (i) an update to such report indicating that there is no longer any Hazardous Materials (except for cleaning and other products used in connection with the routine maintenance or repair of the Substitute Property or the operation thereof as an office building, in full compliance with Hazardous Materials Laws) on the Substitute Property or any danger of contamination from any off-site Hazardous Materials that has not been fully remediated in accordance with all applicable laws and (ii) paid receipts indicating that the costs of all such remediation work have been paid. Such report shall also state the amount of time that will be necessary to complete such remediation, as may be required by applicable law. Borrowers covenant to undertake any repairs, cleanup or remediation indicated.

(p) Borrowers shall deliver or cause to be delivered to Lender (i) an Officer's Certificate and updates of all organizational documentation related to the Borrower substituting an Individual Property and/or the formation, structure, existence, good standing and/or qualification to do business delivered to Lender on the Closing Date; (ii) 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 (iii) resolutions of the managing member of the Borrower substituting an Individual Property authorizing the substitution and any actions taken in connection with such substitution.

(q) Lender shall have received the following opinions of Borrowers' counsel (which opinions, with respect to the opinions set forth in clauses (i), (ii) and (iii) below, shall be in form similar to the corresponding opinions delivered to Lender on the Closing Date: (i) 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 (j) 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 the related Borrower is not required by applicable law to qualify to do business in such jurisdiction; (ii) an opinion of counsel stating that the Loan Documents delivered with respect to the Substitute Property pursuant to clause (j) above were duly authorized, executed and delivered by the related Borrower and that, to the best of such Borrowers' counsel's knowledge, the execution and delivery of such Loan Documents and the performance by the related Borrower of its obligations thereunder will not cause a breach of, or a default under, any agreement, document or instrument to which such Borrower is a party or to which it or its properties are bound; (iii) title endorsements or, if such title endorsements are not

available, an opinion of counsel insuring or opining, as applicable, that subjecting the Substitute Property to the lien of the related Mortgage and the execution and delivery of the related Loan Documents does not and will not affect or impair the ability of Lender to enforce its remedies under all of the Loan Documents or the Guaranty Security Documents or to realize the benefits of the cross-collateralization provided for thereunder; (iv) an update of the Non-Consolidation Opinion indicating that the substitution does not affect the opinions set forth therein; (v) an Officer's Certificate and other reasonable evidence acceptable to the applicable Rating Agencies confirming that the substitution and the related transactions do not constitute a fraudulent conveyance under applicable bankruptcy and insolvency laws and (vi) an opinion of counsel acceptable to the applicable Rating Agencies that the substitution does not constitute a "significant modification" of the Loan under Section 1001 of the Code or otherwise cause a tax to be imposed on a "prohibited transaction" by any REMIC.

(r) Borrowers shall have paid or caused to be paid all Basic Carrying Costs 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, (ii) currently due taxes (including any in arrears) relating to each of the Individual Properties and the Substitute Property and (iii) any other charges relating to each of the Individual Properties and Substitute Property which are currently due.

(s) Borrowers shall have paid or reimbursed Lender for all third party out-of-pocket costs and expenses incurred by Lender (including, without limitation, reasonable attorneys fees and disbursements) in connection with the substitution and Borrowers 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. Borrowers shall have paid all costs and expenses of the Rating Agencies incurred in connection with the substitution.

(t) Lender shall have received annual operating statements and occupancy statements for the Substitute Property for the three (3) most recently completed fiscal years and a current operating statement for the Substituted Property or, if information is not available for a three (3) year period or if the Substituted Property has been substantially renovated within such three (3) year period, such lesser period as is available, but in no event less than twelve (12) months. Each of the statements required under this clause (t) shall be certified to Lender as being true and correct and an Officer's Certificate certifying that there has been no material adverse change in the financial condition of the Substitute Property since the date of such operating statements.

(u) The Borrower that owns the Substitute Property shall have used commercially reasonable efforts to obtain and deliver to Lender estoppel certificates from all of the Tenants of the Substitute Property, provided, that, such Borrower shall be required to deliver estoppel certificates acceptable to Lender from a minimum of seventy-five percent (75%) of the Tenants of the rentable square footage of such Substitute Property prior to effectuating the substitution contemplated by this Section 2.6. All such estoppel certificates shall be in the form attached hereto as Schedule XII (with such commercially reasonable changes as may be requested by Tenants, from time to time, and which are reasonably acceptable to Lender) and shall indicate, among other things, that (i) the subject Lease is a valid and binding obligation of

the tenant thereunder, (ii) there are no defaults under such Lease on the part of the landlord or Tenant thereunder, (iii) the Tenant thereunder has no defense or offset to the payment of rent under such leases, (iv) no rent under such lease has been paid more than one (1) month in advance, (v) the Tenant thereunder has no option or right of first refusal under such Lease to purchase all or any portion of the Substitute Property and (vi) all Tenant improvement work required under such Lease has been completed and the Tenant under such Lease is in actual occupancy of its leased premises. If an estoppel certificate indicates that all tenant improvement work required under the subject Lease has not yet been completed, such Borrower shall, if required by the Rating Agencies, deliver to Lender financial statements indicating that such Borrower has adequate funds to pay all costs related to such tenant improvement work as required under such Lease.

(v) Lender shall have received copies of all Leases affecting the Substitute Property which shall be accompanied by an Officer's Certificate certifying that such Leases being delivered are true and correct copies thereof. Lender shall have received a current Rent Roll of the Substitute Property certified pursuant to an Officer's Certificate as being true and correct.

(w) Lender shall have received (A) an endorsement to the Title Insurance Policy insuring the lien of the Mortgage encumbering the Substitute Property insuring that the Substitute Property constitutes a separate tax lot or, if such an endorsement is not available in the state in which the Substitute Property is located, a letter from the title insurance company issuing such Title Insurance Policy stating that the Substitute Property constitutes a separate tax lot or (B) a letter from the appropriate taxing authority stating that the Substitute Property constitutes a separate tax lot.

(x) Lender shall have received a physical conditions report with respect to the Substitute Property from a nationally recognized structural consultant approved by the Rating Agencies (if applicable) in a form recognized and approved by such Rating Agencies not less than thirty (30) days prior to such release and substitution stating that the Substitute Property and its use comply in all material respects with all applicable Legal Requirements (including, without limitation, zoning, subdivision and building laws) and that the Substitute Property is in good condition and repair and free of material damage or waste. If compliance with any Legal Requirements are not addressed by the physical conditions report, such compliance shall be confirmed by delivery to Lender of a zoning report issued to Lender by a nationally recognized zoning review consultant, a certificate of an architect licensed in the state in which the Substitute Property is located, a letter from the municipality in which such Substitute 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 (k) above (with respect to zoning laws) or a subdivision endorsement to the Title Insurance Policy delivered pursuant to clause (k) above (with respect to subdivision laws) to the extent such endorsements are available in the jurisdiction in which the Substitute Property is located. If the physical conditions report recommends that any repairs be made with respect to the Substitute Property, such physical conditions report shall either (i) include an estimate of the cost of such recommended repairs (in which case Borrower shall deposit into the Repair Escrow Account an amount equal to one hundred twenty-five percent (125%) of such estimated cost), or (ii) state the specific amounts

that need to be reserved over time in order to meet the requirements of such replacements (in which case Borrower shall deposit such reserves into the Replacement Reserve Account on a monthly basis). Any such deposits shall constitute additional security for the Loan pursuant to Section 6.9 and shall be released to Borrowers pursuant to Section 6.4.2. Borrower covenants to undertake any repairs, cleanup or remediation indicated in the physical conditions report before the earlier of (A) the time required by Legal Requirements or (B) the time recommended in the physical conditions report.

(y) Lender shall have received the Management Agreement, if any, relating to the Substitute Property, and the related Borrower shall have demonstrated that such agreement is on substantially similar terms as the agreement then in place at the Substituted Property.

(z) If the Substitute Property is located in California or a seismic area designated as Zone 3 or 4 by the Rating Agencies (Source: ICBC, 1994 Uniform Building Code), Lender shall have received a PML study and a seismic report indicating the seismic zone in which the Substitute Property is located and otherwise acceptable to a prudent institutional mortgage lender and, if the reports would have been acceptable to a prudent institutional lender, Borrower shall obtain earthquake insurance in accordance with Section 5.1.1(a)(i).

(aa) Lender shall have received such other and further approvals, opinions, documents and information in connection with the substitution as the Rating Agencies may request.

(bb) If the related Borrower owns a ground leasehold estate in the Substitute Property, Lender shall have received (i) a certified copy of the ground lease for the Substitute Property, together with all amendments and modifications thereto and a recorded memorandum thereof, which ground lease would be reasonably satisfactory to a prudent institutional mortgage lender and which contains customary leasehold mortgagee provisions and protections, and which shall provide, among other things, (A) for a remaining term of not less than thirty (30) years from the Maturity Date (including any extensions that are exercisable by Lender in the event such Borrower fails to do so when permitted or obligated thereunder), (B) that the ground lease shall not be terminated until Lender has received of an event of default thereunder and has been afforded a reasonable opportunity to cure the default or complete foreclosure, and fails to do so in a diligent manner, (C) for a new lease on the same terms to Lender as the tenant if the ground lease is terminated for any reason, (D) the non-merger of fee and leasehold estates, and (E) that insurance proceeds and condemnation awards (from the fee interest as well as the leasehold interest) will be applied pursuant to the terms of this Agreement or to the restoration of the improvements, (ii) and a ground lessor estoppel in the form attached hereto as Exhibit XIII, with such modifications and additions as reasonably required after a review of the ground lease by Lender.

(cc) Lender shall have received copies of all contracts and agreements relating to the leasing and operation of the Substitute Property together with an Officer's Certificate 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) Borrowers shall submit to Lender, not less than thirty (30) 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. Borrowers shall deliver an Officer's Certificate certifying that the requirements set forth in this Section 2.6 have been satisfied.

(ee) The total Allocated Loan Amount, in the aggregate, for all prior Substituted Properties (including the current Substituted Property) under this Agreement and the Other Loan Agreements is less than thirty percent (30%) of the aggregate Original Principal Amount of the Loan and all of the Other Loans.

(ff) The Substitute Property shall be subject to the lien of the related Mortgage and subject to any cross-collateralization and cross-default provisions of this Loan Agreement and the Mortgages.

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 an Individual Property for purposes of this Agreement and the Substitute Property Loan Amount with respect to such Substitute Property shall be deemed to be the Allocated Loan Amount with respect to such Substituted Property for all purposes hereunder.

III. REPRESENTATIONS AND WARRANTIES

Section 3.1 Borrower Representations.

Borrower represents and warrants that:

3.1.1 Organization. (a) Each Borrower and each SPC Party is duly organized, validly existing and in good standing with full power and authority to own its assets and conduct its business, and is duly qualified in all jurisdictions in which the ownership of its property or the conduct of its business requires such qualification, except where the failure to be so qualified would not have a material adverse effect on its ability to perform its obligations hereunder, and each Borrower has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents by it, and has the power and authority to execute, deliver and perform under this Agreement, the other Loan Documents and all the transactions contemplated hereby.

(b) Each Borrower's exact legal name is correctly set forth in the first paragraph of this Agreement. Each Borrower is an organization of the type specified in the first paragraph of this Agreement. Each Borrower is incorporated or organized under the laws of the state specified in the first paragraph of this Agreement. Each Borrower's principal place of business and chief executive office, and the place where each Borrower keeps its books and records, including recorded data of any kind or nature, regardless of the medium of recording, including software, writings, plans, specifications and schematics, has been for the preceding four (4) months (or, if less than four (4) months, the entire period of the existence of such Borrower) and will continue to be the address of such Borrower set forth in the first paragraph of this Agreement (unless such Borrower notifies Lender in writing at least thirty (30) days prior to

the date of such change). The organizational identification number of Wells REIT-Austin, TX, L.P. assigned by the state of its incorporation or organization is 3797241 and its federal tax identification number is 20-1068388. The organizational identification number of Wells REIT-Multi-State Owner, LLC assigned by the state of its incorporation or organization is 3794978 and its federal tax identification number is 20-1068206. The organizational identification number of Wells-REIT Nashville, TN, LLC assigned by the state of its incorporation or organization is 3794982 and its federal tax identification number is 20-1068271. The organizational identification number of Wells REIT-Bridgewater, NJ, LLC assigned by the state of its incorporation or organization is 3794987 and its federal tax identification number is 20-1068464. No Borrower is subject to back-up withholding taxes.

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

3.1.3 No Conflicts. The execution and delivery of this Agreement and the other Loan Documents by Borrowers and the performance of its obligations hereunder and thereunder will not conflict with any provision of any law or regulation to which any Borrower is subject, or conflict with, result in a breach of, or constitute a default under, any of the terms, conditions or provisions of any of any Borrower's organizational documents or any agreement or instrument to which any Borrower is a party or by which it is bound, or any order or decree applicable to any Borrower, or result in the creation or imposition of any lien on any of any Borrower's assets or property (other than the Individual Properties and pursuant to the Loan Documents and the Guaranty Security Documents).

3.1.4 Litigation. Except as disclosed on Schedule XI, there is no action, suit, proceeding or investigation pending or, to any Borrower's knowledge, threatened against any Borrower in any court or by or before any other Governmental Authority which would materially and adversely affect the ability of a Borrower to carry out the transactions contemplated by this Agreement.

3.1.5 Agreements. No Borrower is in default with respect to any order or decree of any court or any order, regulation or demand of any Governmental Authority, which default might have consequences that would materially and adversely affect the condition (financial or other) or operations of any Borrower or its properties or might have consequences that would adversely affect its performance hereunder.

3.1.6 Consents. No consent, approval, authorization or order of any court or Governmental Authority is required for the execution, delivery and performance by any Borrower of, or compliance by any Borrower with, this Agreement or the consummation of the transactions contemplated hereby, other than those which have been obtained by Borrowers.

3.1.7 Title. Each Borrower has good, marketable and insurable fee simple title to the real property comprising part of each of the Individual Properties that it owns and good title to the balance of each of the Individual Properties owned by it, free and clear of all Liens whatsoever except the Permitted Encumbrances, the Second Mortgage and the Second Assignment of Leases. The First Mortgage and the First Assignment of Leases, when properly recorded in the appropriate records, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create (i) a valid, first priority, perfected lien on each Individual Property, subject only to Permitted Encumbrances and (ii) perfected security interests in and to, and perfected collateral assignments of, all personalty (including the Leases), all in accordance with the terms thereof, in each case subject only to any Permitted Encumbrances. The Second Mortgage and Second Assignment of Leases, when properly recorded in the appropriate records, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create (i) a valid, second priority, perfected lien on each Individual Property, subject only to Permitted Encumbrances and the First Mortgage and (ii) perfected security interests in and to, and perfected collateral assignments of, all personalty (including the Leases), all in accordance with the terms thereof, in each case subject only to any Permitted Encumbrances and the First Mortgage and the First Assignment of Leases. There are no mechanics', materialman's or other similar liens or claims which have been filed for work, labor or materials affecting any Individual Property which are or may be liens prior to, or equal or coordinate with, the lien of the related Mortgage. None of the Permitted Encumbrances, individually or in the aggregate, materially interfere with the benefits of the security intended to be provided by the Mortgage and this Loan Agreement, materially and adversely affect the value of the Individual Properties, impair the use or operations of such Individual Properties or impair any Borrower's ability to pay its obligations in a timely manner.

3.1.8 No Plan Assets. As of the date hereof and throughout the term of the Loan (a) No Borrower is and no Borrower will be an “employee benefit plan,” as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), whether or not subject to Title I of ERISA, or a “plan” as defined in Section 4975 of the Code, (b) none of the assets of any Borrower constitutes or will constitute “plan assets” of one or more such plans within the meaning of U.S. Department of Labor Regulation 29 C.F.R. Section 2510.3-101 (the “Plan Assets Regulation”), and (c) transactions by or with Borrowers are not and will not be subject to any state statute regulating investments of, or fiduciary obligations with respect to, governmental plans, as defined in Section 3(32) of ERISA.

3.1.9 Compliance. Except as set forth on Schedule XI attached hereto, Borrowers and each of the Individual Properties and the use thereof comply in all material respects with all applicable Legal Requirements, including, without limitation, building and zoning ordinances and codes and Prescribed Laws. No Borrower is in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority, the violation of which might materially adversely affect the condition (financial or otherwise) or business of any Borrower. No Borrower has committed any act which may give any Governmental Authority the right to cause any Borrower to forfeit any of the Individual Properties or any part thereof or any monies paid in performance of the Borrowers' obligations under any of the Loan Documents or the Guaranty Security Documents.

3.1.10 Financial Information. All financial data, including, without limitation, the statements of cash flow and income and operating expense, that have been delivered to Lender in respect of each of the Individual Properties (i) are true, complete and correct in all material respects, (ii) accurately represent the financial condition of each Individual Property as of the date of such reports, and (iii) have been prepared in accordance with GAAP throughout the periods covered, except as disclosed therein. No Borrower has 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 any Borrower and reasonably likely to have a materially adverse effect on any of the Individual Properties or the operation thereof, except as referred to or reflected in said financial statements. Since the date of the financial statements, there has been no material adverse change in the financial condition, operations or business of any Borrower or the Individual Properties from that set forth in said financial statements.

3.1.11 Condemnation. No Condemnation or other proceeding has been commenced or, to Borrowers' best knowledge, is contemplated with respect to all or any portion of any of the Individual Properties or for the relocation of roadways providing access to any of the Individual Properties.

3.1.12 Utilities and Public Access. Each of the Individual Properties has rights of access to public ways and is served by water, sewer, sanitary sewer and storm drain facilities adequate to service such Individual Property for its respective intended uses.

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

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

3.1.15 Enforceability. The Loan Documents are not subject to any right of rescission, set off, counterclaim or defense by any 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, and no Borrower has asserted any right of rescission, set off, counterclaim or defense with respect thereto. The Guaranty Security Documents are not subject to any right of rescission, set off, counterclaim or defense by any Borrower, including the defense of usury, nor would the operation of any of the terms of the Guaranty Security Documents, or the exercise of any right thereunder, render the Guaranty Security Documents unenforceable, and no Borrower has asserted any right of rescission, set off, counterclaim or defense with respect thereto.

3.1.16 Assignment of Leases. Each Assignment of Leases creates a valid assignment of, or a valid security interest in, certain rights under the Leases at the related Individual Property, subject only to a license granted to the related Borrower to exercise certain rights and to perform certain obligations of the lessor under such Leases, including the right to

operate the related Individual Property. No Person other than Lender has any interest in or assignment of the Leases or any portion of the Rents due and payable or to become due and payable thereunder.

3.1.17 Insurance. Borrowers have obtained and has delivered to Lender certificates evidencing the insurance coverage provided under the Policies, with all premiums prepaid thereunder, reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. Except as set forth on Schedule XI attached hereto, no claims have been made under any of the Policies, and no Person, including the Borrowers, has done, by act or omission, anything which would impair the coverage of any of the Policies.

3.1.18 Licenses. All permits and approvals, including without limitation, certificates of occupancy required by any Governmental Authority for the use, occupancy and operation of each of the Individual Properties in the manner in which such Individual Property is currently being used, occupied and operated have been obtained and are in full force and effect.

3.1.19 Flood Zone. Except as may be shown on a Survey, none of the Improvements on any of the Individual Properties are located in an area identified by the Federal Emergency Management Agency as a special flood hazard area.

3.1.20 Physical Condition. Except as may be disclosed in the engineering reports described on Schedule XI attached hereto, each of the Individual Properties, including, without limitation, all buildings, improvements, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and all structural components, are in good condition, order and repair in all material respects; there exists no structural or other material defects or damages in any of the Individual Properties, whether latent or otherwise, and no Borrower has received notice from any insurance company or bonding company of any defects or inadequacies in any of the Individual Properties, or any part thereof, which would adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or of any termination or threatened termination of any policy of insurance or bond.

3.1.21 Boundaries. Except as may be shown on a Survey, all of the improvements which were included in determining the appraised value of each Individual Property lie wholly within the boundaries and building restriction lines of such Individual Property, and no improvements on adjoining properties encroach upon such Individual Property, and no easements or other encumbrances affecting the applicable Individual Property encroach upon any of the improvements, so as to affect the value or marketability of the applicable Individual Property except those which are insured against by title insurance.

3.1.22 Leases. Except as set forth on Schedule XI attached hereto, each Borrower represents and warrants to Lender with respect to the Leases at the Individual Property(ies) that it owns: (a) each rent roll attached hereto as Schedules I(A) – I(E) is true, complete and correct and none of the Individual Properties are subject to any Leases other than the Leases for such Individual Property that are described in the applicable Schedule I, (b) the Leases identified on Schedules I(A) – I(E) are in full force and effect and there are no defaults

thereunder by either party (other than non-material defaults by Tenants that it is commercially reasonable for the Borrower to excuse), (c) the copies of the Leases delivered to Lender are true and complete, and there are no oral agreements with respect thereto, (d) no Rent (including security deposits) has been paid more than one (1) month in advance of its due date, (e) all work to be performed by such Borrower under each Lease has been performed as required and has been accepted by the applicable Tenant, (f) any payments, free rent, partial rent, rebate of rent or other payments, credits, allowances or abatements required to be given by such Borrower to any Tenant has already been received by such Tenant and (g) all security deposits are being held in accordance with Legal Requirements.

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

3.1.24 Single Purpose. Each Borrower hereby represents and warrants to, and covenants with, Lender that as of the date hereof and until such time as the Debt shall be paid in full:

(a) Borrower does not own and will not own any asset or property other than (i) its Individual Property(ies), and (ii) incidental personal property or other assets necessary for the ownership or operation of its Individual Property(ies).

(b) Borrower will not engage in any business other than the ownership, management and operation of the Individual Properties, entering into the Loan as a co-borrower and such Borrower will conduct and operate its business as presently conducted and operated.

(c) Borrower will not enter into any contract or agreement with any Affiliate of Borrowers, any constituent party of Borrowers or any Affiliate of any constituent party, 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 third parties other than any such party.

(d) Borrower has not incurred and will not incur any Indebtedness other than (i) the Debt, (ii) unsecured trade payables and operational debt not evidenced by a note and (iii) Indebtedness incurred in the financing of equipment and other personal property used at the Individual Property(ies) that it owns; provided that any Indebtedness incurred pursuant to subclauses (ii) and (iii) shall be (x) for each Individual Property, not in excess of three percent (3%) of the Allocated Loan Amount for such Individual Property in the aggregate, (y) paid not more than sixty (60) days from the date incurred as to the matters in subclause (ii) above and not

more than sixty (60) days from the date due as to the matters in subclause (iii) above, subject only to such Borrower's right to diligently prosecute a good faith dispute as to amounts due and payable in accordance with the provisions of this Agreement and (z) incurred in the ordinary course of business. No Indebtedness other than the Debt may be secured (subordinate or *pari passu*) by any of the Individual Properties except with respect to the Guaranty of Other Loans and the Guaranty Security Documents delivered by each Borrower in connection therewith.

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

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

(g) Borrower has done or caused to be done and will do all things necessary to observe organizational formalities and preserve its existence, and Borrower will not, nor will Borrower permit any constituent party to amend, modify or otherwise change the partnership certificate, partnership agreement, articles of incorporation and bylaws, operating agreement, trust or other organizational documents of Borrower or such constituent party without the prior consent of Lender in any manner that (i) violates the single purpose covenants set forth in this Section 3.1.24, or (ii) amends, modifies or otherwise changes any provision thereof that by its terms cannot be modified at any time when the Loan is outstanding or by its terms cannot be modified without Lender's consent.

(h) Borrower will maintain all of its books, records, financial statements and bank accounts separate from those of its Affiliates and any constituent party. Borrower's assets will not be listed as assets on the financial statement of any other Person; provided, however, that Borrower's assets may be included in a consolidated financial statement of its Affiliates provided that (i) appropriate notation shall be made on such consolidated financial statements (or the notes thereto) 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 will file its own tax returns (to the Borrower is required to file any such tax returns) and will not file a consolidated federal income tax return with any other Person except to the extent Borrower is a disregarded entity for federal income tax purposes. Borrower shall maintain its books, records, resolutions and agreements as official records.

(i) Borrower will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any Affiliate of Borrower or any constituent party of Borrower), shall correct any known misunderstanding regarding its status as a separate entity, shall conduct business in its own name, shall not identify itself or any of its Affiliates as a division or part of the other.

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

(k) Neither Borrower nor any constituent party will seek or effect the liquidation, dissolution, winding up, liquidation, consolidation or merger, in whole or in part, of Borrower.

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

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

(n) Borrower will not guarantee, other than as set forth in the Guaranty of Other Loans, or become obligated for the debts of any other Person and does not and will not hold itself out to be responsible for or have its credit available to satisfy the debts or obligations of any other Person.

(o) (i) If Borrower is a limited partnership or a limited liability company (other than a single member limited liability company), each general partner or managing member (each, an “SPC Party”), as applicable, shall be a corporation or a Delaware single member limited liability company acceptable to Lender whose sole asset is its interest in Borrower and each such SPC Party will at all times comply, and will cause Borrower to comply, with each of the representations, warranties, and covenants contained in this Section 3.1.24 as if such representation, warranty or covenant was made directly by such SPC Party. Upon the withdrawal or the disassociation of an SPC Party from Borrower, Borrower shall immediately appoint a new SPC Party whose articles of incorporation are substantially similar to those of such SPC Party and deliver a new non-consolidation opinion to the Rating Agency or Rating Agencies, as applicable, with respect to the new SPC Party and its equity owners.

(ii) If Borrower or any SPC Party of Borrower is a single member limited liability company, Borrower or such SPC Party shall have at least two (2) springing members, one of which, upon the dissolution of such sole member or the withdrawal or the disassociation of the sole member from Borrower or such SPC Party, shall immediately become the sole member of Borrower or such SPC Party, and the other of which shall become the sole member of Borrower or such SPC Party if the first such springing member no longer is available to serve as such sole member.

(p) Borrower shall at all times cause there to be at least two (2) duly appointed members of the board of directors of each SPC Party and the Borrower who are provided by a nationally recognized company that provides professional independent directors (each, an “Independent Director”) and which are reasonably satisfactory to Lender who shall not have been at the time of such individual’s appointment or at any time while serving as a director of such SPC Party and Borrower, and may not have been at any time during the preceding five years (i) a stockholder, director (other than as an Independent Director), officer, employee, partner, attorney or counsel of such SPC Party, Borrower or any Affiliate of either of them, (ii) a customer, supplier or other Person who derives any of its purchases or revenues from its activities with such SPC Party, Borrower or any Affiliate of either of them (other than as an

Independent Director), (iii) a Person or other entity controlling or under common control with any such stockholder, partner, customer, supplier or other Person, or (iv) a member of the immediate family of any such stockholder, director, officer, employee, partner, customer, supplier or other Person. A natural person who otherwise satisfies the foregoing definition of Independent Director except for being the independent director, manager or special member of a "special purpose entity" affiliated with the Borrower that does not own a direct or indirect equity interest in the Borrower shall not be disqualified from serving as an Independent Director if such individual is at the time of initial appointment, or at any time while serving as an Independent Director, is an independent manager, director or special member provided by a nationally-recognized company that provides professional independent managers, directors or special members. As used in this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise.

(q) Borrower shall not cause or permit the board of directors of any SPC Party and Borrower to take any action which, under the terms of any certificate of incorporation, by-laws or any voting trust agreement with respect to any common stock or under any organizational document of Borrower or SPC Party, requires a unanimous vote of the board of directors of each SPC Party and Borrower unless at the time of such action there shall be at least two members who are each an Independent Director.

(r) Borrower shall conduct its business so that the assumptions made with respect to Borrower in the Non-Consolidation Opinion shall be true and correct in all respects. In connection with the foregoing, Borrower hereby covenants and agrees that it will comply with or cause the compliance with, (i) all of the facts and assumptions (whether regarding the Borrower or any other Person) set forth in the Non-Consolidation Opinion, (ii) all the representations, warranties and covenants in this Section 3.1.24, and (iii) all the organizational documents of the Borrower and any SPC Party.

(s) Borrower will not permit any Affiliate or constituent party independent access to its bank accounts other than a Manager approved by Lender, and then in such circumstances, only in accordance with the terms of its respective Management Agreement.

(t) Borrower shall pay the salaries of its own employees (if any) from its own funds and maintain a sufficient number of employees (if any) in light of its contemplated business operations.

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

3.1.25 Intentionally Deleted.

3.1.26 Intentionally Deleted.

3.1.27 Tax Filings. To the extent required, each Borrower has filed (or has obtained effective extensions for filing) all federal, state and local tax returns required to be filed and have paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments payable by such Borrower. Each Borrower believes that its tax returns

(if any) properly reflect the income and taxes of such Borrower for the periods covered thereby, subject only to reasonable adjustments required by the Internal Revenue Service or other applicable tax authority upon audit.

3.1.28 Solvency. Each Borrower (a) has not entered into the transaction or any Loan Document or Guaranty Security 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 and the Guaranty Security Documents. Giving effect to the Loan, the fair saleable value of each Borrower's assets exceeds and will, immediately following the making of the Loan, exceed such Borrower's total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities, excluding the Guaranty of Other Loans. The fair saleable value of each Borrower's assets is and will, immediately following the making of the Loan, be greater than such Borrower's probable liabilities, including the maximum amount of its contingent liabilities on its debts as such debts become absolute and matured, excluding the Guaranty of Other Loans. Each Borrower's assets do not and, immediately following the making of the Loan and the Guaranty of Other Loans will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. No Borrower intends to, and does not believe that it will, incur Indebtedness and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such Indebtedness and liabilities as they mature (taking into account the timing and amounts of cash to be received by such Borrower and the amounts to be payable on or in respect of obligations of such Borrower).

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

3.1.30 Organizational Chart. The organizational chart attached as Schedule III hereto, relating to each Borrower and certain Affiliates and other parties, is true, complete and correct on and as of the date hereof.

3.1.31 Bank Holding Company. No Borrower is a "bank holding company" or a direct or indirect subsidiary of a "bank holding company" as defined in the Bank Holding Company Act of 1956, as amended, and Regulation Y thereunder of the Board of Governors of the Federal Reserve System.

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

3.1.33 Investment Company Act. No Borrower is (1) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; (2) 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 (3) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

3.1.34 Access/Utilities. All public utilities necessary to the continued use and enjoyment of each Individual Property as presently used and enjoyed are located in the public right-of-way abutting such Individual Property. All roads necessary for the full utilization of each Individual Property for its current purpose have been completed and dedicated to public use and accepted by all governmental authorities or are the subject of access easements for the benefit of such Individual Property.

3.1.35 No Bankruptcy Filing. No Borrower is contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidation of its assets or property, and no Borrower has any knowledge of any Person contemplating the filing of any such petition against it.

3.1.36 Full and Accurate Disclosure. To the best of Borrowers' knowledge, no information contained in this Agreement, the other Loan Documents, the Guaranty Security Documents or any written statement furnished by or on behalf of Borrowers pursuant to the terms of this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not materially misleading in light of the circumstances under which they were made. There is no material fact or circumstance presently known to Borrowers which have not been disclosed to Lender and which materially adversely affects, or is reasonably likely to materially adversely affect, the Individual Properties, Borrowers, the Guaranty of Other Loans or its business, operations or condition (financial or otherwise).

3.1.37 Foreign Person. No Borrower is a "foreign person" within the meaning of Section 1445(f)(3) of the Code.

3.1.38 No Change in Facts or Circumstances; Disclosure. To the best of each Borrower's knowledge, there has been no material adverse change in any condition, fact, circumstance or event that would make the financial statements, rent rolls, reports, certificates or other documents submitted in connection with the Loan inaccurate, incomplete or otherwise misleading in any material respect or that otherwise materially and adversely affects the business operations or the financial condition of such Borrower or the Individual Property(ies) that it owns.

3.1.39 Perfection of Accounts. Borrowers hereby represent and warrant 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 (as defined in the Cash Management Agreement) 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 the Guaranty Security Documents and except for Permitted Encumbrances, Borrower has not sold or otherwise conveyed the Accounts;

(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;

(c) Pursuant and subject to the terms of the Cash Management Agreement, Agent has agreed to comply with all instructions originated by Lender, without further consent by Borrowers, directing disposition of the Accounts and all sums at any time held, deposited or invested therein, together with any interest or other earnings thereon, and all proceeds thereof (including proceeds of sales and other dispositions), whether accounts, general intangibles, chattel paper, deposit accounts, instruments, documents or securities; and

(d) The Accounts are not in the name of any Person other than Borrower, as pledgor, or Lender, as pledgee. Borrowers have not consented to Agent’s complying with instructions with respect to the Accounts from any Person other than Lender.

3.1.40 REA. Except as disclosed on Schedule XI attached hereto, each REA is in full force and effect and no Borrower nor, to any Borrower’s knowledge, any other party to any REA, is in default thereunder, and to the best of each Borrower’s knowledge, there are no conditions which, with the passage of time or the giving of notice, or both, would constitute a default thereunder. Except as set forth on Schedule VII, the REA has not been modified, amended or supplemented.

Section 3.2 Survival of Representations.

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

IV. BORROWER COVENANTS

Section 4.1 Borrower Affirmative Covenants.

Borrowers hereby covenant and agree with Lender that:

4.1.1 Existence; Compliance with Legal Requirements. Borrowers shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, licenses, permits and franchises and comply with all Legal Requirements applicable to it and the Individual Properties, including, without limitation, Prescribed Laws.

4.1.2 Taxes and Other Charges. Borrowers shall pay all Taxes and Other Charges now or hereafter levied or assessed or imposed against the Individual Properties or any part thereof as the same become due and payable; provided, however, Borrowers’ obligation to directly pay Taxes shall be suspended for so long as Borrowers are required to make deposits of Tax Funds and in such case complies with the terms and provisions of Section 6.2 hereof. Borrowers 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 Borrowers are not

required to furnish such receipts for payment of Taxes in the event that such Taxes have been paid by Lender with Tax Funds on deposit with Lender pursuant to Section 6.2 hereof. Borrowers shall not permit or suffer and shall promptly discharge any lien or charge against the Individual Properties. After prior notice to Lender, any Borrower, at its own expense, may contest by appropriate legal proceeding, conducted in good faith and with due diligence, the amount or validity 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 all applicable statutes, laws and ordinances; (iii) no Individual Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost; (iv) such 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 Taxes or Other Charges from the applicable Individual Property; and (vi) to the extent required by law, such Borrower shall have paid under protest or deposited with the appropriate taxing authority any such security as may be required by applicable law (which must be in an amount equal to at least 100% of Taxes plus interest thereon for an additional period of three (3) years) to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon, provided, that, if the applicable taxing authority does not require Borrower to deliver cash as security while Taxes or Other Charges are being contested by Borrower, Borrower shall deliver cash to Lender or, in lieu of a cash deposit, a Letter of Credit, in the amount required above as security for the payment of such Taxes or Other Charges, as the case may be. Lender may pay over any such cash, Letter of Credit or other security held by Lender to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established. Notwithstanding anything contained herein to the contrary, in the event that Citicorp is permitted, pursuant to the terms of the Citicorp Lease, to contest Taxes or Other Charges and the applicable Borrower is not permitted to require Citicorp to post security for such Taxes or Other Charges being contested by Citicorp, such Borrower shall not be required to comply with the requirements of clause (vi) above with respect to the delivery to Lender or a cash deposit or Letter of Credit, provided, that, such Borrower ensures that Citicorp diligently conducts such contest, that the contest is conducted in accordance with the terms of the Citicorp Lease and that the Taxes or Other Charges are promptly paid (if required by the applicable authority) by Citicorp upon completion of the proceedings.

4.1.3 Litigation. Borrowers shall give prompt notice to Lender of any litigation or governmental proceedings pending or threatened against any Borrower which might materially adversely affect any of the Individual Properties or any Borrower's ability to perform its obligations hereunder or under the other Loan Documents or the Guaranty Security Documents.

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

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

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

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

4.1.6 Financial Reporting. (a) Each Borrower shall keep and maintain or will cause to be kept and maintained proper and accurate books and records, in accordance with GAAP, reflecting the financial affairs of such Borrower. Lender shall have the right from time to time during normal business hours upon reasonable notice to the affected Borrower to examine such books and records at the office of Borrower or other Person maintaining such books and records and to make such copies or extracts thereof as Lender shall desire.

(b) Borrowers shall furnish Lender annually, within one hundred twenty (120) days following the end of each Fiscal Year, a complete copy of such Borrowers' annual financial statements audited by a "Big Four" accounting firm or other independent certified public accountant acceptable to Lender prepared in accordance with GAAP covering the Individual Properties on a combined basis, such financial statements to include statements of income and expense and cash flow for Borrowers and the Individual Properties and a balance sheet for Borrowers. Such statements shall set forth gross revenue and operating expenses for each Individual Property. Borrowers' annual financial statements shall be accompanied by a certificate executed by the chief financial officer of Borrowers stating that such annual financial statement presents fairly the financial condition and the results of operations of Borrowers and the Individual Properties being reported on. Each Borrower shall furnish a balance sheet and income statement for the preceding Fiscal Year for the Individual Property(ies) that it owns, certified by the chief financial officer of such Borrower that each statement fairly presents the financial condition and results of operations of such Individual Property. Together with each Borrower's annual financial statements, such Borrower shall furnish to Lender an Officer's Certificate certifying as of the date thereof whether to the best of such Borrower's knowledge there exists an event or circumstance which constitutes a Default or Event of Default by Borrowers under the Loan Documents and if such Default or Event of Default exists, the nature thereof, the period of time it has existed and the action then being taken to remedy the same.

(c) Each Borrower will furnish Lender on or before the sixtieth (60th) day after the end of each fiscal quarter (based on such Borrower's Fiscal Year), the following items, accompanied by a certificate from the chief financial officer of such Borrower, certifying that such items are true, correct, accurate and complete and fairly present the financial condition and results of the operations of such Borrower and each Individual Property in accordance with GAAP as applicable:

(i) quarterly and year-to-date statements of income and expense prepared for such quarter with respect to each Individual Property, with a balance sheet for such quarter for such Borrower;

(ii) a calculation reflecting the Debt Service Coverage Ratio as of the last day of such quarter, for such quarter and the last four quarters;

(iii) a current rent roll for each Individual Property;

(iv) a comparison of the budgeted income and expenses and the actual income and expenses for such quarter and year to date for each Individual Property, together with a detailed explanation of any variances of more than five percent (5%) between budgeted and actual amounts for such period and year to date; and

(v) with respect to any Major Leases, any notice received from a Tenant threatening non-payment of Rent or other default, alleging or acknowledging a default by landlord, requesting a termination of a Lease or a material modification of any Lease or notifying Borrower of the exercise or non-exercise of any option provided for in such Tenant's Lease, or any other similar material correspondence received by such Borrower from Tenants during the subject fiscal quarter.

(d) Prior to the last Securitization of any portion of the Loan and upon request by Lender, each Borrower will furnish Lender on or before the thirty-fifth (35th) day after the end of each calendar month, the following items, accompanied by a certificate from the chief financial officer of such Borrower, certifying that such items are true, correct, accurate, and complete and fairly present the financial condition and results of the operations of such Borrower and each Individual Property in a manner consistent with GAAP, as applicable:

(i) monthly and year-to-date statements of income and expense and cash flow prepared for such month with respect to each Individual Property;

and

(ii) a current rent roll for each Individual Property.

(e) Each Borrower shall submit a proposed draft of the Annual Budget to Lender not later than thirty (30) days prior to the commencement of each Fiscal Year and a final Annual Budget to Lender not later than ten (10) days prior to the commencement of each Fiscal Year. Lender shall have the right to approve each Annual Budget covering any period of time after the occurrence of a Trigger Event. In the event that Lender objects to a proposed Annual Budget (draft or final) submitted by Borrower at any time after a Trigger Event, Lender shall advise such Borrower of such objections within fifteen (15) days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and such Borrower shall promptly revise such Annual Budget and resubmit the same to Lender. Lender shall advise each Borrower of any objections to its revised Annual Budget within ten (10) days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and each Borrower shall promptly revise the same in accordance with the process described in this subsection until Lender approves the Annual Budget. Until such time that Lender approves a proposed Annual Budget, which approval shall not be unreasonably withheld, conditioned or delayed unless an Event of Default exists, in which case Lender's approval shall be in its sole

and absolute discretion, the most recent Annual Budget (or the most recent Approved Annual Budget, if such previous Annual Budget was subject to Lender's approval) shall apply; provided that, such Annual Budget (or Approved Annual Budget, as applicable) shall be adjusted to reflect actual increases in Taxes, Insurance Premiums, utility expenses and management fees under the Management Agreement. Each Annual Budget approved by Lender shall hereinafter be referred to as an "Approved Annual Budget." In the event that, after the occurrence of a Trigger Event, a Borrower incurs an extraordinary operating expense or extraordinary capital expenditure not set forth in the applicable Annual Budget (each, an "Extraordinary Expense"), then such Borrower shall promptly deliver to Lender a reasonably detailed explanation of such proposed Extraordinary Expense for Lender's approval.

(f) Each Borrower shall furnish to Lender, within ten (10) Business Days after request (or as soon thereafter as may be reasonably possible), such further detailed information with respect to the operation of any of the Individual Properties and the financial affairs of such Borrower as may be reasonably requested by Lender, including, without limitation, a comparison of the budgeted income and expenses and the actual income and expenses for a quarter and year to date for each Individual Property, together with a detailed explanation of any variances of more than the greater of five percent (5%) or \$10,000 between budgeted and actual amounts for such period and year to date.

4.1.7 Title to the Individual Properties. Each Borrower will warrant and defend the validity and priority of the Liens of the Mortgage and the Assignment of Leases on each Individual Property against the claims of all Persons whomsoever, subject only to Permitted Encumbrances and, in the case of the Second Mortgage and the Second Assignment of Leases, the First Mortgage and the First Assignment of Leases.

4.1.8 Estoppel Statement. (a) After request by Lender, Borrowers shall within ten (10) Business Days furnish Lender with a statement, duly acknowledged and certified, stating (i) the unpaid principal amount of the Note, (ii) the Interest Rate of the Note, (iii) the date installments of interest and/or principal were last paid, (iv) any offsets or defenses to the payment of the Debt, if any, and (v) that this Agreement, the other Loan Documents and the Guaranty Security Documents have not been modified or if modified, giving particulars of such modification.

(b) After request by Borrowers, Lender shall within ten (10) Business Days furnish Borrower with a statement, duly acknowledged and certified, stating (i) the unpaid principal amount of the Note, (ii) the Interest Rate of the Note, (iii) the date installments of interest and/or principal were last paid and (iv) whether or not Lender has sent any notice of default under the Loan Documents which remains uncured in the opinion of Lender.

(c) Borrowers shall deliver to Lender, upon request, an estoppel certificate from each Tenant under any Lease (provided that Borrowers shall only be required to use commercially reasonable efforts to obtain an estoppel certificate from any Tenant not required to provide an estoppel certificate under its Lease); provided that such certificate may be in the form required under such Lease; provided, further, that Borrowers shall not be required to deliver such certificates more frequently than once in any calendar year (or twice during any calendar year in which a Securitization occurs).

(d) Borrowers shall deliver to Lender, upon request, estoppel certificates from each party under the REA; provided that such certificates may be in the form required under the REA; provided, further, that Borrowers shall not be required to deliver such certificates more than three (3) times 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).

4.1.9 Leases. (a) All Leases and all renewals of Leases executed after the date hereof shall (i) provide for rental rates comparable to existing local market rates for similar properties, (ii) be on commercially reasonable terms, (iii) provide that such Lease is subordinate to the Mortgage encumbering the related Individual Property and that the lessee will attorn to Lender and any purchaser at a foreclosure sale and (iv) not contain any terms which would materially adversely affect Lender's rights under the Loan Documents. All Major Leases and all renewals, amendments and modifications thereof executed after the date hereof shall be subject to Lender's prior approval, which approval shall not be unreasonably withheld or delayed. Lender shall execute and deliver a Subordination Non-Disturbance and Attornment Agreement in the form annexed as Schedule IV to Tenants under future Major Lease approved by Lender promptly upon request with such commercially reasonable changes as may be requested by Tenants, from time to time, and which are reasonably acceptable to Lender.

(b) Borrowers (i) shall observe and perform the obligations imposed upon the lessor under the Leases in a commercially reasonable manner; (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, Borrowers shall not terminate or accept a surrender of a Major Lease without Lender's prior approval, not to be unreasonably withheld or delayed in the event of a material default under a Major Lease; (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 and the Guaranty Security Documents); (v) shall not alter, modify or change any Major 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 without Lender's prior written approval, such approval not to be unreasonably withheld or delayed if no Trigger Event has occurred and is continuing; and (vi) shall hold all security deposits under all Leases in accordance with Legal Requirements. Upon request, Borrowers shall furnish Lender with executed copies of all Leases.

(c) Notwithstanding anything to the contrary contained in this Section 4.1.9:

(i) whenever Lender's approval or consent is required pursuant to the provisions of this Section 4.1.9, a Borrower shall have the right to submit a term sheet of such transaction to Lender for Lender's approval, such approval not to be unreasonably withheld or delayed. Any such term sheet submitted to Lender shall set forth all material terms of the proposed transaction including, without limitation, identity of tenant, square footage, term, rent, rent credits, abatements, work allowances and tenant improvements to be constructed by such Borrower. Lender shall use good faith efforts to respond within ten (10) Business Days after Lender's receipt of the Borrower's written request for approval or consent of such term sheet. If Lender fails to respond to such request within

ten (10) Business Days, and the Borrower sends a second request containing a legend in bold letters stating that Lender's failure to respond within five (5) Business Days shall be deemed consent or approval, Lender shall be deemed to have approved or consented to such term sheet if Lender fails to respond to such second written request before the expiration of such five (5) Business Day period;

(ii) whenever Lender's approval or consent is required pursuant to the provisions of this Section 4.1.9 for any matter that Lender has not previously approved a term sheet pursuant to Section 4.1.9(c)(i) above, Lender shall use good faith efforts to respond within ten (10) Business Days after Lender's receipt of a Borrower's written request for such approval or consent. If Lender fails to respond to such request within ten (10) Business Days, and such Borrower sends a second request containing a legend in bold letters stating that Lender's failure to respond within ten (10) Business Days shall be deemed consent or approval, Lender shall be deemed to have approved or consented to the matter for which Lender's consent or approval was sought if Lender fails to respond to such second written request before the expiration of such ten (10) Business Day period;

(iii) whenever Lender's approval or consent is required pursuant to the provisions of this Section 4.1.9 for any matter that Lender has previously approved a term sheet pursuant to Section 4.1.9(c)(i) above, Lender shall use good faith efforts to respond within five (5) Business Days after Lender's receipt of a Borrower's written request for such approval or consent. If Lender fails to respond to such request within five (5) Business Days, and such Borrower sends a second request containing a legend in bold letters stating that Lender's failure to respond within five (5) Business Days shall be deemed consent or approval, Lender shall be deemed to have approved or consented to the matter for which Lender's consent or approval was sought if Lender fails to respond to such second written request before the expiration of such five (5) Business Day period, provided that there have been no material deviations from the term sheet and that the aggregate economics of the transaction are no less favorable to such Borrower than as set forth in the term sheet;

(iv) in the event that Lender shall have approved (or be deemed to have approved) a term sheet submitted by a Borrower with respect to a certain Lease, Lender shall not withhold its approval or consent with respect to such Lease on the basis of any provisions of such Lease dealing with the items contained in the approved term sheet; and

(v) Borrowers shall have the right, without the consent or approval of Lender in any instance, to terminate or accept a surrender of any Lease that is not a Major Lease.

4.1.10 Alterations. Lender's prior approval shall be required in connection with any alterations to any Improvements (except tenant improvements under any Lease approved by Lender or under any Lease for which approval was not required by Lender under this Agreement) at any Individual Property (a) that may have a material adverse effect on any Borrower's financial condition, the value of the related Individual Property or the ongoing revenues and expenses of the related Individual Property, or (b) the cost of which (including any related alteration, improvement or replacement), is reasonably anticipated to exceed the

Alteration Threshold, which approval may be granted or withheld in Lender's sole discretion. If the total unpaid amounts incurred and to be incurred with respect to such alterations to the Improvements shall at any time exceed the Alteration Threshold, Borrowers shall promptly deliver to Lender as security for the payment of such amounts and as additional security for Borrower's obligations under the Loan Documents and the Guaranty Security Documents any of the following: (i) cash, (ii) Letters of Credit, (iii) U.S. Obligations, (iv) other securities acceptable to Lender, provided that Lender shall have received a Rating Agency Confirmation as to the form and issuer of same, or (v) 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 on the Individual Property (other than such amounts to be paid or reimbursed by Tenants under the Leases) over the Alteration Threshold.

4.1.11 Intentionally Deleted.

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

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

4.1.14 Costs of Enforcement/Remedying Defaults. In the event (a) that the Mortgage is foreclosed in whole or in part or the Note or any other Loan Document or Security Document is put into the hands of an attorney for collection, suit, action or foreclosure, (b) of the foreclosure of any Lien or Mortgage prior to or subsequent to the Mortgage in which proceeding Lender is made a party, (c) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Borrower or Guarantor or an assignment by Borrower or Guarantor for the benefit of its creditors, or (d) Lender shall remedy or attempt to remedy any Event of Default hereunder, Borrowers shall be chargeable with and agree to pay all costs incurred by Lender as a result thereof, including costs of collection and defense (including reasonable attorneys', experts', consultants' and witnesses' fees and disbursements) in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, which shall be due and payable on demand, together with interest thereon from the date incurred by Lender at the Default Rate, and together with all required service or use taxes.

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

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

4.1.16 Loan Fees. Borrowers shall pay all fees and costs (including, without limitation, all origination and commitment fees) required of Borrower pursuant to the terms of that certain summary of terms letter between Wells Real Estate Funds and Morgan Stanley Mortgage Capital, Inc. dated March 2, 2004.

Section 4.2 Borrower Negative Covenants.

Each Borrower covenants and agrees with Lender that:

4.2.1 Due on Sale and Encumbrance; Transfers of Interests. Without the prior written consent of Lender, no Borrower nor any other Person having a direct or indirect ownership or beneficial interest in Borrower shall sell, convey, mortgage, grant, bargain, encumber, pledge, assign or transfer any interest, direct or indirect, in any Borrower, any of the Individual Properties or any part thereof, whether voluntarily or involuntarily, in violation of the covenants and conditions set forth in the Mortgages and this Agreement.

4.2.2 Liens. Borrowers shall not create, incur, assume or suffer to exist any Lien on any portion of the any of the Individual Properties except for Permitted Encumbrances.

4.2.3 Dissolution. No Borrower shall (i) engage in any dissolution, liquidation or consolidation or merger with or into any other business entity, (ii) engage in any business activity not related to the ownership and operation of its Individual Property(ies), (iii) transfer, lease or sell, in one transaction or any combination of transactions, all or substantially all of the properties or assets of such Borrower except to the extent expressly permitted by the Loan Documents, or (iv) cause, permit or suffer any SPC Party to (A) dissolve, wind up or liquidate or take any action, or omit to take an action, as a result of which such SPC Party would be dissolved, wound up or liquidated in whole or in part, or (B) amend, modify, waive or terminate the certificate of incorporation, limited partnership or formation, as applicable, or bylaws, partnership agreement or operating agreement, as applicable, of such SPC Party, in each case without obtaining the prior consent of Lender, but only to the extent such action requires consent of the Lender pursuant to the terms of the partnership agreement or operating agreement delivered to Lender in connection with the closing of the Loan.

4.2.4 Change in Business. Borrowers shall not enter into any line of business other than the ownership and operation of the Individual Properties.

4.2.5 Debt Cancellation. Borrowers shall not cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to any Borrower by any Person, except for adequate consideration and in the ordinary course of Borrowers' business, provided, that, nothing contained in this Section shall in and of itself require any Borrower to pursue collection of debts in a manner that is not commercially reasonable.

4.2.6 Affiliate Transactions. Borrowers shall not enter into, or be a party to, any transaction with an Affiliate of Borrowers or any of the partners or members of Borrowers except in the ordinary course of business and on terms which are fully disclosed to Lender in advance and are no less favorable to Borrowers or such Affiliate than would be obtained in a comparable arm's length transaction with an unrelated third party.

4.2.7 Zoning. Borrowers shall not initiate or consent to any zoning reclassification of any portion of any of the Individual Properties or seek any variance under any existing zoning ordinance or use or permit the use of any portion of any of the Individual Properties in any manner that could result in such use becoming a non conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, without the prior consent of Lender which shall not be unreasonably withheld or delayed if such action is required to be undertaken by a Borrower pursuant to a Lease that Lender has approved.

4.2.8 Assets. No Borrower shall purchase or own any properties other than the Individual Properties and any property necessary or incidental for the operation of the Individual Properties.

4.2.9 No Joint Assessment. No Borrower shall suffer, permit or initiate the joint assessment of any Individual Property (i) with any other real property constituting a tax lot separate from such Individual Property, and (ii) with any portion of such Individual Property which may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to such Individual Property.

4.2.10 Principal Place of Business. No Borrower shall change its principal place of business from the address set forth on the first page of this Agreement without first giving Lender thirty (30) days prior notice.

4.2.11 ERISA. (a) No Borrower shall 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 or the Guaranty Security Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under the ERISA or Section 4975 of the Code.

(b) Each 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) such 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 "plan" within the meaning of Section 4975 of the Code; (B) such Borrower is not subject to any state statute regulating investments of, or fiduciary obligations with respect to, governmental plans as defined in Section 3(32) of ERISA; and (C) one or more of the following circumstances is true:

(i) Equity interests in such Borrower are publicly offered securities, within the meaning of the Plan Assets Regulation;

(ii) Less than twenty-five percent (25%) of each outstanding class of equity interests in such Borrower is held by “benefit plan investors” within the meaning of the Plan Assets Regulation; or

(iii) such Borrower qualifies as an “operating company” or a “real estate operating company” within the meaning of the Plan Assets Regulation.

4.2.12 Material Agreements. No Borrower shall, without Lender’s prior written consent which shall not be unreasonably withheld or delayed: (a) enter into, surrender or terminate any Material Agreement to which it is a party (unless the other party thereto is in material default and the termination of such agreement would be commercially reasonable), (b) increase or consent to the increase of the amount of any charges under any Material Agreement to which it is a party, except as provided therein or on an arms’-length basis and commercially reasonable terms; or (c) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under any Material Agreement to which it is a party in any material respect, except on an arm’s length basis and commercially reasonable terms.

4.2.13 REA. Each Borrower agrees that without the prior consent of Lender, such Borrower will not execute modifications to any REA it is a party to if such modifications will have a material adverse effect on the use, operation or value (including the Underwritable Cash Flow) of such Individual Property, taken as a whole, or the ability of such Borrower to pay its obligations in respect of the Loan.

V. INSURANCE, CASUALTY AND CONDEMNATION

Section 5.1 Insurance.

5.1.1 Insurance Policies. (a) Borrowers shall obtain and maintain, or cause to be maintained, insurance for Borrowers and each of the Individual Properties providing at least the following coverages:

(i) comprehensive all risk insurance on the Improvements and the personal property, if any, owned by the respective Borrower at each of the Individual Properties, including contingent liability from Operation of Building Laws, Demolition Costs and Increased Cost of Construction Endorsements, in each case (A) in an amount equal to one hundred percent (100%) of the “Full Replacement Cost,” which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation, but the amount shall in no event be less than the Allocated Loan Amount for the related Individual Property; (B) containing an agreed amount endorsement with respect to the Improvements and personal property at each of the Individual Properties waiving all co-insurance provisions; (C) providing for deductibles no greater than \$250,000 for all such insurance coverage, provided, that, upon request of Borrower a higher deductible may be approved by Lender in its reasonable discretion, such approval or rejection to be based on then-current insurance market conditions and the then-current amount of equity that the Borrower has in the subject Individual Property); and further, provided, that, with respect to the Individual Property located in Englewood Cliffs, New Jersey, and for so

long as such Individual Property is leased to Citicorp North America, Inc. ("**Citicorp**"), as Tenant pursuant to the Citicorp Lease, the related Borrower shall be permitted to maintain (or permit the Tenant to maintain, as applicable) deductibles or permit self-insurance retention by such Tenant or an Affiliated insurance company of such Tenant in accordance with the terms of the Citicorp Lease; and (D) containing an "Ordinance or Law Coverage" or "Enforcement" endorsement if any of the Improvements or the use of any Individual Property shall at any time constitute legal non-conforming structures or uses. In addition, Borrowers shall obtain: (y) if any portion of the Improvements is currently or at any time in the future located in an area identified by the Federal Emergency Management Agency as a "special flood hazard area," flood hazard insurance in an amount equal to the lesser of (1) the Allocated Loan Amount for the related Individual Property or (2) the maximum amount of such insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended or such greater amount as Lender shall require or (3) \$50,000,000 for flood zones A& C and \$250,000,000 for other flood coverage; and (z) earthquake insurance in amounts and in form and substance satisfactory to Lender in the event the Individual Property is located in a seismic area designated as a Zone 3 or 4 by the Rating Agencies (Source: ICBC 1994 Uniform Building Code, or similar designation under successor standards), provided that the insurance pursuant to clauses (y) and (z) hereof shall be on terms consistent with the comprehensive all risk insurance policy required under this subsection (i).

(ii) commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about each of the Individual Property, such insurance (A) to be on the so-called "occurrence" form with a combined limit, excluding umbrella coverage, of not less than One Million and No/100 Dollars (\$1,000,000) per occurrence and \$2,000,000 in the aggregate; (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) blanket contractual liability for all legal contracts; and (5) contractual liability covering the indemnities contained in Article 9 of the Mortgage to the extent the same is available;

(iii) business income insurance (A) with loss payable to Lender; (B) covering all risks required to be covered by the insurance provided for in subsection (i) above for a period commencing at the time of loss for such length of time as it takes to repair or replace with the exercise of due diligence and dispatch; (C) containing an extended period of indemnity endorsement which provides that after the physical loss to the Improvements and Personal Property has been repaired, the continued loss of income at the related Individual Property will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of twelve (12) months from the date that the related Individual 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; and (D) in an amount equal to one hundred percent (100%) of the projected gross income (less non-continuing expenses) from the related Individual Property for a period from the date of loss to a date (assuming total destruction) which is

twelve (12) months from the date that the related Individual Property is repaired or replaced and operations are resumed. The amount of such business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on the related Borrower's reasonable estimate of the gross income (less non-continuing expenses) from each Individual Property for the succeeding twenty-four (24) month period. All proceeds payable to Lender pursuant to this subsection shall be held by Lender and shall be applied to the obligations secured by the Loan Documents from time to time due and payable hereunder and under the Note; provided, however, that nothing herein contained shall be deemed to relieve any Borrower of its obligations to pay the obligations secured by the Loan Documents on the respective dates of payment provided for in the Note and the other Loan Documents except to the extent such amounts are actually paid out of the proceeds of such business income insurance; and further provided that for so long as Citicorp is the Tenant at the Individual Property located in Englewood Cliffs, New Jersey, and such Tenant continues to pay rent and other amounts due under its Lease, and such Tenant is not otherwise in default beyond any applicable cure or grace periods under its Lease, such Tenant shall be entitled to retain the proceeds from the business income insurance that it maintains in accordance with its Lease;

(iv) at all times during which structural construction, repairs or alterations are being made with respect to the Improvements, and only if the Property coverage form does not otherwise apply, (A) owner's contingent or protective liability insurance covering claims not covered by or under the terms or provisions of the above mentioned commercial general liability insurance policy; and (B) the insurance provided for in subsection (i) above written in a so-called builder's risk completed value form (1) on a non-reporting basis, (2) against all risks insured against pursuant to subsection (i) above, (3) including permission to occupy the applicable Individual Property, and (4) with an agreed amount endorsement waiving co-insurance provisions;

(v) workers' compensation, subject to the statutory limits of the state in which each Individual Property is located, and employer's liability insurance, in an amount satisfying statutory requirements, in respect of any work or operations on or about each Individual Property, or in connection with each Individual Property or its operation (if applicable), provided, that, a Borrower shall not be required to maintain insurance pursuant to this clause (v) for such time that it does not have any employees;

(vi) comprehensive boiler and machinery insurance, if applicable, in amounts as shall be reasonably required by Lender on terms consistent with the commercial property insurance policy required under subsection (i) above;

(vii) umbrella liability insurance in addition to primary coverage in an amount not less than Fifty Million and No/100 Dollars (\$50,000,000) per occurrence on terms consistent with the commercial general liability insurance policy required under subsection (ii) above and (viii) below;

(viii) motor vehicle liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence, including umbrella coverage, of One Million and No/100 Dollars (\$1,000,000), provided,

that, a Borrower shall not be required to maintain insurance pursuant to this clause (viii) for such time that it does not own any automobiles or require any employees to use automobiles in their business duties;

(ix) so-called “dramshop” insurance or other liability insurance required in connection with the sale of alcoholic beverages, provided, that, a Borrower shall not be required to maintain insurance pursuant to this clause (ix) for such time that such Borrower does not operate a business at any Individual Property that would cause a prudent lender to require such coverage;

(x) insurance against employee dishonesty in an amount not less than one (1) month of gross revenue from each Individual Property and with a deductible reasonably approved by Lender, provided, that, a Borrower shall not be required to maintain insurance pursuant to this clause (x) for such time that it does not have any employees;

(xi) (A) during any period of the term of the Loan that TRIA is in effect, if “acts of terrorism” or other similar acts or events are hereafter excluded from Borrowers’ comprehensive all risk insurance policy (including business income), Borrowers shall obtain an endorsement to such policy, or a separate policy from an insurance provider which maintains at least an investment grade rating from Moody’s (that is, “Baa3”) and/or S&P (that is, “BBB-”) (provided that neither Moody’s nor S&P rates such provider less than investment grade), insuring against all “certified acts of terrorism” as defined by TRIA and “fire following”, each in an amount equal to one hundred percent (100%) of the “Full Replacement Cost” of each Individual Property, which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation, but the amount shall in no event be less than the total outstanding Allocated Loan Amount for such Individual Property; provided, however, the total annual premium payable by each Borrower for the Individual Property(ies) that it owns shall not exceed the Terrorism Insurance Premium Limit for such coverage for such Individual Property. The endorsement or policy shall be in form and substance reasonably satisfactory to Lender and shall meet Rating Agency criteria for securitized loans; or

(B) during any period of the term of the Loan that TRIA is not in effect, if “acts of terrorism” or other similar acts or events or “fire following” are hereafter excluded from Borrowers’ comprehensive all risk insurance policy or business income insurance coverage, Borrowers shall obtain an endorsement to such policy, or a separate policy from an insurance provider which maintains at least an investment grade rating from Moody’s (that is, “Baa3”) and/or S&P (that is, “BBB-”) (provided that neither Moody’s nor S&P rates such provider less than investment grade), insuring against all such excluded acts or events, to the extent such policy or endorsement is available, in an amount determined by Lender in its sole discretion (but in no event greater than the total insurable value plus business income insurance coverage satisfying the provisions of clause (iii) above; provided, however, Borrowers shall not be required to pay annual premiums in excess of the Terrorism Insurance Premium Limit for such coverage. The endorsement or policy shall be in form and substance reasonably satisfactory to Lender and shall meet Rating Agency criteria for securitized loans; and

(xii) upon sixty (60) days' notice, such other reasonable insurance and in such reasonable 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 any Individual Property located in or around the region in which such Individual Property is located.

(b) All insurance provided for in Section 5.1.1(a) shall be obtained under valid and enforceable policies (collectively, the "Policies" or, in the singular, the "Policy") and, to the extent not specified above, shall be subject to the reasonable approval of Lender as to deductibles, loss payees and insureds. Borrower shall deliver to Lender certified copies of the Policies promptly upon Lender's request therefor, provided, that, for such time that the Individual Property located in Englewood Cliffs, New Jersey is leased to Citicorp pursuant to the Citicorp Lease and Citicorp is required to, and does, maintain the Policies with respect to such Individual Property pursuant to the terms of the Citicorp Lease, Borrower shall not be required to furnish the Policies to Lender for such Individual Property unless it is able to obtain the same from Citicorp. Not less than ten (10) days prior to the expiration dates of the Policies theretofore furnished to Lender, certificates of insurance evidencing the Policies accompanied by evidence satisfactory to Lender of payment of the premiums then due thereunder (the "Insurance Premiums"), shall be delivered by Borrowers to Lender.

(c) Any blanket insurance Policy shall specifically allocate to each Individual Property the amount of coverage from time to time required hereunder and shall otherwise provide the same protection as would a separate Policy insuring only the related Individual Property in compliance with the provisions of Section 5.1.1(a).

(d) All Policies of insurance provided for or contemplated by Section 5.1.1(a) shall be primary coverage and, except for the Policy referenced in Section 5.1.1(a)(v), shall name Borrowers as the insured and Lender and its successors and/or assigns as the additional insured, as its interests may appear, and in the case of property damage, boiler and machinery, flood, earthquake and terrorism insurance, shall contain a so-called New York standard non-contributing mortgagee clause or similar endorsement in favor of Lender providing that the loss thereunder shall be payable to Lender. Borrowers shall not procure or permit any of its constituent entities to procure any other insurance coverage which would be on the same level of payment as the Policies or would adversely impact in any way the ability of Lender or Borrowers to collect any proceeds under any of the Policies.

(e) All Policies of insurance provided for in Section 5.1.1(a), except for the Policies referenced in Section 5.1.1(a)(v) and (a)(viii) shall contain clauses or endorsements to the effect that:

(i) with respect to the insurance coverage obtained pursuant to Section 5.1.1(a)(i), (iii), (iv) and (vi) above, no act or negligence of any Borrower, or anyone acting for Borrower, or of any Tenant or other occupant, or failure to comply with the provisions of any Policy, which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Lender is concerned;

(ii) the Policy shall not be canceled without at least thirty (30) days' written notice to Lender and any other party named therein as an additional insured and, if obtainable by Borrowers using commercially reasonable efforts, shall not be materially changed (other than to increase the coverage provided thereby) without such a thirty (30) day notice; and

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

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

(g) In the event of foreclosure of any Mortgage with respect to any Individual Property or other transfer of title to any Individual Property in extinguishment in whole or in part of the Debt, all right, title and interest of the related Borrower in and to the Policies that are not blanket Policies then in force concerning such Individual Property and all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure or Lender or other transferee in the event of such other transfer of title.

(h) Borrower shall not be required to maintain insurance with respect to the Individual Property located in Englewood Cliffs, New Jersey under this Section 5.1.1 to the extent that it would be duplicative of the insurance required to be maintained (and in fact maintained) by Citicorp pursuant to the Citicorp Lease. However, in the event Citicorp does not maintain insurance satisfying the requirements as set forth in the Citicorp Lease or does not maintain any of the insurance required under this Section 5.1.1, Borrower shall promptly obtain the Policies required hereunder and deliver such Policies to Lender in accordance with the terms of this Agreement.

5.1.2 Insurance Company. The Policies shall be issued by financially sound and responsible insurance companies authorized to do business in the state in which the subject Individual Property is located and having a claims paying ability rating of "A" or better by S&P and Fitch and an insurance financial strength rating of "Aa2" by Moody's (provided, however, that for so long as Citicorp is the Tenant at the Individual Property located in Englewood Cliffs, New Jersey pursuant to the Citicorp Lease, the Policies may be issued by insurance companies as permitted in the Citicorp Lease). If a Securitization occurs, (i) the foregoing required insurance company rating by a Rating Agency not rating any Securities shall be disregarded and (ii) if the insurance company complies with the aforesaid S&P required rating (and S&P is rating the Securities) and the other Rating Agencies rating the Securities do not rate the insurance company, such insurance company shall be deemed acceptable with respect to such Rating Agency not rating such insurance company. If a Securitization occurs and S&P is not a Rating Agency, each of the insurance companies shall have a claims paying ability rating of at least A-

by Fitch and an insurance financial strength rating of A3 by Moody's and at least sixty-seven percent (67%) of the coverage shall be provided by insurance companies having claims paying ability ratings of AA by Fitch and an insurance financial strength rating of Aa2 by Moody's; provided, however, if Fitch or Moody's shall not provide a rating for an insurance company, then an A.M. Best rating of A(X) shall be substituted for each of the foregoing rating requirements of Fitch or Moody's, as applicable. Notwithstanding the foregoing, Borrowers shall be permitted to maintain the Policies with insurance companies which do not meet the foregoing requirements (an "Otherwise Rated Insurer"), provided Borrowers obtain a "cut-through" endorsement (that is, an endorsement which permits recovery against the provider of such endorsement) with respect to any Otherwise Rated Insurer from an insurance company which meets the claims paying ability ratings required above. Moreover, if Borrowers desire to maintain insurance required hereunder from an insurance company which does not meet the claims paying ability ratings set forth herein but the parent of such insurance company, which owns at least fifty-one percent (51%) of such insurance company, maintains such ratings, Borrowers may use such insurance companies if approved by the Rating Agencies (such approval may be conditioned on items required by the Rating Agencies including a requirement that the parent guarantee the obligations of such insurance company).

Section 5.2 Casualty and Condemnation.

5.2.1 Casualty. If any Individual Property shall sustain a Casualty, the Borrower that owns such Individual Property shall give prompt notice of such Casualty to Lender and shall promptly commence and diligently prosecute to completion the repair and restoration of such Individual Property as nearly as possible to the condition such Individual Property was in immediately prior to such Casualty (a "Restoration") and otherwise in accordance with Section 5.3, it being understood, however, that Borrower shall not be obligated to restore such Individual Property to the precise condition of such Individual Property prior to such Casualty provided such Individual Property is restored, to the extent practicable, to be of at least equal value and of substantially the same character as prior to the Casualty. The affected 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 the applicable Borrower. In the event of a Casualty where the loss does not exceed Restoration Threshold, the affected Borrower may settle and adjust such claim; provided that (a) no Event of Default has occurred and is continuing and (b) such adjustment is carried out in a commercially reasonable and timely manner. In the event of a Casualty where the loss exceeds the Restoration Threshold or if an Event of Default then exists, the affected Borrower may settle and adjust such claim only with the consent of Lender (which consent shall not be unreasonably withheld or delayed) and Lender shall have the opportunity to participate, at such Borrower's cost, in any such adjustments. Notwithstanding any Casualty, Borrowers shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Agreement.

5.2.2 Condemnation. Borrowers shall give Lender prompt notice of any actual or threatened Condemnation by any Governmental Authority of all or any part of any Individual Property and shall deliver to Lender a copy of any and all papers served in connection with such proceedings. Provided no Event of Default has occurred and is continuing, in the event of a Condemnation where the amount of the taking does not exceed the Restoration Threshold, the affected Borrower may settle and compromise such Condemnation; provided that the same is

effected in a commercially reasonable and timely manner. In the event a Condemnation where the amount of the taking exceeds the Restoration Threshold or if an Event of Default then exists, the affected Borrower may settle and compromise the Condemnation only with the consent of Lender (which consent shall not be unreasonably withheld or delayed) and Lender shall have the opportunity to participate, at such Borrower's cost, in any litigation and settlement discussions in respect thereof and such Borrower shall from time to time deliver to Lender all instruments requested by Lender to permit such participation. The affected 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 Condemnation, Borrowers shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Agreement. Lender shall not be limited to the interest paid on the Award by any Governmental Authority but shall be entitled to receive out of the Award interest at the rate or rates provided herein or in the Note. If any Individual Property or any portion thereof is taken by any Governmental Authority, the affected Borrower shall promptly commence and diligently prosecute the Restoration of such Individual Property and otherwise comply with the provisions of Section 5.3. If such Individual 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.

5.2.3 Business Interruption Insurance Proceeds. Notwithstanding the second-to-last sentence of Section 5.1.1(a)(iii) and provided no Event of Default exists hereunder, proceeds received by Lender on account of the business interruption insurance specified in Subsection 5.1.1(a)(iii) above with respect to any Casualty shall be deposited by Lender directly into the Clearing Account; however, during the continuance of a Trigger Period such proceeds shall be deposited directly into the Deposit Account (as defined in the Cash Management Agreement) but (a) only to the extent it reflects a replacement for (i) lost Rents that would have been due under Leases existing on the date of such Casualty, and/or (ii) lost Rents under Leases that had not yet been executed and delivered at the time of such Casualty which the affected Borrower has proven to the insurance company would have been due under such Leases (and then only to the extent such proceeds disbursed by the insurance company reflect a replacement for such past due Rents) and (b) only to the extent necessary to fully make the disbursements required by Section 3.3(a)(i) through 3.3(a)(vii) of the Cash Management Agreement. All other such proceeds shall be held by Lender and disbursed in accordance with Section 5.3 hereof.

Section 5.3 Delivery of Net Proceeds.

5.3.1 Minor Casualty or Condemnation. If a Casualty or Condemnation has occurred to any Individual Property and the Net Proceeds shall be less than the Restoration Threshold and the costs of completing the Restoration shall be less than the Restoration Threshold, and provided no Event of Default shall have occurred and remain uncured, the Net Proceeds will be disbursed by Lender to Borrowers. Promptly after receipt of the Net Proceeds, Borrowers shall commence and satisfactorily complete with due diligence the Restoration in accordance with the terms of this Agreement. If any Net Proceeds are received by Borrowers and may be retained by Borrowers pursuant to the terms hereof, such Net Proceeds shall, until completion of the Restoration, be held in trust for Lender and shall be segregated from other funds of Borrowers to be used to pay for the cost of Restoration in accordance with the terms hereof.

5.3.2 Major Casualty or Condemnation. (a) If a Casualty or Condemnation has occurred to any Individual Property and the Net Proceeds are equal to or greater than the Restoration Threshold or the costs of completing the Restoration is equal to or greater than the Restoration Threshold, Lender shall make the Net Proceeds available for the Restoration, provided that each of the following conditions are met:

(i) no Event of Default shall have occurred and be continuing;

(ii) (A) in the event the Net Proceeds are insurance proceeds, less than thirty-three percent (33%) of the total floor area of the Improvements at such Individual Property that has been damaged, destroyed or rendered unusable as a result of such Casualty or (B) in the event the Net Proceeds are an Award, less than ten percent (10%) of the land constituting the affected Individual Property is taken, and such land is located along the perimeter or periphery of such Individual Property, and no portion of the Improvements is the subject of the Condemnation;

(iii) Leases requiring payment of annual rent equal to eighty percent (80%) of the Gross Revenue at such Individual Property received by Borrower during the twelve (12) month period immediately preceding the Casualty or Condemnation and all Major Leases shall remain in full force and effect during and after the completion of the Restoration without abatement of rent beyond the time required for Restoration, notwithstanding the occurrence of such Casualty or Condemnation.

(iv) the affected Borrower shall commence the Restoration as soon as reasonably practicable (but in no event later than ninety (90) days after such Casualty or Condemnation, whichever the case may be, occurs) and shall diligently pursue the same to satisfactory completion;

(v) Lender shall be satisfied that any operating deficits and all payments of principal and interest under the Note will be paid during the period required for Restoration from (A) the Net Proceeds, or (B) other funds of Borrowers;

(vi) Lender shall be satisfied that the Restoration will be completed on or before the earliest to occur of (A) the date six (6) months prior to the Maturity Date, (B) the earliest date required for such completion under the terms of any Lease at the related Individual Property or other Leases necessary to meet the condition set forth in clause (iii) above, (C) such time as may be required under applicable Legal Requirements in order to repair and restore such Individual Property to the condition it was in immediately prior to such Casualty or to as nearly as possible the condition it was in immediately prior to such Condemnation, as applicable or (D) the expiration of the insurance coverage referred to in Section 5.1.1(a)(iii) unless Borrowers deposit with Lender additional amounts necessary to pay Debt Service and Operating Expenses for the period not covered by the insurance referred to in Section 5.1.1(a)(iii) through completion of the Restoration (provided, that, in no event shall Borrowers' deposit of additional funds extend the deadline for completion of the Restoration otherwise set forth in (A)-(C) of this clause (vi));

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

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

(ix) such Casualty or Condemnation, as applicable, does not result in the loss of access to such Individual Property or the related Improvements.

(b) The Net Proceeds shall be paid directly to Lender and held by Lender in an interest-bearing account and, until disbursed in accordance with the provisions of this Section 5.3.2, shall constitute additional security for the Debt. The Net Proceeds shall be disbursed by Lender to, or as directed by, Borrowers from time to time during the course of the Restoration, upon receipt of evidence satisfactory to Lender that (A) all requirements set forth in Section 5.3.2(a) have been satisfied, (B) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with the Restoration have been paid for in full, and (C) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Individual Property arising out of the Restoration 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.

(c) All plans and specifications required in connection with the Restoration shall be subject to prior approval of Lender (such approval not to be unreasonably withheld or delayed) and an independent architect selected by Lender (the "Casualty Consultant"). The plans and specifications shall require that the Restoration be completed in a first-class workmanlike manner at least equivalent to the quality and character of the original work in the Improvements (provided, however, that in the case of a partial Condemnation, the Restoration shall be done to the extent reasonable practicable after taking into account the consequences of such partial Condemnation), so that upon completion thereof, the Individual Property shall be at least equal in value and general utility to such Individual Property prior to the damage or destruction; it being understood, however, that Borrowers shall not be obligated to restore the Individual Property to the precise condition of such Individual Property prior to such Casualty provided such Individual Property is restored, to the extent practicable, to be of at least equal value and of substantially the same character as prior to the Casualty. Borrowers shall restore all Improvements such that when they are fully restored and/or repaired, such Improvements and their contemplated use fully comply with all applicable material Legal Requirements. The identity of the general contractor and material subcontractors and materialmen engaged in the Restoration, as well as the contracts under which they have been engaged, shall be subject to approval of Lender and the Casualty Consultant, such approval not to be unreasonably withheld or delayed. All costs and expenses incurred by Lender in connection with recovering, holding and advancing the Net Proceeds for the Restoration including, without limitation, reasonable attorneys' fees and disbursements and the Casualty Consultant's fees and disbursements, shall be paid by Borrower.

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

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

(f) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the opinion of Lender in consultation with the Casualty Consultant, be sufficient to pay in full the balance of the costs which are estimated by the Casualty Consultant to be incurred in connection with the completion of the Restoration, Borrowers 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 5.3.2 shall constitute additional security for the Debt.

(g) 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 5.3.2, 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 Borrowers, provided no Event of Default shall have occurred and shall be continuing under any of the Loan Documents or the Guaranty Security Documents; provided, however, the amount of such excess returned to Borrowers in the case of a Condemnation shall not exceed the amount of Net Proceeds Deficiency deposited by Borrower with the balance being applied to the Debt in the manner provided for in Subsection 5.3.2(h).

(h) All Net Proceeds not required (i) to be made available for the Restoration or (ii) to be returned to Borrowers as excess Net Proceeds pursuant to Section 5.3.2(g) may be retained and applied by Lender toward the payment of the Components, whether or not due and payable, in the manner and priority specified in Section 2.4.2 or, at the discretion of Lender, the same may be paid, either in whole or in part, to Borrowers for such purposes as Lender shall designate.

VI. RESERVE FUNDS

Section 6.1 Required Repair Fund.

6.1.1 Deposit of Required Repair Funds. Each Borrower shall perform the repairs at the Individual Property(ies) that it owns as more particularly set forth on Schedule II hereto (such repairs hereinafter referred to as “Required Repairs”) and shall complete each of the Required Repairs on or before the respective deadline for each repair as set forth on Schedule II. On the Closing Date, Borrower shall deposit with Agent the amount for each Individual Property set forth on such Schedule II hereto to perform the Required Repairs for such Individual Property. Amounts deposited pursuant to this Section 6.1.1 are referred to herein as the “Required Repair Funds.”

6.1.2 Release of Required Repair Funds. Lender shall direct Agent to disburse to the applicable Borrower the Required Repair Funds upon satisfaction by such Borrower of each of the following conditions: (a) such Borrower shall submit a written request for payment to Lender at least ten (10) days prior to the date on which such Borrower requests such payment be made and specifies the Required Repairs to be paid, (b) on the date such request is received by Lender and on the date such payment is to be made, no Event of Default shall exist and remain uncured, (c) Lender shall have received an Officer’s Certificate (i) stating that all Required Repairs to be funded by the requested disbursement have been completed in a good and workmanlike manner and in accordance with all applicable Legal Requirements, such certificate to be accompanied by a copy of any license, permit or other approval by any Governmental Authority required in connection with the Required Repairs, (ii) identifying the general contractor and material subcontractors and suppliers that supplied materials or labor in connection with the Required Repairs performed at such Individual Property to be funded by the requested disbursement, and (iii) stating that each such Person has been paid in full or will be paid in full upon such disbursement, such certificate to be accompanied by lien waivers or other evidence of payment satisfactory to Lender, (d) at Lender’s option, a title search for such Individual Property for which Required Repair Funds are being disbursed indicating that such Individual Property is free from all liens, claims and other encumbrances not previously

approved by Lender, (e) at Lender's option, if the cost of the Required Repairs exceeds \$500,000, 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 required repairs, and (f) Lender shall have received such other evidence as Lender shall reasonably request that the Required Repairs to be funded by the requested disbursement have been completed and are paid for or will be paid upon such disbursement to Borrower. Lender shall not be required to disburse Required Repair Funds more frequently than once each calendar month, or with respect to any Individual Property unless such requested disbursement is in an amount greater than the Minimum Disbursement Amount (or a lesser amount if the total Required Repair Funds is less than the Minimum Disbursement Amount, in which case only one disbursement of the amount remaining in the account shall be made).

Section 6.2 Tax Funds.

6.2.1 Deposits of Tax Funds. During the continuance of a Trigger Period only, pursuant to the Cash Management Agreement there shall be deposited on each Monthly Payment Date an amount equal to one-twelfth 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. Amounts deposited pursuant to this Section 6.2.1 are referred to herein as the "Tax Funds." If at any time Lender reasonably determines that the Tax Funds will not be sufficient to pay the Taxes, Lender shall notify Borrowers 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 any Borrower receives notice of any deficiency after the date that is ten (10) days prior to the date that Taxes are due, such Borrower will deposit such amount within three (3) Business Days after its receipt of such notice.

6.2.2 Release of Tax Funds. Provided no Event of Default has occurred and is continuing, Lender shall apply the Tax Funds, if any, 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 Funds shall exceed the amounts due for Taxes, Lender shall, in its sole discretion, return any excess to Borrowers or credit such excess against future payments to be made to the Tax Funds. Any Tax Funds remaining after the Debt has been paid in full shall be returned to Borrower.

Section 6.3 Insurance Funds.

6.3.1 Deposits of Insurance Funds. During the continuance of a Trigger Period only, pursuant to the Cash Management Agreement there shall be deposited on each Monthly Payment Date an amount equal to one-twelfth 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. Any amounts deposited pursuant to this Section 6.3.1 are referred to herein as the "Insurance Funds." If at any time Lender reasonably determines that the Insurance Funds will not be sufficient to pay the Insurance

Premiums, Lender shall notify Borrowers 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.

6.3.2 Release of Insurance Funds. Provided no Event of Default has occurred and is continuing, Lender shall apply the Insurance Funds, if any, 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 Funds shall exceed the amounts due for Insurance Premiums, Lender shall, in its sole discretion, return any excess to Borrowers or credit such excess against future payments to be made to the Insurance Funds. Any Insurance Funds remaining after the Debt has been paid in full shall be returned to Borrowers.

Section 6.4 Capital Expenditure Funds.

6.4.1 Deposits of Capital Expenditure Funds. During the continuance of a Trigger Period only, Borrowers shall deposit with Lender on each Monthly Payment Date an aggregate amount equal to one-twelfth of the Cap Ex Amount for each Individual Property for annual Capital Expenditures approved by Lender in the Approved Annual Budget that has been approved by Lender under Section 4.1.10 hereof or otherwise approved by Lender, which approval shall not be unreasonably withheld or delayed. Any amounts deposited pursuant to this Section 6.4.1 are referred to herein as the "Capital Expenditure Funds." Lender may reassess its estimate of the amount necessary for capital expenditures from time to time and, and may require Borrowers to increase the monthly deposits required pursuant to this Section 6.4.1 upon thirty (30) days notice to Borrowers if Lender determines in its reasonable discretion that an increase is necessary to maintain proper operation of any Individual Properties.

6.4.2 Release of Capital Expenditure Funds. (a) Lender shall direct Agent to disburse Capital Expenditure Funds only for Capital Expenditures.

(b) Lender shall direct Agent to disburse to a Borrower the Capital Expenditure Funds upon satisfaction by the requesting Borrower of each of the following conditions: (i) Borrower shall submit a written request for payment to Lender at least ten (10) days prior to the date on which such Borrower requests such payment be made and specifies the Capital Expenditures to be paid, (ii) on the date such request is received by Lender and on the date such payment is to be made, no Event of Default shall exist and remain uncured, (iii) Lender shall have received an Officer's Certificate (A) stating that the items to be funded by the requested disbursement are Capital Expenditures, (B) stating that all Capital Expenditures at the applicable Individual Property to be funded by the requested disbursement have been completed in a good and workmanlike manner and in accordance with all applicable Legal Requirements, such certificate to be accompanied by a copy of any license, permit or other approval required by any Governmental Authority in connection with the Capital Expenditures, (C) identifying the general contractor and material subcontractors and suppliers that supplied materials or labor in connection with the Capital Expenditures performed at such Individual Property to be funded by the requested disbursement, and (D) stating that each such Person has been paid in full or will be paid in full upon such disbursement, such certificate to be accompanied by lien waivers or other

evidence of payment satisfactory to Lender, (iv) at Lender's option, a title search for such Individual Property for which Capital Expenditure Funds are being disbursed indicating that such Individual Property is free from all Liens, claims and other encumbrances not previously approved by Lender, and (v) at Lender's option, if the cost of any individual Capital Expenditure exceeds \$500,000, 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 required repairs, and (vi) Lender shall have received such other evidence as Lender shall reasonably request that the Capital Expenditures at such Individual Property to be funded by the requested disbursement have been completed and are paid for or will be paid upon such disbursement to Borrower. Lender shall not be required to disburse Capital Expenditure Funds more frequently than once each calendar month, or with respect to any Individual Property unless such requested disbursement is in an amount greater than the Minimum Disbursement Amount (or a lesser amount if the total amount of Capital Expenditure Funds is less than the Minimum Disbursement Amount, in which case only one disbursement of the amount remaining in the account shall be made).

(c) Nothing in this Section 6.4.2 shall (i) make Lender responsible for making or completing the Capital Expenditures Work; (ii) require Lender to expend funds in addition to the Capital Expenditure Funds to complete any Capital Expenditures Work; (iii) obligate Lender to proceed with the Capital Expenditures Work; or (iv) obligate Lender to demand from Borrowers additional sums to complete any Capital Expenditures Work.

(d) Borrowers shall permit Lender and Lender's agents and representatives (including, without limitation, Lender's engineer, architect, or inspector) or third parties to enter onto the applicable Individual Property during normal business hours (subject to the rights of Tenants under their Leases) to inspect the progress of any Capital Expenditures Work and all materials being used in connection therewith and to examine all plans and shop drawings relating to such Capital Expenditures Work. Borrowers 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 6.4.2(d).

(e) If a disbursement will exceed \$250,000, Lender may require an inspection of the applicable Individual Property at Borrowers' expense prior to making a disbursement of Capital Expenditure Funds in order to verify completion of the Capital Expenditures Work for which reimbursement is sought. Lender may require that such inspection be conducted by an appropriate independent qualified professional selected by Lender and may require a certificate of completion by an independent qualified professional architect acceptable to Lender prior to the disbursement of Capital Expenditure Funds. Borrowers shall pay the expense of the inspection as required hereunder, whether such inspection is conducted by Lender or by an independent qualified professional architect.

(f) In addition to any insurance required under the Loan Documents and/or the Guaranty Security Documents, Borrowers 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 Capital Expenditures Work. All such policies shall be in form and amount reasonably satisfactory to Lender.

Section 6.5 Rollover Funds.

6.5.1 Deposits of Rollover Funds. During the continuance of a Trigger Period only, Borrowers shall deposit with Lender on each Monthly Payment Date an aggregate amount equal to one-twelfth of the Rollover Amount for each Individual Property for tenant improvements and leasing commissions that may be incurred at each Individual Property following the date hereof. Any amounts deposited pursuant to this Section 6.5.1 are referred to herein as the “Rollover Funds.”

6.5.2 Release of Rollover Funds. Lender shall direct Agent to disburse to Borrower the Rollover Funds upon satisfaction by Borrowers of each of the following conditions: (i) the requesting Borrower shall submit a written request for payment to Lender at least ten (10) days prior to the date on which such Borrower requests such payment be made and specifies the tenant improvement costs and leasing commissions to be paid, (ii) on the date such request is received by Lender and on the date such payment is to be made, no Event of Default shall exist and remain uncured, (iii) the Lease in respect of which a Borrower is obligated to pay or reimburse certain tenant improvement costs and leasing commissions shall (A) have been approved or deemed approved by Lender pursuant to the terms of this Agreement or (B) not be subject to Lender approval pursuant to the terms of this Agreement, (iv) to the extent not set forth in the Approved Annual Budget, Lender shall have received and approved a budget for tenant improvement costs and a schedule of leasing commissions payments and the requested disbursement will be used to pay all or a portion of such costs and payments, (v) Lender shall have received an Officer's Certificate (A) stating that all tenant improvements at the applicable Individual Property to be funded by the requested disbursement have been completed in good and workmanlike manner and in accordance with all applicable federal, state and local laws, rules and regulations, such certificate to be accompanied by a copy of any license, permit or other approval by any Governmental Authority required in connection with such tenant improvements, (B) identifying the general contractor and material subcontractors and suppliers that supplied materials or labor in connection with the tenant improvements performed at such Individual Property to be funded by the requested disbursement, and (C) stating that each such Person has been paid in full or will be paid in full upon such disbursement, such certificate to be accompanied by lien waivers or other evidence of payment satisfactory to Lender, (vi) at Lender's option, a title search for such Individual Property for which Rollover Funds are being disbursed indicating that such Individual Property is free from all Liens, claims and other encumbrances not previously approved by Lender, and (vii) Lender shall have received such other evidence as Lender shall reasonably request that the tenant improvements at such Individual Property to be funded by the requested disbursement have been completed and are paid for or will be paid upon such disbursement to the requesting Borrower. Lender shall not be required to disburse Rollover Funds more frequently than once each calendar month, or with respect to any Individual Property unless such requested disbursement is in an amount greater than the Minimum Disbursement Amount (or a lesser amount if the total amount of Rollover Funds is less than the Minimum Disbursement Amount, in which case only one disbursement of the amount remaining in the account shall be made).

Section 6.6 Lease Termination Rollover Funds.

6.6.1 Deposits of Rollover Funds. In the event that any Borrower receives a fee, payment or other compensation from any Tenant relating to or in exchange for the termination of such Tenant's Lease (a "Lease Termination Fee"), such Borrower shall, during the continuance of a Trigger Period only, immediately deposit such Lease Termination Fee with Lender, to be utilized for tenant improvements and leasing commissions that may be incurred with respect to the space relating to such Lease Termination Fee (a "Termination Space") and, in the event that there is a Rent Deficiency (as hereinafter defined) for the Termination Space from and after the date that the Lease for the Termination Space was terminated, in replacement of Rent. Amounts deposited pursuant to this Section 6.6.1 are referred to herein as the "Lease Termination Rollover Funds."

6.6.2 Release of Lease Termination Rollover Funds. (a) Lender shall direct Agent to disburse to the applicable Borrower the Lease Termination Rollover Funds upon satisfaction by the requesting Borrower of each of the following conditions: (i) the requesting Borrower shall submit a written request for payment to Lender at least ten (10) days prior to the date on which such Borrower requests such payment be made and (A) specifies the tenant improvement costs and leasing commissions to be paid for the Termination Space or (B) specifies the amount by which the rent expected to be obtained by such Borrower for the Termination Space during the next succeeding calendar month pursuant to the Lease or Leases for such Termination Space (a "Replacement Lease") is less than the amount of monthly rent received from the previous Tenant in the Termination Space pursuant to its Lease prior to such termination (the "Rent Deficiency"), (ii) on the date such request is received by Lender and on the date such payment is to be made, no Event of Default shall exist and remain uncured, (iii) the Replacement Lease in respect of which such Borrower is obligated to pay or reimburse certain tenant improvement costs and leasing commissions shall (A) have been approved or deemed approved by Lender pursuant to the terms of this Agreement or (B) not be subject to Lender approval pursuant to the terms of this Agreement, (iv) with respect to any Lease Termination Rollover Funds to be released by Lender for tenant improvements or leasing commissions pursuant to a Replacement Lease, Lender shall have received a budget for tenant improvement costs and a schedule of leasing commissions payments and the requested disbursement will be used to pay all or a portion of such costs and payments, (v) with respect to any Lease Termination Rollover Funds to be released by Lender for tenant improvements or leasing commissions pursuant to a Replacement Lease, Lender shall have received an Officer's Certificate from Borrower (A) stating that all tenant improvements at the applicable Individual Property to be funded by the requested disbursement have been completed in good and workmanlike manner and in accordance with all applicable federal, state and local laws, rules and regulations, such certificate to be accompanied by a copy of any license, permit or other approval by any Governmental Authority required in connection with the Capital Expenditures, (B) identifying the general contractor and material subcontractors and suppliers that supplied materials or labor in connection with the tenant improvements performed at such Individual Property to be funded by the requested disbursement, and (C) stating that each such Person has been paid in full or will be paid in full upon such disbursement, such certificate to be accompanied by lien waivers or other evidence of payment satisfactory to Lender, (vi) with respect to any Lease Termination Rollover Funds to be released by Lender for tenant improvements or leasing commissions pursuant to a Replacement Lease, at Lender's option, a

title search for such Individual Property for which Lease Termination Rollover Funds are being disbursed indicating that such Individual Property is free from all Liens, claims and other encumbrances not previously approved by Lender and (vii) with respect to any Lease Termination Rollover Funds to be released by Lender for tenant improvements or leasing commissions pursuant to a Replacement Lease, Lender shall have received such other evidence as Lender shall reasonably request that the tenant improvements at such Individual Property to be funded by the requested disbursement have been completed and are paid for or will be paid upon such disbursement to the Borrower. Lender shall not be required to disburse Lease Termination Rollover Funds more frequently than once each calendar month, or with respect to any Individual Property, unless such requested disbursement is in an amount greater than the Minimum Disbursement Amount (or a lesser amount if the total amount of Lease Termination Rollover Funds is less than the Minimum Disbursement Amount, in which case only one disbursement of the amount remaining in the account shall be made). All Rent Deficiency disbursements made by Lender shall be deposited into the Deposit Account as if such sums were received by Borrowers as Rent during the calendar month after such request is made by Borrower.

(b) Notwithstanding the foregoing, upon receipt by Lender of evidence that, with respect to any new Replacement Lease with a term of at least five (5) years, all tenant improvements required to be completed by the applicable Borrower pursuant to the Replacement Lease, if any, have been completed and all leasing commissions required to be paid by such Borrower with respect to the Replacement Lease, if any, have been paid, and provided no Event of Default then exists, Lender shall direct Agent to disburse to Borrowers the Lease Termination Rollover Funds on deposit with respect to such Termination Space provided that the rent to be obtained by Borrowers for such Termination Space during the next succeeding sixty (60) calendar months pursuant to the respective Replacement Lease is equal to or greater than the sum of the monthly rent last received from the previous Tenant in such Termination Space pursuant to its Lease multiplied by sixty (60).

Section 6.7 Ground Rent Funds.

6.7.1 Deposits of Ground Rent Funds. If any Substitute Properties shall consist of a Ground Lease, Borrowers shall deposit with Lender, at least ten (10) Business Days prior to each Monthly Payment Date, an amount (the "Monthly Ground Rent Deposit") equal to the Ground Rent that will be payable under such Ground Leases for the month in which such Monthly Payment Date occurs (such amounts so deposited shall hereinafter be referred to as the "Ground Rent Funds"). Such deposit may be increased by Lender in the amount Lender deems is necessary in its reasonable discretion based on any increases in the Ground Rent.

6.7.2 Release of Ground Rent Funds. Provided no Event of Default has occurred and is continuing, Lender shall apply the Ground Rent Funds to payments of Ground Rent. In making any payment relating to Ground Rent, Lender may do so according to any bill or statement given by the ground lessor under any Ground Lease without inquiry into the accuracy of such bill or statement or into the validity of any rent, additional rent or other charge thereof. If the amount of the Ground Rent Funds shall exceed the amounts due for Ground Rent, Lender shall, in its sole discretion, either (a) return any excess to Borrowers or (b) credit such excess against future payments to be made to the Ground Rent Funds. Any Ground Rent Funds remaining after the Debt has been paid in full shall be returned to Borrowers.

Section 6.8 Application of Reserve Funds.

Upon the occurrence of an Event of Default, Lender, at its option, may withdraw the Reserve Funds and apply the Reserve Funds to the items for which the Reserve Funds were established or to payment of the Debt in such order, proportion and priority as Lender may determine in its sole discretion. Lender's right to withdraw and apply the Reserve Funds shall be in addition to all other rights and remedies provided to Lender under the Loan Documents and the Guaranty Security Documents.

Section 6.9 Security Interest in Reserve Funds.

6.9.1 Grant of Security Interest. Borrowers shall be the owner of the Reserve Funds. Borrowers hereby pledge, assign and grant a security interest to Lender, as security for payment of the Debt and the performance of all other terms, conditions and covenants of the Loan Documents and the Guaranty Security Documents on Borrowers' part to be paid and performed, in all of Borrowers' right, title and interest in and to the Reserve Funds. The Reserve Funds shall be under the sole dominion and control of Lender.

6.9.2 Income Taxes. Each Borrower shall report on its federal, state and local income tax returns all interest or income accrued on the Reserve Funds to the extent that it constitutes reportable income.

6.9.3 Prohibition Against Further Encumbrance. No Borrower shall, without the prior consent of Lender, further pledge, assign or grant any security interest in the Reserve Funds or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto.

Section 6.10 Letters of Credit.

6.10.1 Delivery of Letters of Credit. (a) In lieu of making the payments to any of the Reserve Funds as required pursuant to the terms hereof, Borrowers may deliver to Lender a Letter of Credit in accordance with the provisions of this Section 6.10. Additionally, Borrowers may deliver to Lender a Letter of Credit in accordance with the provisions of this Section 6.10 in lieu of deposits previously made to the Reserve Funds. The aggregate amount of any Letter of Credit and cash on deposit with respect to the Capital Expenditure Funds, the Required Repair Funds and Rollover Funds shall at all times be at least equal to the aggregate amount which Borrower is required to have on deposit in such Reserve Fund pursuant to this Agreement. The aggregate amount of any Letter of Credit and cash on deposit with respect to the Tax Funds shall at all times be at least equal to the aggregate which Borrowers would be required to deposit in such Reserve Fund over the next twelve (12) month period. The aggregate amount of any Letter of Credit and cash on deposit with respect to the Insurance Funds and the Ground Rent Funds, if applicable, shall at all times be at least equal to the aggregate which Borrowers would be required to deposit in such Reserve Fund over the next twelve (12) month period. In the event that a Letter of Credit is delivered in lieu of any portion of the Tax Funds,

the Insurance Funds or the Ground Rent Funds, if applicable, Borrowers shall be responsible for the payment of Taxes, Insurance Premiums or Ground Rent, as applicable, and Lender shall not be responsible therefor. In the event that a Letter of Credit is delivered in lieu of any portion of the Tax Funds, the Insurance Funds or the Ground Rent Funds, if applicable, Lender shall return to Borrower any cash deposits that are no longer required to be on deposit (based on the provisions of this clause(a)).

(b) Borrowers shall give Lender no less than thirty (30) days notice of Borrowers' election to deliver a Letter of Credit and Borrowers shall pay to Lender all of Lender's reasonable out-of-pocket costs and expenses in connection therewith. Borrowers shall not be entitled to draw from any such Letter of Credit. Upon thirty (30) days notice to Lender, Borrowers may replace a Letter of Credit with a cash deposit to the applicable Reserve Fund if a Letter of Credit has been outstanding for more than six (6) months. Prior to the return of a Letter of Credit, Borrowers shall deposit an amount equal to the amount that would have accumulated in the applicable Reserve Fund and not been disbursed in accordance with this Agreement if such Letter of Credit had not been delivered.

(c) Borrowers shall provide Lender with notice of any increases in the annual payments for Taxes, Insurance Premiums and Ground rent, if applicable, thirty (30) days prior to the effective date of any such increase and any applicable Letter of Credit shall be increased by such increased amount at least ten (10) days prior to the effective date of such increase.

Section 6.11 Provisions Regarding Letters of Credit.

6.11.1 Security for Debt. Each Letter of Credit delivered under this Agreement shall be additional security for the payment of the Debt. Upon the occurrence of an Event of Default, Lender shall have the right, at its option, to draw on any Letter of Credit and to apply all or any part thereof to the payment of the items for which such Letter of Credit was established or to apply each such Letter of Credit to payment of the Debt in such order, proportion or priority as Lender may determine. Any such application to the Debt shall be subject to the Yield Maintenance Premium. On the Maturity Date, any such Letter of Credit may be applied to reduce the Debt.

6.11.2 Additional Rights of Lender. In addition to any other right Lender may have to draw upon a Letter of Credit pursuant to the terms and conditions of this Agreement, Lender shall have the additional rights to draw in full any Letter of Credit: (a) with respect to any evergreen Letter of Credit, if Lender has received a notice from the issuing bank that the Letter of Credit will not be renewed and a substitute Letter of Credit is not provided at least thirty (30) days prior to the date on which the outstanding Letter of Credit is scheduled to expire; (b) with respect to any Letter of Credit with a stated expiration date, if Lender has not received a notice from the issuing bank that it has renewed the Letter of Credit at least thirty (30) days prior to the date on which such Letter of Credit is scheduled to expire and a substitute Letter of Credit is not provided at least thirty (30) days prior to the date on which the outstanding Letter of Credit is scheduled to expire; (c) upon receipt of notice from the issuing bank that the Letter of Credit will be terminated (except if the termination of such Letter of Credit is permitted pursuant to the terms and conditions of this Agreement or a substitute Letter of Credit is provided); or (d) if Lender has received notice that the bank issuing the Letter of Credit shall cease to be an Eligible

Institution. Notwithstanding anything to the contrary contained in the above, Lender is not obligated to draw any Letter of Credit upon the happening of an event specified in (a), (b), (c) or (d) above and shall not be liable for any losses sustained by Borrowers due to the insolvency of the bank issuing the Letter of Credit if Lender has not drawn the Letter of Credit. Provided no Event of Default is continuing, draws of a Letter of Credit under this Section 6.11.2 shall thereafter be held as Reserve Funds in accordance with this Agreement.

VII. PROPERTY MANAGEMENT

Section 7.1 The Management Agreement.

Each Borrower shall cause the Manager of the Individual Property(ies) that it owns to manage the applicable Individual Property substantially in accordance with its Management Agreement. Each Borrower shall (i) diligently perform and observe all of the material terms, covenants and conditions of its Management Agreement on the part of such Borrower to be performed and observed, (ii) promptly notify Lender of any notice to such Borrower of any default by such Borrower in the performance or observance of any of the terms, covenants or conditions of its Management Agreement on the part of such Borrower to be performed and observed, and (iii) upon request of Lender, promptly deliver to Lender a copy of each financial statement, business plan, capital expenditures plan, report and estimate received by it under each Management Agreement. If any Borrower shall default in the performance or observance of any material term, covenant or condition of any Management Agreement on the part of such Borrower to be performed or observed, then, without limiting Lender's other rights or remedies under this Agreement or the other Loan Documents, and without waiving or releasing such Borrower from any of its obligations hereunder or under such Management Agreement, upon five (5) Business Days' prior notice to Borrowers, Lender shall have the right, but shall be under no obligation, to pay any sums and to perform any act as may be appropriate to cause all the material terms, covenants and conditions of such Management Agreement on the part of the Borrower to be performed or observed.

Section 7.2 Prohibition Against Termination or Modification.

No Borrower shall surrender, terminate, cancel, modify, renew or extend any Management Agreement, or enter into any other agreement relating to the management or operation of any Individual Property with Manager or any other Person, or consent to the assignment by the Manager of its interest under the related Management Agreement, in each case without the express consent of Lender, which consent shall not be unreasonably withheld; provided, however, with respect to a new manager such consent may be conditioned upon Borrowers delivering a Rating Agency Confirmation as to such new manager and management agreement and, if such new manager is an Affiliate of Borrowers, upon delivery of a non-consolidation opinion acceptable to the Rating Agencies. If at any time Lender consents to the appointment of a new manager, such new manager and the applicable Borrower shall, as a condition of Lender's consent, execute a subordination of management agreement in the form then used by Lender. Notwithstanding anything contained in this Section 7.2 to the contrary, Wells Management Company, Inc. is hereby approved by Lender as a substitute property manager for any Manager currently managing an Individual Property, provided, that, prior to Wells Management Company, Inc. becoming the manager of any Individual Property, Borrowers shall be required to satisfy each of the conditions set forth in this Section other than obtaining Lender's approval or a Rating Agency Confirmation.

Section 7.3 Replacement of Manager.

Lender shall have the right to require any Borrower to replace any Manager at any Individual Property with a Person which is not an Affiliate of, but is chosen by, such Borrower and approved by Lender upon the occurrence of any one or more of the following events: (i) from and after the Maturity Date, (ii) at any time following the occurrence of an Event of Default, (iii) if at any time the Debt Service Coverage Ratio falls below 1.20 to 1.0 (the “Manager Termination Ratio”), as determined by Lender in its sole discretion on a quarterly basis and/or (iv) if such Manager shall be in monetary default or any other material default under its Management Agreement beyond any applicable notice and cure period or if at any time such Manager has engaged in gross negligence, fraud or willful misconduct. Notwithstanding the provisions of clause (iii) above, the applicable Borrower shall nevertheless have the right to retain such Manager if, prior to the replacement of such Manager, Borrowers shall provide additional collateral in the form of Letters of Credit for a portion of the Loan, satisfactory to Lender, such that the Manager Termination Ratio can be maintained on the Loan Amount net of such additional collateral. Lender may require the Borrowers to increase the additional collateral to the extent such Debt Service Coverage Ratio continues to decline in subsequent quarters. Such additional collateral shall be released to Borrower when the Debt Service Coverage Ratio equals or exceeds the Manager Termination Ratio for six (6) consecutive months and provided no Event of Default has occurred. Letters of Credit provided under this section shall be additional security for the repayment of the Indebtedness and may be drawn upon by Lender upon the occurrence of an Event of Default and applied by Lender in such order and priority as Lender may determine in its sole discretion.

VIII. PERMITTED TRANSFERS

Section 8.1 Permitted Transfer of the Individual Properties.

Lender shall not withhold its consent to the one-time conveyance of the Individual Properties to a Permitted Transferee provided that (a) Lender has received a Rating Agency Confirmation as to the conveyance of the applicable Individual Properties to the Permitted Transferee, (b) Lender has received an agreement, acceptable to it in its sole discretion, pursuant to which Permitted Transferee assumes all of Borrowers’ obligations under the Loan Documents, (c) Lender receives a transfer fee equal to one percent (1.0)% of the original Loan Amount, (d) Lender shall have received such documents, certificates and legal opinions as it may reasonably request and (e) the Other Borrowers simultaneously transfer the Other Properties to such Transferee and satisfy the conditions set forth in Section 8.1 of each of the Other Loan Agreements.

Section 8.2 Permitted Transfers of Interest in Borrowers.

The restrictions on Transfers of ownership interests in the Borrowers set forth in Article 6 of the Mortgage shall not apply to the issuance, sale, transfer or pledge of publicly traded shares of the REIT or the issuance, transfer or pledge of limited partnership interests

(including the conversion of general partnership interests to limited partnership interests) in Wells Operating Partnership, L.P. (“the OP”), provided that (x) no one Person or its Affiliates owns more than forty-nine percent (49%) of the REIT or the OP (other than the REIT pursuant to clause (ii) below) and the REIT shall at all times (i) be and remain the sole general partner of the OP and have the right and power to direct the management, policies and day-to-day business and affairs of the OP and (ii) directly owns a minimum of ninety percent (90%) of the interests in the OP, (y) the OP directly or indirectly at all times owns at least one hundred percent (100%) of the ownership interests in each Borrower and retains control of the Borrowers and the day-to-day management of the Individual Properties and (z) if after giving effect to such transfer and all prior transfers, more than forty-nine percent (49%) in the aggregate of direct or indirect interests in any individual Borrower are owned by any Person and its Affiliates that owned less than a forty-nine percent (49%) direct or indirect interest in such Borrower as of the Closing Date, Lender receives a non-consolidation opinion acceptable to Lender and the Rating Agencies.

Section 8.3 Permitted Easements.

Lender shall not unreasonably withhold or delay its consent to grants of easements, restrictions, covenants, reservations and rights of way in the ordinary course of business for water and sewer lines, telephone and telegraph lines, electric lines and other utilities or for other similar purposes, provided that no such grant shall materially impair the utility and operation of any Individual Property or materially adversely affect the value of any Individual Property or materially adversely affect any Borrower’s ability to pay the Loan.

IX. SALE AND SECURITIZATION OF MORTGAGE

Section 9.1 Sale of Mortgage and Securitization.

(a) Lender shall have the right (i) to sell or otherwise transfer the Loan 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) 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, Borrowers 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, including, without limitation, to:

(i) (A) provide updated financial and other information with respect to the Individual Properties, the business operated at the Individual Properties, Borrowers and, to the extent reasonably available to Borrowers, each Manager, (B) provide updated budgets relating to the Individual Properties and (C) at Lender’s expense provide updated appraisals, market studies, environmental reviews (Phase I’s and, if appropriate, Phase II’s), property condition reports and other due diligence investigations of the Individual Properties (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, fraudulent conveyance, and true sale or any other opinion customary in Secondary Market Transactions or required by the Rating Agencies with respect to the Individual Properties and Borrowers and Affiliates, which counsel and opinions shall be satisfactory 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 substantially similar to the representations and warranties contained in the Loan Documents as the Rating Agencies may require; and

(iv) execute amendments to the Loan Documents and the Guaranty Security Documents and Borrowers' organizational documents reasonably requested by Lender; provided, however, that Borrowers shall not be required to modify or amend any Loan Document if such modification or amendment would (A) change the interest rate, the stated maturity or the amortization of principal as set forth herein or in the Note, (B) modify or amend any other material economic term of the Loan, or (C) materially decrease the rights or materially increase the obligations of the Borrower.

Any reports, statements or other information required to be delivered under this Section 9.1 shall be delivered in paper form or transmitted electronically in PDF or other similar format or Borrower may deliver such reports, statements and other information (A) on a diskette, or (B) in electronic form and prepared using Microsoft Word for Windows or WordPerfect for Windows files (which files may be prepared using a spreadsheet program and saved as word processing files), provided, that, delivery of such reports, statements and other information in such formats shall be subject to Borrowers' satisfaction of the reporting and delivery obligations and requirements of the Servicer. Notwithstanding the foregoing, Borrowers shall be required to deliver original opinions, agreements, amendments, certificates of the Borrower or its Affiliates, and title insurance policies or endorsements, and Borrower shall be required to deliver originals of any other agreements, documents, certificates and reports if such originals are reasonably requested by Lender, the Servicer or the Rating Agencies or otherwise required pursuant to the Loan Documents.

Section 9.2 Securitization Indemnification.

(a) Borrowers understand that information provided to Lender by Borrowers 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) Borrowers 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 Borrowers have examined such Disclosure Documents specified by Lender and that, to the best of Borrower's knowledge, each such Disclosure Document, as it relates to Borrowers, Borrowers' Affiliates, the Individual Properties, Manager 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 9.2, Lender hereunder shall include its officers and directors), the Affiliate of Morgan Stanley Dean Witter & Co. ("Morgan Stanley") 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 "Morgan Stanley Group"), and Morgan Stanley, and any other placement agent or underwriter with respect to the Securitization, each of their respective directors and each Person who controls Morgan Stanley 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 Morgan Stanley 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 Morgan Stanley Group and/or the Underwriter Group for any legal or other expenses reasonably incurred by Lender, the Morgan Stanley 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 Borrowers 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 Borrowers, operating statements and rent rolls with respect to the Individual Properties. This indemnity agreement will be in addition to any liability which Borrowers may otherwise have.

(c) In connection with Exchange Act Filings, Borrowers shall (i) indemnify Lender, the Morgan Stanley Group and the Underwriter Group for Liabilities to which Lender, the Morgan Stanley 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 Morgan Stanley Group or the Underwriter Group for any legal or other expenses reasonably incurred by Lender, the Morgan

Stanley Group or the Underwriter Group in connection with defending or investigating the Liabilities; provided, however, that Borrower will be liable in any such case under clauses (i) or (ii) 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 Borrowers 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 Borrowers, operating statements and rent rolls with respect to the Individual Properties. This indemnity agreement will be in addition to any liability which Borrowers may otherwise have.

(d) Promptly after receipt by an indemnified party under this Section 9.2 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 9.2, 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 reasonably satisfactory to such indemnified party. After notice from the indemnifying party to such indemnified party under this Section 9.2, 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 9.2(b) or (c) 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 9.2(b) or (c), 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) Morgan Stanley's and Borrowers' 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 Borrowers hereby agree that it would not be equitable if the amount of such contribution were determined by pro rata or per capita allocation.

(f) The liabilities and obligations of both of the Borrowers and Lender under this Section 9.2 shall survive the termination of this Agreement and the satisfaction and discharge of the Debt.

X. DEFAULTS

Section 10.1 Event of Default.

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

(i) if (A) any monthly installment of principal and/or interest due under the Note or the payment due on the Maturity Date is not paid when due or (B) any other portion of the Debt is not paid when due and such non-payment continues for five (5) days following notice to Borrowers that the same is due and payable;

(ii) if any of the Taxes or Other Charges are not paid when due;

(iii) if the Policies are not kept in full force and effect;

(iv) if one or more Borrowers breach or permit or suffer a breach of Article 6 of the Mortgage;

(v) if any representation or warranty made by any Borrower herein or in any other Loan Document or any Guaranty Security Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished to Lender shall have been false or misleading in any material respect as of the date the representation or warranty was made;

(vi) if any Borrower, any SPC Party, any of the Other Borrowers or Guarantor shall make an assignment for the benefit of creditors;

(vii) if a receiver, liquidator or trustee shall be appointed for any Borrower, any SPC Party, any of the Other Borrowers or Guarantor or if Borrower, any SPC Party, any of the Other Borrowers or Guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, any Borrower, any SPC Party, any of the Other Borrowers or Guarantor, or if any proceeding for the dissolution or liquidation of any Borrower, any SPC Party, any of the Other Borrowers or Guarantor shall be instituted; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by such Borrower, and SPC Party, any of the Other Borrowers or Guarantor, upon the same not being discharged, stayed or dismissed within sixty (60) days;

(viii) if any Borrower attempts to assign its rights under this Agreement or any of the other Loan Documents or the Guaranty Security Documents or any interest herein or therein in contravention of the Loan Documents or the Guaranty Security Documents;

(ix) if any of the assumptions contained in the Non-Consolidation Opinion, or in any other non-consolidation opinion delivered to Lender in connection with the Loan, or in any other non-consolidation delivered subsequent to the closing of the Loan, is or shall become untrue in any material respect;

(x) if any Borrower breaches any representation, warranty or covenant contained in Section 3.1.24 hereof;

(xi) if Borrower fails to comply with the covenants as to Prescribed Laws set forth in Section 4.1.1, provided, that, it shall not be an Event of Default under this clause (xi) if Borrower's failure to comply with Prescribed Laws (A) is unintentional, (B) occurs after the date of this Agreement, (C) is susceptible of cure in the reasonable discretion of the Lender and is actually cured within thirty (30) days of the date upon which Borrower receives notice of, or becomes aware of, any breach of the covenant with respect to Prescribed Laws as set forth in Section 4.1.1 hereof, (D) can be cured within such thirty (30) day period in such a way so that Lender will not incur any damages or liability and (E) is due to the direct or indirect action(s) of an unaffiliated third party with which Borrower or its Affiliates is then doing business;

(xii) if any Borrower breaches any of the negative covenants contained in Sections 4.2.12 or 4.2.13 hereof or acts or neglects to act in such a manner as to be considered a default under the Operating Agreements and such failure is not cured within ten (10) days of written notice from Lender;

(xiii) if any Ground Lease is part of the collateral for the Loan, (A) Borrowers shall fail in the payment of any rent, additional rent or other charge mentioned in or made payable by the Ground Lease as and when such rent or other charge is payable (unless waived by the landlord under the Ground Lease), (B) there shall occur any default by any Borrower, as tenant under the Ground Lease, in the observance or performance of any term, covenant or condition of the Ground Lease on the part of such Borrower, to be observed or performed (unless cured within applicable grace, notice or cure periods set forth in such Ground Lease or otherwise waived by the landlord under the Ground Lease), (C) if any one or more of the events referred to in the Ground Lease shall occur which would cause the Ground Lease to terminate without notice or action by the landlord under the Ground Lease or which would entitle the landlord to terminate the Ground Lease and the term thereof by giving notice to such Borrower, as tenant thereunder (unless waived by the landlord under the Ground Lease), (D) if the leasehold estate created by the Ground Lease shall be surrendered or the Ground Lease shall be terminated or canceled for any reason or under any circumstances whatsoever or (E) if any of the terms, covenants or conditions of the Ground Lease shall in any manner be modified, changed, supplemented, altered, or amended without the consent of Lender except as otherwise permitted by this Agreement;

(xiv) if Guarantor breaches in any material respect any covenant, warranty or representation contained in the Guaranty or if any Borrower breaches in any material respect any covenant, warranty or representation contained in the Guaranty of Other Loans which is not cured within any applicable notice and cure period provided therein;

(xv) if any Borrower shall continue to be in Default under any of the other terms, covenants or conditions of this Agreement not specified in Subsections (i) to (xiv) above, for ten (10) days after notice to Borrowers from Lender, in the case of any Default which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other Default; provided, however, that if such non monetary Default is susceptible of cure but cannot reasonably be cured within such 30 day period and provided further that Borrowers shall have commenced to cure such Default within such 30 day period and thereafter diligently and expeditiously proceeds to cure the same, such 30 day period shall be extended for such time as is reasonably necessary for Borrowers in the exercise of due diligence to cure such Default, such additional period not to exceed sixty (60) days plus time permitted for Excusable Delays;

(xvi) an "Event of Default" shall occur under, and as defined in, any of the Other Loan Documents or the Guaranty Security Documents; or

(xvii) if there shall be default under any of the other Loan Documents or the Guaranty Security Documents beyond any applicable cure periods contained in such Loan Documents or such Guaranty Security Documents, whether as to the Borrowers or any of the Individual Properties, or if any other such event shall occur or condition shall exist, if the effect of such event or condition is to accelerate the maturity of any portion of the Debt or to permit Lender to accelerate the maturity of all or any portion of the Debt.

(b) Upon the occurrence of an Event of Default (other than an Event of Default described in clause (vi), (vii) or (viii) above) and at any time thereafter Lender may, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or the Guaranty Security Documents or at law or in equity, take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and in and to all or any of the Individual Properties, including, without limitation, declaring the Debt to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents against Borrowers and any or all of the Individual Properties, including, without limitation, all rights or remedies available at law or in equity; and upon any Event of Default described in clauses (vi), (vii) or (viii) above, the Debt and all other obligations of Borrowers hereunder and under the other Loan Documents and the Guaranty Security Documents shall immediately and automatically become due and payable, without notice or demand, and Borrowers hereby expressly waive any such notice or demand, anything contained herein or in any other Loan Document or in any of the Guaranty Security Documents to the contrary notwithstanding.

Section 10.2 Remedies.

(a) Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrowers under this Agreement or any of the other Loan Documents or any of the Guaranty Security Documents executed and delivered by, or applicable to, Borrowers or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Debt shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents or the Guaranty Security Documents with respect to all or any of the Individual Properties. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents or in the Guaranty Security Documents. Without limiting the generality of the foregoing, if an Event of Default is continuing (i) Lender is not subject to any “one action” or “election of remedies” law or rule, and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against the Individual Properties and each Mortgage has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Debt or the Debt has been paid in full.

(b) With respect to the Borrowers and the Individual Properties, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to any Individual Property for the satisfaction of any of the Debt in preference or priority to any other Individual Property, and Lender may seek satisfaction out of all of the Individual Properties or any part thereof, in its absolute discretion in respect of the Debt. In addition, Lender shall have the right from time to time to partially foreclose the Mortgages in any manner and for any amounts secured by the Mortgages then due and payable as determined by Lender in its sole discretion including, without limitation, the following circumstances: (i) in the event Borrowers default beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose one or more Mortgages 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 one or more Mortgage to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by one or more Mortgages as Lender may elect. Notwithstanding one or more partial foreclosures, the Individual Properties shall remain subject to the Mortgages to secure payment of sums secured by the Mortgages and not previously recovered.

(c) Lender shall have the right from time to time to sever the Note and the other Loan Documents into one or more separate notes, mortgages and other Guaranty 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. Borrowers 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. Borrowers hereby absolutely and irrevocably appoint 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, Borrowers ratifying all that their 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 Borrowers by Lender of Lender's intent to exercise its rights under such power. Except as may be required in connection with a Securitization pursuant to Section 9.1 hereof, (i) 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 (ii) the Severed Loan Documents shall not contain any representations, warranties or covenants not contained in the Loan Documents or the Guaranty Security Documents and any such representations and warranties contained in the Severed Loan Documents will be given by Borrowers only as of the Closing Date.

(d) Any amounts recovered from any Individual 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 Components and/or any other amounts due under the Loan Documents or the Guaranty Security Documents in such order, priority and proportions as Lender in its sole discretion shall determine.

Section 10.3 Right to Cure Defaults.

Lender may, but without any obligation to do so and without notice to or demand on Borrowers and without releasing Borrowers from any obligation hereunder or being deemed to have cured any Event of Default hereunder, make, do or perform any obligation of Borrowers hereunder in such manner and to such extent as Lender may deem necessary. Lender is authorized to enter upon any Individual Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in any Individual Property for such purposes, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 10.3, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any action or proceeding shall bear interest at the Default Rate, for the period after such cost or expense was incurred until the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by the liens, claims and security interests provided to Lender under the Loan Documents and shall be immediately due and payable upon demand by Lender therefore.

Section 10.4 Remedies Cumulative.

The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrowers pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole 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.

XI. MISCELLANEOUS

Section 11.1 Successors and Assigns.

All covenants, promises and agreements in this Agreement, by or on behalf of Borrowers, shall inure to the benefit of the legal representatives, successors and assigns of Lender.

Section 11.2 Lender's Discretion.

Whenever pursuant to this Agreement Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Lender and shall be final and conclusive. Prior to a Securitization, whenever pursuant to this Agreement the Rating Agencies are given any right to approve or disapprove, or any arrangement or term is to be satisfactory to the Rating Agencies, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory, based upon Lender's determination of Rating Agency criteria, shall be substituted therefore.

Section 11.3 Governing Law.

(A) THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, AND THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWERS IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW (THE "GOL")) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES (I) THE PROVISIONS OF THIS AGREEMENT GOVERNING THE CREATION, PERFECTION, PRIORITY AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT HERETO WITH RESPECT TO THE

PROPERTY (OTHER THAN AS DESCRIBED IN SUBSECTION II BELOW) SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE APPLICABLE INDIVIDUAL PROPERTY AND FIXTURES ARE LOCATED AND (II) WITH RESPECT TO THE LIENS AND SECURITY INTERESTS CREATED BY THIS AGREEMENT IN PROPERTY COVERED BY ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE (OTHER THAN THE ACCOUNTS), THE LAW OF THE JURISDICTION APPLICABLE IN ACCORDANCE WITH SECTIONS 9-301 THROUGH 9-307 OF THE UNIFORM COMMERCIAL CODE IN EFFECT IN THE STATE WHERE THE APPLICABLE INDIVIDUAL PROPERTY IS LOCATED SHALL GOVERN THE PERFECTION, THE EFFECT OF PERFECTION OR NON-PERFECTION, AND THE PRIORITY THEREOF. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWERS HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVE ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT AND THE NOTE, AND THIS AGREEMENT AND THE NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE GOL EXCEPT AS SPECIFICALLY SET FORTH ABOVE.

(B) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWERS 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 BORROWERS WAIVE 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 BORROWERS HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWERS DO HEREBY DESIGNATE AND APPOINT:

CT CORPORATION SYSTEM
111 EIGHTH AVENUE
NEW YORK, NEW YORK 10011
ATTN: SERVICE OF PROCESS DEPT.

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON THEIR 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 BORROWERS IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWERS, IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWERS (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF THEIR 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 THEIR AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

Section 11.4 Modification, Waiver in Writing.

No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement or of any other Loan Document or any other Guaranty Security Documents, nor consent to any departure by Borrowers 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 Borrowers, shall entitle Borrowers to any other or future notice or demand in the same, similar or other circumstances.

Section 11.5 Delay Not a Waiver.

Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under any other Loan Document or Security Document, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement or any other Loan Document or Security Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement or the other Loan Documents or Security Document, or to declare a default for failure to effect prompt payment of any such other amount. Lender shall have the right to waive or reduce any time periods that Lender is entitled to under the Loan Documents or the Guaranty Security Documents in its sole and absolute discretion.

Section 11.6 Notices.

All notices, demands, requests, consents, approvals or other communications (any of the foregoing, a “Notice”) required, permitted, or desired to be given hereunder shall be in writing sent by registered or certified mail, postage prepaid, return receipt requested, or delivered by hand or reputable overnight courier addressed to the party to be so notified at its address hereinafter set forth, or to such other address as such party may hereafter specify in accordance with the provisions of this Section 11.6. Any Notice shall be deemed to have been received: (a) three (3) days after the date such Notice is mailed, (b) on the date of delivery by hand if delivered during business hours on a Business Day (otherwise on the next Business Day), and (c) on the next Business Day if sent by an overnight commercial courier, in each case addressed to the parties as follows:

If to Lender: Morgan Stanley Mortgage Capital Inc.
1221 Avenue of the Americas, 27th Floor
New York, New York 10020
Attention: James Flaum and Kevin Swartz

with a copy to: Cadwalader, Wickersham & Taft LLP
100 Maiden Lane
New York, New York 10038
Attention: John M. Zizzo, Esq.

If to Borrowers: c/o Wells Real Estate Funds
6200 The Corners Parkway, Suite 250
Norcross, Georgia 30092-6040
Attention: Finance Department

with a copy to: Alston & Bird LLP
1201 West Peachtree Street
Atlanta, Georgia 30309-3424
Attention: Steven D. Collier, Esq.

Section 11.7 Trial by Jury.

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

Section 11.8 Headings.

The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 11.9 Severability.

Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Section 11.10 Preferences.

Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrowers to any portion of the obligations of Borrowers hereunder. To the extent Borrowers make 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 bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

Section 11.11 Waiver of Notice.

Borrowers shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or the other Loan Documents or the Guaranty Security Documents specifically and expressly provide for the giving of notice by Lender to Borrower and except with respect to matters for which Borrowers are not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice. Borrowers hereby expressly waive the right to receive any notice from Lender with respect to any matter for which this Agreement or the other Loan Documents or the Guaranty Security Documents do not specifically and expressly provide for the giving of notice by Lender to Borrowers.

Section 11.12 Remedies of Borrower.

In the event that a claim or adjudication is made that Lender or its agents have acted unreasonably or unreasonably delayed acting in any case where, by law or under this Agreement or the other Loan Documents or the other Guaranty Security Documents, Lender or such agent, as the case may be, has an obligation to act reasonably or promptly, neither Lender nor its agents shall be liable for any monetary damages, and Borrowers' sole remedy shall be limited to commencing an action seeking injunctive relief or declaratory judgment. Any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment.

Section 11.13 Expenses; Indemnity.

(a) Borrowers shall pay or, if Borrowers fail to pay, reimburse Lender upon receipt of notice from Lender, for all reasonable costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Lender in connection with (i) Borrowers' ongoing performance of and compliance with Borrowers' agreements and covenants contained in this Agreement and the other Loan Documents and the Guaranty Security Documents on its part to be performed or complied with after the Closing Date, including, without limitation, confirming compliance with environmental and insurance requirements; (ii) Lender's ongoing performance of and compliance with all agreements and covenants contained in this Agreement and the other Loan Documents and the Guaranty Security Documents on its part to be performed or complied with after the Closing Date; (iii) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement

and the other Loan Documents and the Guaranty Security Documents and any other documents or matters requested by any Borrower; (iv) the filing and recording fees and expenses, title insurance and reasonable fees and expenses of counsel for providing to Lender all required legal opinions, and other similar expenses incurred, in creating and perfecting the Liens in favor of Lender pursuant to this Agreement and the other Loan Documents and the Guaranty Security Documents; (v) enforcing or preserving any rights, in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation or otherwise, in each case against, under or affecting any Borrower, this Agreement, the other Loan Documents, the Guaranty Security Documents, the Individual Properties, or any other security given for the Loan; and (vi) enforcing any obligations of or collecting any payments due from Borrowers under this Agreement, the other Loan Documents, the Guaranty Security Documents or with respect to the Individual Properties or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work out" or of any insolvency or bankruptcy proceedings; provided, however, that Borrowers 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. Any costs due and payable to Lender may be paid to Lender pursuant to the Cash Management Agreement.

(b) Borrowers shall indemnify, defend and hold harmless Lender and its officers, directors, agents, employees (and the successors and assigns of the foregoing) (the "Lender Indemnitees") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for the Lender Indemnitees in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not the Lender Indemnitees shall be designated a party thereto), that may be imposed on, incurred by, or asserted against the Lender Indemnitees in any manner relating to or arising out of (i) any breach by any Borrower of its obligations under, or any material misrepresentation by any Borrower contained in, this Agreement or the other Loan Documents or the Guaranty Security Documents, or (ii) the use or intended use of the proceeds of the Loan (collectively, the "Indemnified Liabilities"); provided, however, that Borrowers shall not have any obligation to the Lender Indemnitees hereunder to the extent that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of the Lender Indemnitees. To the extent that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrowers shall pay the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by the Lender Indemnitees.

Section 11.14 Schedules Incorporated.

The Schedules annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

Section 11.15 Offsets, Counterclaims and Defenses.

Any assignee of Lender's interest in and to this Agreement and the other Loan Documents and the Guaranty Security Documents shall take the same free and clear of all

offsets, counterclaims or defenses which are unrelated to such documents which Borrowers may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrowers 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 Borrowers.

Section 11.16 No Joint Venture or Partnership; No Third Party Beneficiaries.

(a) Each Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents and the Guaranty Security 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 any Borrower and Lender nor to grant Lender any interest in the Individual Properties other than that of mortgagee, beneficiary or lender.

(b) This Agreement and the other Loan Documents and the Guaranty Security Documents are solely for the benefit of Lender and nothing contained in this Agreement or the other Loan Documents and the Guaranty Security Documents shall be deemed to confer upon anyone other than Lender 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.

Section 11.17 Publicity.

All news releases, publicity or advertising by either party to this Agreement through any media intended to reach the general public which refers to the Loan Documents, to the parties, or any of their Affiliates shall be subject to the prior approval of the other party, not to be unreasonably withheld or delayed.

Section 11.18 Cross Default; Cross-Collateralization; Waiver of Marshalling of Assets.

(a) Borrowers acknowledge that Lender has made the Loan to Borrowers and has accepted the Guaranty of Other Loans from Borrowers upon the security of its collective interest in the Individual Properties and in reliance upon the aggregate of the Individual Properties taken together being of greater value as collateral security than the sum of the Individual Properties taken separately. Borrowers agree that the Mortgages are and will be cross-collateralized and cross-defaulted with each other so that (i) an Event of Default under any of the Mortgages shall constitute an Event of Default under each of the other Mortgages which

secure the Note and the Guaranty of Other Loans; (ii) an Event of Default under the Note, the Guaranty of Other Loans or this Agreement shall constitute an Event of Default under each Mortgage; (iii) each First Mortgage shall constitute security for the Note as if a single blanket lien were placed on all of the Individual Properties as security for the Note, and (iv) each Second Mortgage shall constitute security for the Guaranty of Other Loans as if a single blanket lien were placed on all of the Individual Properties as security for the Guaranty of Other Loans.

(b) To the fullest extent permitted by law, each Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of such Borrower, such Borrower's partners and others with interests in any Borrower, and of the Individual Properties, or to a sale in inverse order of alienation in the event of foreclosure of all or any of the Mortgages, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents or the Guaranty Security Documents to a sale of the Individual Properties for the collection of the Debt without any prior or different resort for collection or of the right of Lender to the payment of the Debt out of the net proceeds of the Individual Properties in preference to every other claimant whatsoever. In addition, each Borrower, for itself and its successors and assigns, waives in the event of foreclosure of any or all of the Mortgages, any equitable right otherwise available to such Borrower which would require the separate sale of the Individual Properties or require Lender to exhaust its remedies against any Individual Property or any combination of the Individual Properties before proceeding against any other Individual Property or combination of Individual Properties; and further in the event of such foreclosure Borrowers do hereby expressly consent to and authorize, at the option of Lender, the foreclosure and sale either separately or together of any combination of the Individual Properties.

Section 11.19 Waiver of Offsets/Defenses/Counterclaims.

Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents or otherwise to offset any obligations to make the payments required by the Loan Documents or the Guaranty Security Documents. No failure by Lender to perform any of its obligations hereunder shall be a valid defense to, or result in any offset against, any payments which Borrower is obligated to make under any of the Loan Documents.

Section 11.20 Conflict; Construction of Documents; Reliance.

In the event of any conflict between the provisions of this Agreement and any of the other Loan Documents or the Guaranty Security Documents, the provisions of this Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents and Guaranty Security Documents shall not be subject to the principle of construing their meaning against the party which drafted same. Borrowers acknowledge that, with respect to the Loan, Borrowers shall rely solely on their own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate

of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in any Borrower, and each 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. Borrowers acknowledge 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 Borrowers or its Affiliates.

Section 11.21 Brokers and Financial Advisors.

Borrowers hereby represent that they have dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement. Borrowers shall indemnify, defend and hold Lender harmless from and against any and all claims, liabilities, costs and expenses of any kind (including Lender's attorneys' fees and expenses) in any way relating to or arising from a claim by any Person that such Person acted on behalf of Borrowers or Lender in connection with the transactions contemplated herein. The provisions of this Section 11.21 shall survive the expiration and termination of this Agreement and the payment of the Debt.

Section 11.22 Exculpation.

Subject to the qualifications below, Lender shall not enforce the liability and obligation of Borrowers to perform and observe the obligations contained in the Note, this Agreement, the Mortgage, the other Loan Documents or the Guaranty Security Documents by any action or proceeding wherein a money judgment shall be sought against Borrowers, 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 Mortgages, the other Loan Documents and the Guaranty Security Documents, or in the Individual Properties, the Rents, or any other collateral given to Lender pursuant to the Loan Documents and the Guaranty Security Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against Borrowers only to the extent of Borrowers' interest in the Individual Properties, in the Rents and in any other collateral given to Lender, and Lender, by accepting the Note, this Agreement, the Mortgages, the other Loan Documents and the Guaranty Security Documents, shall not sue for, seek or demand any deficiency judgment against Borrowers in any such action or proceeding under or by reason of or under or in connection with the Note, this Agreement, the Mortgages, the other Loan Documents or the Guaranty Security Documents. The provisions of this Section shall not, however, (a) constitute a waiver, release or impairment of any obligation evidenced or secured by any of the Loan Documents or the Guaranty Security Documents; (b) impair the right of Lender to name any Borrower or all Borrowers as a party defendant in any action or suit for foreclosure and sale under any of the Mortgages; (c) affect the validity or enforceability of any guaranty made in connection with the Loan or any of the rights and remedies of Lender thereunder; (d) impair the right of Lender to obtain the appointment of a receiver; (e) impair the enforcement of any of the Assignments of Leases; (f) constitute a prohibition against Lender to seek a deficiency judgment against Borrower in order to fully

realize on any security given by any Borrower in connection with the Loan or to commence any other appropriate action or proceeding in order for Lender to exercise its remedies against such security; or (g) constitute a waiver of the right of Lender to enforce the liability and obligation of Borrowers, by money judgment or otherwise, to the extent of any loss, damage, cost, expense, liability, claim or other obligation incurred by Lender (including attorneys' fees and costs reasonably incurred) arising out of or in connection with the following:

- (i) fraud or intentional misrepresentation by any Borrower or any guarantor in connection with the Loan;
- (ii) the gross negligence or intentionally tortious conduct of any Borrower;
- (iii) the breach of any representation, warranty, covenant or indemnification provision in the Environmental Indemnity or in the Mortgages concerning environmental laws, hazardous substances and asbestos and any indemnification of Lender with respect thereto in either document;
- (iv) the removal or disposal of any portion of the Individual Properties after an Event of Default;
- (v) the misapplication or conversion by any Borrower of (A) any insurance proceeds paid by reason of any loss, damage or destruction to the Individual Properties, (B) any Awards or other amounts received in connection with the Condemnation of all or a portion of the Individual Properties, or (C) any Rents following an Event of Default;
- (vi) failure to pay charges for labor or materials or other charges that can create Liens on any portion of the Individual Properties unless Borrowers promptly bond off the resulting Lien from the affected Individual Property to the reasonable satisfaction of the Lender and in compliance with applicable law;
- (vii) any security deposits, advance deposits or any other deposits collected with respect to the Individual Properties which are not delivered to Lender upon a foreclosure of the Individual Properties or action in lieu thereof, except to the extent any such security deposits were applied in accordance with the terms and conditions of any of the Leases prior to the occurrence of the Event of Default that gave rise to such foreclosure or action in lieu thereof;
- (viii) Borrowers' indemnification of Lender set forth in Section 9.2 hereof; and
- (ix) Borrower's failure to obtain the prior consent of Lender as required pursuant to this Agreement in connection with any amendment, modification or termination of any of the following Leases: Aventis Lease, Gemini Lease, Harcourt Lease and State Street Lease (this clause (ix) shall survive payment of the Note and the satisfaction of all other obligations of Borrower under this Agreement and the 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 Borrowers in the event that: (i) any Borrower fails to obtain Lender's prior written consent to any subordinate financing or other voluntary Lien encumbering the Individual Properties; (ii) any Borrower fails to obtain Lender's prior written consent to any assignment, transfer, or conveyance of the Individual Properties or any interest therein as required by the Mortgages or this Agreement; (iii) any Borrower files a voluntary petition under the Bankruptcy code or any other Federal or state bankruptcy or insolvency law; (iv) an Affiliate, officer, director, or representative which controls, directly or indirectly, any Borrower files, or joins in the filing of, an involuntary petition against any Borrower under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or solicits or causes to be solicited petitioning creditors for any involuntary petition against any Borrower from any Person; (v) any Borrower files an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or solicits or causes to be solicited petitioning creditors for any involuntary petition from any Person; (vi) any Affiliate, officer, director, or representative which controls any Borrower consents to or acquiesces in or joins in an application for the appointment of a custodian, receiver, trustee, or examiner for any Borrower or any portion of any Individual Property; or (vii) any Borrower makes an assignment for the benefit of creditors, or admits, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due.

Section 11.23 Prior Agreements.

This Agreement and the other Loan Documents and the Guaranty Security Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, are superseded by the terms of this Agreement, the other Loan Documents and the Guaranty Security Documents.

Section 11.24 Servicer.

(a) At the option of Lender, the Loan may be serviced by a servicer (the "Servicer") selected by Lender and Lender may delegate all or any portion of its responsibilities under this Agreement, the other Loan Documents and the Guaranty Security Documents to the Servicer pursuant to a servicing agreement (the "Servicing Agreement") between Lender and Servicer. Borrower shall be responsible for any reasonable set-up fees or any other costs relating to or arising under the Servicing Agreement, including the payment, on a monthly basis, of the monthly servicing fee due to the Servicer under the Servicing Agreement in an amount not to exceed one basis point on the amount of the Loan per annum. Servicer shall also be entitled to reimbursement of costs and expenses as and to the same extent (but without duplication) as Lender is entitled thereto under the applicable provisions of this Agreement and the other Loan Documents.

(b) Upon notice thereof from Lender, Servicer shall have the right to exercise all rights of Lender and enforce all obligations of Borrowers pursuant to the provisions of this Agreement, the Note and the other Loan Documents.

(c) Provided Borrowers shall have been given notice of Servicer's address by Lender, Borrowers shall deliver to Servicer duplicate originals of all notices and other instruments which Borrowers may or shall be required to deliver to Lender pursuant to this Agreement, the Note, the other Loan Documents and the Guaranty Security Documents (and no delivery of such notices or other instruments by any Borrower shall be of any force or effect unless delivered to Lender and Servicer as provided above).

Section 11.25 Joint and Several Liability.

If Borrower is comprised of more than one Person, all representations, warranties, covenants (both affirmative and negative) and all other Obligations hereunder shall be the joint and several obligation of each entity making up Borrower and a Default or Event of Default by any such Person shall be deemed a Default or Event of Default by all such entities and Borrower. The representations, covenants and warranties contained herein or in any other Loan Document shall be read to apply to the individual entities comprising Borrower when the context so requires but a breach of any such representation, covenant or warranty or a breach of any obligation under the Loan Documents shall be deemed a breach by all such entities and such Borrower, entitling the Lender to exercise all of its rights and remedies under all the Loan Documents and under applicable law.

Section 11.26 Creation of Security Interest.

Notwithstanding any other provision set forth in this Agreement, the Note, the Mortgage, the other Loan Documents or the Guaranty Security Documents, Lender may at any time create a security interest in all or any portion of its rights under this Agreement, the Note, the Mortgage, the Loan Documents and any other Security Document (including, without limitation, the advances owing to it) in favor of any Federal Reserve Bank in accordance with Regulation A of the Board of Governors of the Federal Reserve System.

Section 11.27 Assignments and Participations.

(a) The Lender may assign to one or more Persons all or a portion of its rights and obligations under this Agreement, the Note, the Mortgage, any Loan Document and any Security Document.

(b) Upon such execution and delivery, from and after the effective date of any such Assignment, the assignee thereunder shall be a party hereto and have the rights and obligations of Lender hereunder.

(c) Lender may sell participations to one or more Persons in or to all or a portion of its rights and obligations under this Agreement; provided, however, that (i) Lender's obligations under this Agreement shall remain unchanged, (ii) Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) Lender shall remain the holder of any Note for all purposes of this Agreement and (iv) Borrower shall

continue to deal solely and directly with Lender in connection with Lender's rights and obligations under and in respect of this Agreement and the other Loan Documents and the Guaranty Security Documents.

(d) Lender may, in connection with any assignment or participation or proposed assignment or participation pursuant to this Section 11.27, disclose to the assignee or participant or proposed assignee or participant, as the case may be, any information relating to Borrowers or any of their Affiliates or to any aspect of the Loan that has been furnished to the Lender by or on behalf of the Borrowers or any of their Affiliates.

Section 11.28 Set-Off.

In addition to any rights and remedies of Lender provided by this Loan Agreement and by law, the Lender shall have the right, without prior notice to Borrowers, any such notice being expressly waived by Borrowers to the extent permitted by applicable law, upon any amount becoming due and payable by Borrowers hereunder (whether at the stated maturity, by acceleration or otherwise) and the expiration of any applicable grace, notice and cure periods, to set-off and appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by Lender or any Affiliate thereof to or for the credit or the account of Borrowers. Lender agrees promptly to notify Borrowers after any such set-off and application made by Lender; provided that the failure to give such notice shall not affect the validity of such set-off and application.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

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.

LENDER:

MORGAN STANLEY MORTGAGE CAPITAL INC.,
a New York corporation

By: _____

Name:

Title:

BORROWER:

WELLS REIT – AUSTIN, TX, L.P.,
a Delaware limited partnership

By: Wells REIT – AUSTIN, TX, LLC,
a Delaware limited liability company, d/b/a
Wells REIT – AUSTIN, TX GP, LLC

By: _____

Name: Douglas P. Williams

Title: Executive Vice President

WELLS REIT – MULTI-STATE OWNER, LLC,
a Delaware limited liability company

By: _____

Name: Douglas P. Williams

Title: Executive Vice President

WELLS REIT – NASHVILLE, TN, LLC,
a Delaware limited liability company

By: _____

Name: Douglas P. Williams
Title: Executive Vice President

WELLS REIT – BRIDGEWATER, NJ, LLC,
a Delaware limited liability company

By: _____

Name: Douglas P. Williams
Title: Executive Vice President

LOAN AGREEMENT (D.C. PROPERTIES)

Dated as of May 21, 2004

Between

WELLS REIT – INDEPENDENCE SQUARE, LLC,
as Borrower

and

MORGAN STANLEY MORTGAGE CAPITAL INC.,
as Lender

TABLE OF CONTENTS

	Page
	<hr/>
I. DEFINITIONS; PRINCIPLES OF CONSTRUCTION	
Section 1.1 Definitions	1
Section 1.2 Principles of Construction	20
II. THE LOAN	
Section 2.1 The Loan	20
2.1.1 Agreement to Lend and Borrow	20
2.1.2 Single Disbursement to Borrower	20
2.1.3 The Note	20
2.1.4 Use of Proceeds	20
2.1.5 Modification of the Components.	20
Section 2.2 Interest Rate	21
2.2.1 Interest Rate	21
2.2.2 Default Rate	21
2.2.3 Interest Calculation	21
2.2.4 Usury Savings	21
Section 2.3 Loan Payments	21
2.3.1 Payment Before Maturity Date	21
2.3.2 Payment on Maturity Date	22
2.3.3 Late Payment Charge	22
2.3.4 Method and Place of Payment	22
Section 2.4 Prepayments	22
2.4.1 Voluntary Prepayments	22
2.4.2 Mandatory Prepayments	23
2.4.3 Prepayments After Default	23
Section 2.5 Defeasance	23
2.5.1 Total Defeasance	23
2.5.2 Intentionally Deleted.	25
2.5.3 Additional Partial Defeasance	25
2.5.4 Defeasance Collateral Account	27
2.5.5 Successor Borrower	27
III. REPRESENTATIONS AND WARRANTIES	
Section 3.1 Borrower Representations	28
3.1.1 Organization	28
3.1.2 Proceedings	28
3.1.3 No Conflicts	29
3.1.4 Litigation	29

3.1.5	Agreements	29
3.1.6	Consents	29
3.1.7	Title	29
3.1.8	No Plan Assets	29
3.1.9	Compliance	30
3.1.10	Financial Information	30
3.1.11	Condemnation	30
3.1.12	Utilities and Public Access	30
3.1.13	Separate Lots	30
3.1.14	Assessments	30
3.1.15	Enforceability	31
3.1.16	Assignment of Leases	31
3.1.17	Insurance	31
3.1.18	Licenses	31
3.1.19	Flood Zone	31
3.1.20	Physical Condition	31
3.1.21	Boundaries	32
3.1.22	Leases	32
3.1.23	Filing and Recording Taxes	32
3.1.24	Single Purpose	32
3.1.25	Pre-Existing Borrower Entity.	36
3.1.26	Pre-Existing Borrower Separateness.	36
3.1.27	Tax Filings	37
3.1.28	Solvency	37
3.1.29	Federal Reserve Regulations	38
3.1.30	Organizational Chart	38
3.1.31	Bank Holding Company	38
3.1.32	No Other Debt	38
3.1.33	Investment Company Act	38
3.1.34	Access/Utilities	38
3.1.35	No Bankruptcy Filing	38
3.1.36	Full and Accurate Disclosure	38
3.1.37	Foreign Person	39
3.1.38	No Change in Facts or Circumstances; Disclosure	39
3.1.39	Perfection of Accounts	39
3.1.40	REA	39
Section 3.2	Survival of Representations	40
IV. BORROWER COVENANTS		
Section 4.1	Borrower Affirmative Covenants	40
4.1.1	Existence; Compliance with Legal Requirements	40
4.1.2	Taxes and Other Charges	40
4.1.3	Litigation	41
4.1.4	Access to Individual Properties	41
4.1.5	Further Assurances; Supplemental Mortgage Affidavits	41

4.1.6	Financial Reporting	41
4.1.7	Title to the Individual Properties	43
4.1.8	Estoppel Statement	43
4.1.9	Leases	44
4.1.10	Alterations	46
4.1.11	Intentionally Deleted	46
4.1.12	Material Agreements	46
4.1.13	Performance by Borrower	46
4.1.14	Costs of Enforcement/Remedying Defaults	46
4.1.15	Business and Operations	47
4.1.16	Loan Fees	47
Section 4.2	Borrower Negative Covenants	47
4.2.1	Due on Sale and Encumbrance; Transfers of Interests	47
4.2.2	Liens	47
4.2.3	Dissolution	47
4.2.4	Change in Business	48
4.2.5	Debt Cancellation	48
4.2.6	Affiliate Transactions	48
4.2.7	Zoning	48
4.2.8	Assets	48
4.2.9	No Joint Assessment	48
4.2.10	Principal Place of Business	48
4.2.11	ERISA	48
4.2.12	Material Agreements	49
4.2.13	REA	49
V. INSURANCE, CASUALTY AND CONDEMNATION		
Section 5.1	Insurance.	49
5.1.1	Insurance Policies	49
5.1.2	Insurance Company	54
Section 5.2	Casualty and Condemnation	55
5.2.1	Casualty	55
5.2.2	Condemnation	55
5.2.3	Business Interruption Insurance Proceeds	56
Section 5.3	Delivery of Net Proceeds.	56
5.3.1	Minor Casualty or Condemnation	56
5.3.2	Major Casualty or Condemnation	56
VI. RESERVE FUNDS		
Section 6.1	Required Repair Fund	60
6.1.1	Deposit of Required Repair Funds	60
6.1.2	Release of Required Repair Funds	60
Section 6.2	Tax Funds.	60
6.2.1	Deposits of Tax Funds	60

6.2.2	Release of Tax Funds	61
Section 6.3	Insurance Funds.	61
6.3.1	Deposits of Insurance Funds	61
6.3.2	Release of Insurance Funds	61
Section 6.4	Capital Expenditure Funds	61
6.4.1	Deposits of Capital Expenditure Funds	61
6.4.2	Release of Capital Expenditure Funds	62
Section 6.5	Rollover Funds.	63
6.5.1	Deposits of Rollover Funds	63
6.5.2	Release of Rollover Funds	63
Section 6.6	Lease Termination Rollover Funds.	64
6.6.1	Deposits of Rollover Funds	64
6.6.2	Release of Lease Termination Rollover Funds	64
Section 6.7	Intentionally Deleted.	66
Section 6.8	Application of Reserve Funds	66
Section 6.9	Security Interest in Reserve Funds	66
6.9.1	Grant of Security Interest	66
6.9.2	Income Taxes	66
6.9.3	Prohibition Against Further Encumbrance	66
Section 6.10	Letters of Credit	66
6.10.1	Delivery of Letters of Credit	66
Section 6.11	Provisions Regarding Letters of Credit	67
6.11.1	Security for Debt	67
6.11.2	Additional Rights of Lender	67
VII. PROPERTY MANAGEMENT		
Section 7.1	The Management Agreement	68
Section 7.2	Prohibition Against Termination or Modification	68
Section 7.3	Replacement of Manager	69
VIII. PERMITTED TRANSFERS		
Section 8.1	Permitted Transfer of the Individual Properties	69
Section 8.2	Permitted Transfers of Interest in Borrower	69
Section 8.3	Permitted Easements	70
IX. SALE AND SECURITIZATION OF MORTGAGE		
Section 9.1	Sale of Mortgage and Securitization	70
Section 9.2	Securitization Indemnification	71
X. DEFAULTS		
Section 10.1	Event of Default	74
Section 10.2	Remedies	76

Section 10.3	Right to Cure Defaults	77
Section 10.4	Remedies Cumulative	78
XI. MISCELLANEOUS		
Section 11.1	Successors and Assigns	78
Section 11.2	Lender's Discretion	78
Section 11.3	Governing Law	78
Section 11.4	Modification, Waiver in Writing	80
Section 11.5	Delay Not a Waiver	80
Section 11.6	Notices	80
Section 11.7	Trial by Jury	81
Section 11.8	Headings	81
Section 11.9	Severability	81
Section 11.10	Preferences	81
Section 11.11	Waiver of Notice	82
Section 11.12	Remedies of Borrower	82
Section 11.13	Expenses; Indemnity	82
Section 11.14	Schedules Incorporated	83
Section 11.15	Offsets, Counterclaims and Defenses	83
Section 11.16	No Joint Venture or Partnership; No Third Party Beneficiaries	83
Section 11.17	Publicity	84
Section 11.18	Waiver of Marshalling of Assets	84
Section 11.19	Waiver of Offsets/Defenses/Counterclaims	84
Section 11.20	Conflict; Construction of Documents; Reliance	84
Section 11.21	Brokers and Financial Advisors	85
Section 11.22	Exculpation	85
Section 11.23	Prior Agreements	88
Section 11.24	Servicer	88
Section 11.25	Joint and Several Liability	88
Section 11.26	Creation of Security Interest	89
Section 11.27	Assignments and Participations	89
Section 11.28	Set-Off	89

SCHEDULES

Schedule I	–	Rent Roll
Schedule II	–	Required Repairs
Schedule III	–	Organizational Chart
Schedule IV	–	Form of Subordination, Non-Disturbance and Attornment Agreement
Schedule V	–	Individual Properties
Schedule VI	–	[Reserved]
Schedule VII	–	Description of REA
Schedule VIII	–	Allocated Loan Amounts
Schedule IX	–	The Other Loans
Schedule X	–	Managers and Management Agreements
Schedule XI	–	Exceptions to Representations and Warranties
Schedule XII	–	Form of Estoppel Letter

LOAN AGREEMENT (D.C. PROPERTIES)

THIS LOAN AGREEMENT (D.C. PROPERTIES), dated as of May 21, 2004 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this "Agreement"), between MORGAN STANLEY MORTGAGE CAPITAL INC., a New York corporation, having an address at 1221 Avenue of the Americas, 27th Floor, New York, New York 10020 ("Lender"), and WELLS REIT – INDEPENDENCE SQUARE, LLC, a Delaware limited liability company, having an address at c/o Wells Real Estate Funds, 6200 The Corners Parkway, Norcross, Georgia 30092-6040 ("Borrower").

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

W I T N E S S E T H:

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

WHEREAS, Lender is willing to make the Loan to Borrower, subject to and in accordance with the conditions and terms of this Agreement and the other Loan Documents.

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

I. DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1 Definitions.

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

"Acquired Properties" shall have the meaning set forth in Section 9.1(c)

"Acquired Property Statements" shall have the meaning set forth in Section 9.1(c).

"Additional Partial Defeasance Collateral" shall mean, in connection with an Additional Partial Defeasance Event, U.S. Obligations which provide payments (i) on or prior to, but as close as possible to, the Business Day immediately preceding all Monthly Payment Dates and other scheduled payment dates, if any, under the Defeased Note issued in connection with such Additional Partial Defeasance Event after the Defeasance Date and up to and including the Maturity 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.

"Additional Partial Defeasance Date" shall have the meaning set forth in Section 2.5.3(a)(i).

“Additional Partial Defeasance Event” shall have the meaning set forth in Section 2.5.3(a).

“Affiliate” shall mean, as to any Person, any other Person that, directly or indirectly, owns more than forty percent (40%) 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. As used in this definition, the term **“control”** means the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise.

“Agent” shall mean LaSalle Bank, National Association, and any successor Eligible Institution thereto.

“Allocated Loan Amount” shall mean the portion of the Loan allocated to each Individual Property as set forth on Schedule VIII attached hereto. The Allocated Loan Amount of each Individual Property shall be reduced by the principal amount that the Loan is prepaid pursuant to this Agreement in connection with a Condemnation or Casualty affecting such Individual Property and the Allocated Loan Amount of any Individual Property that is the subject of an Additional Partial Defeasance Event shall be reduced by the principal amount of the Defeased Note attributable to such Individual Property.

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

“Alteration Threshold” shall mean with respect to each Individual Property, three percent (3%) of the Allocated Loan Amount for that Individual Property.

“Annual Budget” shall mean the operating and capital budget for all Individual Properties on a combined basis and for each Individual Property setting forth the Borrower’s good faith estimate of Gross Revenue, Operating Expenses, and Capital Expenditures for the applicable Fiscal Year.

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

“Assignment of Leases” shall mean, collectively, the NASA Assignment of Leases and the OCC Assignment of Leases.

“Assignment of Management Agreement” shall mean, with respect to each Individual Property and collectively as to the Individual Properties, those certain Assignments of Management Agreement and Subordination of Management Fees dated the date hereof each among Borrower, Manager and Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

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

“Bankruptcy 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.

“Basic Carrying Costs” shall mean, with respect to an Individual Property, the sum of the following costs associated with such Individual Property for the relevant Fiscal Year or payment period: (i) Taxes and (ii) Insurance Premiums.

“Borrower” shall mean WELLS REIT – INDEPENDENCE SQUARE, LLC, a Delaware limited liability company, together with its permitted successors and permitted assigns.

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

“Cap Ex Amount” shall mean, as to each Individual Property, an annual amount equal to the product of (a) \$0.25 multiplied by (b) the number of square feet in the Improvements at such Individual Property.

“Capital Expenditures” for any period shall mean amounts expended for replacements and alterations to the Individual Properties and required to be capitalized according to GAAP.

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

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

“Cash Management Agreement” shall mean that certain Cash Management Agreement (D.C. Properties) of even date herewith among Lender, Borrower, Manager and Agent.

“Casualty” shall mean the occurrence of any casualty, damage or injury, by fire or otherwise, to any of the Individual Properties or any part thereof.

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

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

“Clearing Account Agreement” shall mean that certain Clearing Account Agreement (D.C. Properties) dated as of the date hereof, among Borrower, Lender and the Clearing Bank (as defined therein).

“Clearing Account” shall mean the “Clearing Account” as defined in the Clearing Account Agreement.

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

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

“Component A1” shall mean that portion of the Loan in the amount of Forty-Six Million Seven Hundred Forty Thousand and No/100 Dollars (\$46,740,000.00) made by Lender to Borrower pursuant to this Agreement.

“Component A1 Rate” shall mean a rate per annum equal to four and eighty-four hundredths percent (4.84%).

“Component A2” shall mean that portion of the Loan in the amount of Thirty-Seven Million Three Hundred Ninety Thousand and No/100 Dollars (\$37,390,000.00) made by Lender to Borrower pursuant to this Agreement.

“Component A2 Rate” shall mean a rate per annum equal to four and eighty-four hundredths percent (4.84%).

“Component A3” shall mean that portion of the Loan in the amount of Thirty-Two Million Seven Hundred Twenty Thousand and No/100 Dollars (\$32,720,000.00) made by Lender to Borrower pursuant to this Agreement.

“Component A3 Rate” shall mean a rate per annum equal to four and eighty-four hundredths percent (4.84%).

“Component A4” shall mean that portion of the Loan in the amount of Twenty-Three Million Three Hundred Seventy Thousand and No/100 Dollars (\$23,370,000.00) made by Lender to Borrower pursuant to this Agreement.

“Component A4 Rate” shall mean a rate per annum equal to four and eighty-four hundredths percent (4.84%).

“Component A5” shall mean that portion of the Loan in the amount of Fourteen Million Twenty Thousand and No/100 Dollars (\$14,020,000.00) made by Lender to Borrower pursuant to this Agreement.

“Component A5 Rate” shall mean a rate per annum equal to four and eighty-four hundredths percent (4.84%).

“Component A6” shall mean that portion of the Loan in the amount of Nine Million Three Hundred Sixty Thousand and No/100 Dollars (\$9,360,000.00) made by Lender to Borrower pursuant to this Agreement.

“Component A6 Rate” shall mean a rate per annum equal to four and eighty-four hundredths percent (4.84%).

“Component Rates” means, collectively, the Component A1 Rate, Component A2 Rate, Component A3 Rate, Component A4 Rate, Component A5 Rate and the Component A6 Rate.

“Components” shall mean, collectively, Component A1, Component A2, Component A3, Component A4, Component A5 and Component A6.

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

“Cross-Collateralization Agreements” collectively: (a) Cross-Collateralization, Cross-Default and Deed of Trust Modification Agreement, (b) Cross-Collateralization, Cross-Default and Modification Agreement (NASA) and (c) Cross-Collateralization, Cross-Default and Modification Agreement (OCC), each of which are dated as of the date hereof and executed by Borrower.

“Debt” shall mean the outstanding principal amount of the Loan together with all interest accrued and unpaid thereon (including, without limitation, any interest that would accrue on the outstanding principal amount of the Loan through and including the end of any applicable Interest Period) and all other sums (including the Yield Maintenance Premium) due to Lender in respect of the Loan under the Note, this Agreement, the Mortgage, the Environmental Indemnity or any other Loan Document.

“Debt Service” shall mean, with respect to any particular period of time, scheduled principal, if any, and interest payments under the Note.

“Debt Service Coverage Ratio” shall mean (a) with respect to all Individual Properties and the Other Properties, the ratio of (i) Underwritable Cash Flow for the Individual Properties and the Other Properties (to the extent then subject to the liens of the Other Mortgages) for the twelve (12) calendar month period immediately preceding the date of calculation to (ii) the projected Debt Service that would be due for the twelve (12) calendar month period immediately following such calculation under the Note and each “Note” (as defined in the Other Loan Agreements) (to the extent not theretofore prepaid) evidencing the Other Loans, assuming an annual loan constant of nine percent (9.0%) of the aggregate outstanding principal balance of the Loan and the Other Loans as of the date of such calculation and (b) with respect to an Individual Property, the ratio of (y) Underwritable Cash Flow for the subject Individual Property for the immediately preceding twelve (12) calendar month period to (z) the projected Debt Service that would be due with respect to the Allocated Loan Amount applicable to the subject Individual Property for the twelve (12) month period immediately following such calculation based upon an assumed loan constant for such period equal to nine percent (9%) of the Allocated Loan Amount with respect to such Individual Property as of the date of such calculation.

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

“Default Rate” shall mean, with respect to the Loan, a rate per annum equal to the lesser of (i) the maximum rate permitted by applicable law, or (ii) four percent (4.0%) above the Interest Rate.

“Defeasance Collateral Account” shall have the meaning set forth in Section 2.5.3.

“Defeased Note” shall have the meaning set forth in Section 2.5.3(a)(iii).

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

“Disclosure Document” shall have the meaning set forth in Section 9.2(a).

“Disclosure Document Date” shall have the meaning set forth in Section 9.1(c)(iv).

“Eligible Account” shall mean an identifiable and separate account which is separate from all other funds held by the holding institution that is either (a) an account or accounts maintained with a federal or state-chartered depository institution or trust company which complies with the definition of Eligible Institution or (b) a segregated trust account or accounts maintained with the corporate trust department of a federal or state chartered depository institution or trust company acting in its fiduciary capacity which, in the case of a 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 federal or state chartered depository institution or trust company insured by the Federal Deposit Insurance Corporation the short term unsecured debt obligations or commercial paper of which are rated at least A-1 by S&P, P-1 by Moody’s and F-1+ by Fitch in the case of accounts in which funds are held for thirty (30) days or less or, in the case of Letters of Credit or accounts in which funds are held for more than thirty (30) days, the long term unsecured debt obligations of which are rated at least “AA” by Fitch and S&P and “Aa2” by Moody’s.

“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.

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

“**ERISA**” shall have the meaning set forth in Section 3.1.8.

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

“**Exchange Act**” shall have the meaning set forth in Section 9.2(a).

“**Exchange Act Filing**” shall have the meaning set forth in Section 9.1(c)(vi).

“**Excusable Delay**” shall mean a delay due to acts of God, governmental restrictions, stays, judgments, orders, decrees, enemy actions, civil commotion, fire, casualty, strikes, work stoppages, shortages of labor or materials or other causes beyond the reasonable control of Borrower, but lack of funds in and of itself shall not be deemed a cause beyond the control of Borrower.

“**Extraordinary Expense**” shall have the meaning set forth in Section 4.1.6(e).

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

“**Fitch**” shall mean Fitch, Inc.

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

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

“**Gross Revenue**” shall mean all revenue, derived from the ownership and operation of the Individual Properties from whatever source, including, but not limited to, Rents, but excluding sales, use and occupancy or other taxes on receipts required to be accounted for by Borrower to any Governmental Authority, non-recurring revenues as determined by Lender, proceeds from the sale or refinancing of any Individual Property, security deposits (except to the extent determined by Lender to be properly utilized to offset a loss of Rent), refunds and uncollectible accounts, proceeds of casualty insurance and Awards (other than business interruption or other loss of income insurance related to business interruption or loss of income for the period in question), and any disbursements to Borrower from the Reserve Funds or any other fund established by the Loan Documents.

“**Guarantor**” shall mean Wells Real Estate Investment Trust, Inc., a Maryland corporation.

“Guaranty” shall mean that certain Guaranty of Recourse Carveouts of even date herewith executed by Guarantor for the benefit of Lender with respect to the Loan, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

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

“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, and (vi) all obligations of such Person under interest rate swaps, caps, floors, collars and other interest hedge agreements, in each case whether such Person is liable contingently or otherwise, as obligor, guarantor or otherwise, or in respect of which obligations such Person otherwise assures a creditor against loss.

“Indemnified Liabilities” shall have the meaning set forth in Section 11.13(b).

“Independent Director” shall have the meaning set forth in Section 3.1.24(p).

“Individual Property” shall mean each parcel of real property, the improvements thereon and all personal property owned by Borrower and encumbered by the Mortgage, together with all rights pertaining to such property and improvements, as more particularly described in the granting clauses of the Mortgage. The location of each Individual Property is set forth on Schedule V attached hereto.

“Insurance Funds” shall have the meaning set forth in Section 6.3.1.

“Insurance Premiums” shall have the meaning set forth in Section 5.1.1(b).

“Interest Period” shall mean for each interest period commencing June 7, 2004, the period commencing on (and including) the seventh (7th) day of each calendar month and ending on (and including) the sixth (6th) day of the following calendar month. Each Interest Period shall be a full month and shall not be shortened by reason of any payment of the Loan prior to the expiration of such Interest Period.

“Interest Rate” shall mean a rate per annum equal to the applicable Component Rate or the weighted average of all Component Rates, as the context requires.

“Lease” shall mean any lease, sublease or subsublease, letting, license, concession or other agreement (whether written or oral and whether now or hereafter in effect) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of any space in any Individual Property, and every modification, amendment or other agreement relating to such lease, sublease, subsublease, or other agreement entered into in

connection with such lease, sublease, subsublease, or other agreement and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto.

“Lease Termination Fee” shall have the meaning set forth in Section 6.6.1.

“Lease Termination Rollover Funds” shall have the meaning set forth in Section 6.6.1.

“Legal Requirements” shall mean, with respect to Borrower and each Individual Property, all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting Borrower or such Individual Property or any part thereof or the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, 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 such Individual Property or any part thereof, including, without limitation, any which may (i) require repairs, modifications or alterations in or to such Individual Property or any part thereof, or (ii) in any way limit the use and enjoyment thereof.

“Lender” shall mean Morgan Stanley Mortgage Capital Inc., a New York corporation, together with its successors and assigns and Participants.

“Lender Indemnitees” shall have the meaning set forth in Section 11.13(b).

“Letter of Credit” shall mean an irrevocable, unconditional, transferable, clean sight draft letter of credit acceptable to Lender and the Rating Agencies (either an evergreen letter of credit or one which does not expire until at least thirty (30) Business Days after the Maturity Date) in favor of Lender and entitling Lender to draw thereon in New York, New York, issued by a domestic Eligible Institution or the U.S. agency or branch of a foreign Eligible Institution which shall provide that if at any time the bank issuing any such Letter of Credit shall cease to be an Eligible Institution, Lender shall have the right immediately to draw down the same in full and hold the proceeds of such draw in accordance with the applicable provisions hereof.

“Liabilities” shall have the meaning set forth in Section 9.2(b).

“Lien” shall mean, with respect to each Individual Property, any mortgage, deed of trust, lien, pledge, hypothecation, assignment, security interest, or any other encumbrance, charge or transfer of, on or affecting such Individual Property or any portion thereof or any interest therein, or any interest in Borrower, including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and mechanic’s, materialmen’s and other similar liens and encumbrances.

“Loan” shall mean the loan in the original principal amount of One Hundred Sixty-Three Million Six Hundred Thousand and No/100 Dollars (\$163,600,000.00) made by Lender to Borrower pursuant to this Agreement, which loan is comprised of the Components.

“Loan Documents” shall mean, collectively, this Agreement, the Note, the Mortgage, the Assignment of Leases, the Cash Management Agreement, the Clearing Account Agreement, the Environmental Indemnity, the Guaranty, the Assignment of Management Agreement, the Cross-Collateralization Agreements and any other document pertaining to the Individual Properties as well as all other documents now or hereafter executed and/or delivered in connection with the Loan, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Major Lease” shall mean any Lease (i) covering more than 20,000 square feet at any Individual Property or (ii) made with a Tenant that is a Tenant under another Lease at such Individual Property or that is an Affiliate of any other Tenant under a Lease at such Individual Property, if the Leases together cover more than 20,000 square feet.

“Management Agreement” shall mean, with respect to each Individual Property, and collectively as to the Individual Properties, as the context may require, the management agreements entered into by and between Borrower and the Manager, pursuant to which the Manager is to provide management and other services with respect to said Individual Property or Individual Properties, as the context may require.

“Manager” shall, with respect to each Individual Property, have the meaning set forth on Schedule X attached hereto or any other manager approved in accordance with the terms and conditions of the Loan Documents.

“Manager Termination Ratio” shall have the meaning set forth in Section 7.3.

“Material Agreements” means, with respect to each Individual Property, each contract and agreement relating to the ownership, management, development, use, operation, leasing, maintenance, repair or improvement of such Individual Property, other than the Management Agreement and the Leases, under which there is an obligation of Borrower to pay more than \$1,000,000.00 per annum.

“Maturity Date” shall mean June 7, 2014 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; provided, however, (i) if a Total Defeasance Event occurs, the Maturity Date shall mean the Permitted Prepayment Date, or (ii) if an Additional Partial Defeasance Event occurs, the Maturity Date of the Defeased Note relating to such Additional Partial Defeasance Event shall mean the Permitted Prepayment Date.

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

“Minimum Disbursement Amount” shall mean Fifty Thousand and No/100 Dollars (\$50,000).

“Monthly Payment Date” shall mean the seventh (7th) day of every calendar month occurring during the term of the Loan.

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

“Morgan Stanley” shall have the meaning set forth in Section 9.2(b).

“Morgan Stanley Group” shall have the meaning set forth in Section 9.2(b).

“Mortgage” shall mean that certain first priority Deed of Trust and Security Agreement, dated as of the date hereof, executed and delivered by Borrower as security for its obligations under this Agreement and the Note, and encumbering the Individual Properties, as amended by that certain Cross-Collateralization, Cross-Default and Deed of Trust Modification Agreement dated as of the date hereof, as the same may be further as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“NASA Assignment of Leases” shall mean that certain first priority Assignment of Leases and Rents (NASA), dated as of the date hereof, executed and delivered by Borrower, as assignor, to Lender, as assignee, as security for Borrower’s obligations under this Agreement and the Note and encumbering the NASA Individual Property, as amended by that certain Cross-Collateralization, Cross-Default and Modification Agreement (NASA) dated as of the date hereof, as the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.

“NASA Individual Property” shall mean the parcel of real property, the improvements thereon and all personal property owned by Borrower and encumbered by the Mortgage, together with all rights pertaining to such property and improvements, as more particularly described in the granting clauses of the Mortgage, and located at Two Independence Square, 300 E Street, S.W., Washington, D.C.

“NASA Lease” shall mean, with respect to the Individual Property at Two Independence Square, 300 E Street, S.W., Washington, D.C., that certain Lease No. GS-11B-00111, dated June 1, 1990, by and between Borrower, as landlord and The United States of America, as tenant, as amended prior to the date hereof.

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

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

“Non-Consolidation Opinion” shall mean that certain bankruptcy nonconsolidation opinion letter dated the date hereof delivered by Alston & Bird LLP in connection with the Loan.

“Note” shall mean, collectively, Note A1, Note A2, Note A3, Note A4, Note A5 and Note A6. The definition of Note shall also include any Undeferred Notes, but shall not include any Deferred Notes.

“Note A1” shall mean that certain Promissory Note A1 dated the date hereof in the original principal amount of Component A1 from Borrower for the benefit of Lender, as the same may hereafter be amended, supplemented, split, restated, increased, extended or consolidated from time to time.

“Note A2” shall mean that certain Promissory Note A2 dated the date hereof in the original principal amount of Component A2 from Borrower for the benefit of Lender, as the same may hereafter be amended, supplemented, split, restated, increased, extended or consolidated from time to time.

“Note A3” shall mean that certain Promissory Note A3 dated the date hereof in the original principal amount of Component A3 from Borrower for the benefit of Lender, as the same may hereafter be amended, supplemented, split, restated, increased, extended or consolidated from time to time.

“Note A4” shall mean that certain Promissory Note A4 dated the date hereof in the original principal amount of Component A4 from Borrower for the benefit of Lender, as the same may hereafter be amended, supplemented, split, restated, increased, extended or consolidated from time to time.

“Note A5” shall mean that certain Promissory Note A5 dated the date hereof in the original principal amount of Component A5 from Borrower for the benefit of Lender, as the same may hereafter be amended, supplemented, split, restated, increased, extended or consolidated from time to time.

“Note A6” shall mean that certain Promissory Note A6 dated the date hereof in the original principal amount of Component A6 from Borrower for the benefit of Lender, as the same may hereafter be amended, supplemented, split, restated, increased, extended or consolidated from time to time.

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

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

“OCC Assignment of Leases” shall mean that certain first priority Assignment of Leases and Rents (OCC), dated as of the date hereof, executed and delivered by Borrower, as assignor, to Lender, as assignee, as security for Borrower’s obligations under this Agreement and the Note and encumbering the OCC Individual Property, as amended by that certain Cross-Collateralization, Cross-Default and Modification Agreement (OCC) dated as of the date hereof, as the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.

"OCC Individual Property" shall mean the parcel of real property, the improvements thereon and all personal property owned by Borrower and encumbered by the Mortgage, together with all rights pertaining to such property and improvements, as more particularly described in the granting clauses of the Mortgage, and located at One Independence Square, 250 E Street, S.W., Washington, D.C.

"Officer's Certificate" shall mean a certificate delivered to Lender by Borrower which is signed by an authorized senior officer of Borrower.

"Operating Agreements" shall mean the REA, including any other covenants, restrictions or agreements of record relating to the construction, operation or use of each Individual Property.

"Operating Expenses" shall mean all costs and expenses relating to the operation, maintenance and management of the Individual Properties, including, without limitation, utilities, repairs and maintenance, insurance, property taxes and assessments, advertising expenses, payroll and related taxes, equipment lease payments, a management fee equal to the greater of three percent (3%) of annual rents or the actual management fee, \$0.25 per rentable square foot of the Improvements per annum with respect to capital costs and \$1.25 per rentable square foot of the Improvements per annum with respect to tenant rollover expenses, but excluding actual Capital Expenditures, depreciation, amortization, Extraordinary Expenses and deposits required to be made to the Reserve Funds; provided, however such costs and expenses shall be subject to adjustment by Lender to normalize such costs and expenses.

"Other Borrowers" shall mean, individually and collectively, the borrowers under any or all of the Other Loans as more particularly set forth on Schedule IX attached hereto.

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

"Other Lenders" shall mean Morgan Stanley Mortgage Capital Inc., a New York corporation, as the lender under the Other Loan Agreements, together with its successors and assigns.

"Other Loan Agreements" shall mean, individually and collectively, the loan agreements dated as of the date hereof pursuant to which Lender has made the Other Loans to the Other Borrowers, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Other Loan Documents" shall mean, individually and collectively, the "Loan Documents" (as defined in the Other Loan Agreements), including, without limitation, the Other Loan Agreements.

“Other Loans” shall mean, individually and collectively, those loans made by the Other Lender to the Other Borrowers contemporaneously herewith, as more particularly set forth on Schedule IX attached hereto.

“Other Mortgages” shall mean, individually and collectively, the Mortgages (as defined in the Other Loan Agreements) encumbering the Other Properties.

“Other Properties” shall mean, individually and collectively, the properties owned by the Other Borrowers, as more particularly set forth on Schedule IX attached hereto.

“Otherwise Rated Insurer” shall have the meaning set forth in Section 5.1.2.

“Participant” shall mean any Person that has purchased a participation in this Loan Agreement pursuant to Section 11.27.

“Permitted Encumbrances” shall mean, collectively, (i) the Liens and security interests created by the Loan Documents, (ii) all Liens, encumbrances and other matters disclosed in the Title Insurance Policy, (iii) Liens, if any, for Taxes imposed by any Governmental Authority not yet due or delinquent, (iv) such other title and survey exceptions as Lender has approved or may approve in writing in Lender’s sole discretion, and (v) any Leases permitted hereunder.

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

“Permitted Prepayment Date” shall mean March 7, 2014.

“Permitted Transferee” shall mean a corporation, partnership or limited liability company (i) acceptable to Lender in its reasonable discretion based on then current underwriting and credit requirements for commercial mortgage loans in the secondary market secured by similar properties, (ii) that qualifies as a single purpose, bankruptcy remote entity under criteria established by the Rating Agencies and (iii) whose counsel has delivered to Lender a non-consolidation opinion acceptable to Lender and the Rating Agencies in their sole discretion.

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

“Plan Assets Regulation” shall have the meaning set forth in Section 3.1.8.

“Policies” shall have the meaning specified in Section 5.1.1(b).

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

“Prescribed Laws” shall mean, collectively, (a) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of

2001 (Public Law 107-56) (the USA PATRIOT Act), (b) Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, (c) the International Emergency Economic Power Act, 50 U.S.C. §1701 et seq. and (d) all other Legal Requirements relating to money laundering or terrorism.

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

“**Rating Agency Confirmation**” shall mean a written affirmation from each of the Rating Agencies 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.

“**REA**” shall mean, collectively, as the same may be amended, restated, supplemented or otherwise modified from time to time, those certain agreements more specifically described on Schedule VII attached hereto and made a part hereof.

“**Registration Statement**” shall have the meaning set forth in Section 9.2(b).

“**REIT**” shall mean Wells Real Estate Investment Trust, Inc., a Maryland corporation.

“**Related Party**” or “**Related Parties**” shall have the meaning set forth in Section 3.1.26.

“**Release Amount**” shall mean in connection with a Total Defeasance Event (as defined herein and in each of the Other Loan Agreements) of the Loan and all the Other Loans, an amount equal to one hundred percent (100%) of the Allocated Loan Amount for all of the Individual Properties.

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

“**Release Property**” shall have the meaning set forth in Section 2.5.2(a)(i).

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

“**Rent Deficiency**” shall have the meaning set forth in Section 6.6.2.

“**Rents**” shall mean, with respect to each Individual Property, all rents, moneys payable as damages or in lieu of rent, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrowers or its agents or employees from any and all sources arising from or attributable to such Individual Property.

“**Replacement Lease**” shall have the meaning set forth in Section 6.6.2.

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

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

“**Reserve Funds**” shall mean, collectively, the Capital Expenditure Funds, the Insurance Funds, the Tax Funds, the Required Repair Funds and the Rollover Funds.

“**Restoration**” shall have the meaning set forth in Section 5.2.1.

“**Restoration Threshold**” shall mean ten percent (10%) of the Allocated Loan Amount for the affected Individual Property.

“**Rollover Amount**” shall mean, as to each Individual Property, an annual amount equal to the product of (a) \$1.25 multiplied by (b) the number of square feet in the Improvements at such Individual Property.

“**Rollover Funds**” shall have the meaning set forth in Section 6.5.1.

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

“**Scheduled Defeasance Payments**” shall mean (a) in connection with a Total Defeasance Event, 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 Maturity Date (including the outstanding principal balance on the Note as of the Maturity Date), and (b) in connection with an Additional Partial Defeasance Event, scheduled payments of interest and principal under the Defeased Note created in connection with such Additional Partial Defeasance Event for all Monthly Payment Dates occurring after the Defeasance Date and up to and including the Maturity Date (including the outstanding principal balance on such Defeased Note as of the Maturity Date), and, in each case, all payments required after the Defeasance Date under the Loan Documents for servicing fees and other similar charges.

“**Secondary Market Transaction**” shall have the meaning set forth in Section 9.1(a).

“**Securities**” shall have the meaning set forth in Section 9.1(a).

“**Securities Act**” shall have the meaning set forth in Section 9.2(a).

“Securitization” shall have the meaning set forth in Section 9.1(a).

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

“Servicer” shall have the meaning set forth in Section 11.24.

“Servicing Agreement” shall have the meaning set forth in Section 11.24.

“Severed Loan Documents” shall have the meaning set forth in Section 10.2(c).

“SPC Party” shall have the meaning set forth in Section 3.1.24(o).

“Standard Statement” shall have the meaning set forth in Section 9.1(c).

“State” shall mean, with respect to each Individual Property, the district, State or Commonwealth in which such Individual Property or any part thereof is located.

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

“Survey” shall mean a survey of the Individual Property in question prepared by a surveyor licensed in the State and satisfactory to Lender and the company or companies issuing the Title Insurance Policies, and containing a certification of such surveyor satisfactory to Lender.

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

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

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

“Termination Space” shall have the meaning set forth in Section 6.6.1.

“Terrorism Insurance Premium Limit” shall mean the aggregate amount of \$500,000 which shall be reasonably allocated by Borrowers and the Other Borrowers to each of the Individual Properties and the Other Properties.

“Title Insurance Policies” shall mean, with respect to each Individual Property, an ALTA mortgagee title insurance policy in the form acceptable to Lender issued with respect to such Individual Property and insuring the lien of the Mortgage encumbering such Individual Property.

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

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

“Total Defeasance Event” shall have the meaning set forth in Section 2.5.1(a).

“Treasury Rate” shall mean, as of the Maturity Date, 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 noncallable 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.

“TRIA” shall mean the Terrorism Risk Insurance Act of 2002, Public Law 107-297.

“Trigger Event” shall mean the occurrence of either of the following: (a) an Event of Default or (b) Lender’s determination that the Debt Service Coverage Ratio with respect to all of the Individual Properties and the Other Properties combined is less than 1.50 to 1.00.

“Trigger Period” shall mean the period commencing on the date upon which a Trigger Event occurs and ending on the date that Lender determines that (a) if the Trigger Event is of the type described in clause (a) of the definition thereof, the Event of Default that such Trigger Event relates to has been cured and no longer exists, or (b) if the Trigger Event is of the type described in clause (b) of the definition thereof and provided no Event of Default has occurred and is continuing, the Debt Service Coverage Ratio with respect to all of the Individual Properties and the Other Properties combined, as calculated by Lender for each of the immediately preceding six (6) calendar months, is equal to or greater than 1.50 to 1.00.

“Trustee” shall mean any trustee holding the Loan in a Securitization.

“UCC” or **“Uniform Commercial Code”** shall mean the Uniform Commercial Code as in effect in the applicable State or Commonwealth in which the related Individual Property is located; provided, however, that when used in connection with the Accounts, UCC or Uniform Commercial Code shall mean the Uniform Commercial Code as in effect in the state of New York.

“Undeferred Note” shall have the meaning set forth in Section 2.5.3(a)(iii) hereof.

“Underwritable Cash Flow” shall mean the excess of Gross Revenue over Operating Expenses. Lender’s calculation of Underwritable Cash Flow (including determination of items that do not qualify as Gross Revenue or Operating Expenses) shall be calculated by Lender based upon Lender’s determination of Rating Agency criteria and shall be final absent manifest error.

“Underwriter Group” shall have the meaning set forth in Section 9.2(b).

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

“U.S. Obligations” shall mean direct full faith and credit obligations of the United States of America that are not subject to prepayment, call or early redemption.

“Yield Maintenance Premium” shall mean an amount equal to the greater of: (i) one percent (1%) of the principal amount of the Loan being prepaid or (ii) the present value as of the Prepayment Date of the Calculated Payments from the Prepayment Date through the Maturity Date determined by discounting such payments at the Discount Rate. As used in this definition, the term **“Prepayment Date”** shall mean the date on which prepayment is made. As used in this definition, the term **“Calculated Payments”** shall mean the monthly payments of interest only which would be due based on the principal amount of the Loan being prepaid on the Prepayment Date and assuming an interest rate per annum equal to the difference (if such difference is greater than zero) between (y) the Interest Rate and (z) the Yield Maintenance Treasury Rate. As used in this definition, the term **“Discount Rate”** shall mean the rate which, when compounded monthly, is equivalent to the Yield Maintenance Treasury Rate, when compounded semi-annually. As used in this definition, the term **“Yield Maintenance Treasury Rate”** shall mean the yield calculated by Lender by the linear interpolation of the yields, as reported in the Federal Reserve Statistical Release H.15-Selected Interest Rates under the heading U.S. Government Securities/Treasury Constant Maturities for the week ending prior to the Prepayment Date, of U.S. Treasury Constant Maturities with maturity dates (one longer or one shorter) most nearly approximating the Maturity Date. In the event Release H.15 is no longer published, Lender shall select a comparable publication to determine the Yield Maintenance Treasury Rate. In no event, however, shall Lender be required to reinvest any prepayment proceeds in U.S. Treasury obligations or otherwise.

Section 1.2 Principles of Construction. All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined.

II. THE LOAN

Section 2.1 The Loan.

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

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

2.1.3 The Note. The Loan shall be evidenced by the Note in the aggregate stated principal amount of One Hundred Sixty-Three Million Six Hundred Thousand and No/100 Dollars (\$163,600,000.00) and shall be repaid in accordance with the terms of this Agreement and the Note.

2.1.4 Use of Proceeds. Borrower shall use proceeds of the Loan to (i) pay and discharge any existing loans relating to the Individual Properties, (ii) pay all past due Basic Carrying Costs, if any, in respect of the Individual Properties, (iii) deposit the Reserve Funds, (iv) pay costs and expenses incurred in connection with the closing of the Loan, as approved by Lender, (v) fund any working capital requirements of the Individual Properties, as approved by Lender and (vi) retain the balance, if any.

2.1.5 Modification of the Components. Lender shall have the right, at any time prior to a Securitization, to modify the Loan in order to create additional Components, reduce the number of Components, reallocate the principal balances of the Components or eliminate the Component structure of the Loan provided that (a) the total principal balance of the Loan as of the effective date of such modification equals the outstanding principal balance of the Loan immediately prior to such modification, (b) the weighted average interest rate of all such Components on the date created shall equal the weighted average interest rate that was applicable to the Components immediately prior to the modification of such Components and (c) any voluntary or required prepayment of the Loan shall be applied, provided no Event of Default has occurred and is continuing, on a prorata basis as to all Components. Lender shall have the right to modify the Components in accordance with this Section 2.1.5 upon notice to Borrower in which event such modification shall then be deemed effective. If requested by Lender, Borrower shall promptly execute an amendment to this Agreement, the Note and the Loan Documents to evidence such modification. Borrower shall, at Lender’s expense, cooperate with all reasonable requests of Lender in order to establish the “component” notes and shall execute and deliver such documents as shall reasonably be required by Lender and any Rating Agency in connection therewith.

Section 2.2 Interest Rate.

2.2.1 Interest Rate. Interest on the outstanding principal balance of the Loan shall accrue from the Closing Date up to but excluding the Maturity Date at the Interest Rate.

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

2.2.3 Interest Calculation. Interest on the outstanding principal balance of each Component of the Loan shall be calculated by multiplying (a) the actual number of days elapsed in the period for which the calculation is being made by (b) a daily rate based on a three hundred sixty (360) day year (that is, the Interest Rate or the Default Rate, as then applicable, expressed as an annual rate divided by 360) by (c) the outstanding principal balance. The accrual period for calculating interest due on each Monthly Payment Date shall be the Interest Period immediately prior to such Monthly Payment Date.

2.2.4 Usury Savings. This Agreement and the other Loan Documents are subject to the express condition that at no time shall Borrower be required to pay interest on the principal balance of the Loan at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If by the terms of this Agreement or the other Loan Documents, Borrower is at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of the Maximum Legal Rate, the Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under the Loan, shall, to the extent permitted by 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 2.3 Loan Payments.

2.3.1 Payment Before Maturity Date Borrower shall make a payment to Lender of interest only on the Closing Date for the period from the Closing Date through June 6, 2004. On the Monthly Payment Date occurring in July 2004 and on each Monthly Payment Date thereafter to and including the Maturity Date, Borrower shall make a payment to Lender of interest accruing hereunder during the entire Interest Period in which such Monthly Payment Date occurs, calculated in the manner set forth herein. Provided no Event of Default shall have occurred, each payment shall be applied (a) first to accrued and unpaid interest on all of the

Components on a pari passu basis and (b) on the Maturity Date, to the principal balance of the Components in the following order of priority: pro rata and pari passu according to the principal amount of Note A1, Note A2, Note A3, Note A4, Note A5 and Note A6.

2.3.2 Payment on Maturity Date. 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 Mortgage and the other Loan Documents.

2.3.3 Late Payment Charge. If any principal, interest or any other sum due under the Loan Documents, other than the payment of principal due on the Maturity Date, is not paid by Borrower on the date on which it is 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 Mortgage and the other Loan Documents.

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

(b) Whenever any payment to be made hereunder or under any other Loan Document shall be stated to be due on a day which is not a Business Day, the due date thereof shall be the preceding Business Day.

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

Section 2.4 Prepayments.

2.4.1 Voluntary Prepayments. Except as otherwise provided herein, Borrower shall not have the right to prepay the Loan in whole or in part. On and after the Permitted Prepayment Date, Borrower may, provided no Event of Default has occurred, at its option and upon ten (10) 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 only on any date without payment of the Yield Maintenance Premium. 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 and such amounts (i.e., principal and interest prepaid by Borrower) shall be held by Lender as collateral security for the Loan in an interest bearing account at an Eligible Institution, with interest accruing on such amounts to the benefit of Borrower; such amounts prepaid shall be applied to the Loan on the next Monthly Payment Date, with any interest on such funds paid to Borrower on such date provided no Event of Default then exists.

2.4.2 Mandatory Prepayments. On each date on which Lender actually receives a distribution of Net Proceeds, and if Lender does not make such Net Proceeds available to Borrower for Restoration of the related Individual Property, Borrower shall, at Lender's option, prepay the outstanding principal balance of the Note in an amount equal to one hundred percent (100%) of such Net Proceeds together with interest that would have accrued on such amounts through the next Monthly Payment Date. No Yield Maintenance Premium shall be due in connection with any prepayment made pursuant to this Section 2.4.2. Any prepayment received by Lender pursuant to this Section 2.4.2 on a date other than a Monthly Payment Date shall be held by Lender as collateral security for the Loan in an interest bearing account, with such interest accruing to the benefit of Borrower, and shall be applied by Lender on the next Monthly Payment Date. Any prepayment made under this Section 2.4.2(a) shall be applied to the Allocated Loan Amount with respect to such Individual Property which will be reduced in an amount equal to any such prepayment made pursuant to this Section 2.4.2 and (b) shall be applied to the outstanding principal balance of the Components in the following order of priority: pro rata and pari passu according to the principal balance of Note A1, Note A2, Note A3, Note A4, Note A5 and Note A6.

2.4.3 Prepayments After Default. If after 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 set forth in Section 2.4.1 and Borrower, such purchaser at foreclosure or other Person shall pay the Yield Maintenance Premium, in addition to the outstanding principal balance, all accrued and unpaid interest and other amounts payable under the Loan Documents. Any amounts received by Lender while any Event of Default exists may be applied by Lender toward the payment of interest and/or principal of any of the Components and/or any other amounts due under the Loan Documents in such order, priority and proportions as Lender in its sole discretion shall deem proper.

Section 2.5 Defeasance.

2.5.1 Total Defeasance. (a) Provided no Event of Default shall have occurred and remain uncured, Borrower shall have the right at any time after the Release Date and prior to the Permitted Prepayment Date, to voluntarily defease the entire Loan and obtain a release of the lien of the Mortgage encumbering all Individual Properties by providing Lender with the Total Defeasance Collateral (hereinafter, a "Total Defeasance Event"), subject to the satisfaction of the following conditions precedent:

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

(ii) Borrower shall pay to Lender (A) all payments of principal and interest due on the Loan to and including the Total Defeasance Date and (B) all other sums, then due under the Note, this Agreement, the Mortgage and the other Loan Documents;

(iii) Borrower shall deposit the Total Defeasance Collateral into the Defeasance Collateral Account and otherwise comply with the provisions of Sections 2.5.4 and 2.5.5 hereof;

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

(v) Borrower shall deliver to Lender an opinion of counsel for Borrower that is standard in commercial lending transactions and subject only to customary qualifications, assumptions and exceptions opining, among other things, that (A) Lender has a legal and valid perfected first priority security interest in the Defeasance Collateral Account and the Total Defeasance Collateral, (B) if a Securitization has occurred, the REMIC Trust formed pursuant to such Securitization will not fail to maintain its status as a “real estate mortgage investment conduit” within the meaning of Section 860D of the Code as a result of a Total Defeasance Event pursuant to this Section 2.5.1, (C) the Total Defeasance Event will not result in a deemed exchange for purposes of the Code and will not adversely affect the status of the Note as indebtedness for federal income tax purposes, (D) delivery of the Total Defeasance Collateral and the grant of a security interest therein to Lender shall not constitute an avoidable preference under Section 547 of the Bankruptcy Code or applicable state law and (E) a non-consolidation opinion with respect to the Successor Borrower;

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

(vii) Borrower shall deliver an Officer’s Certificate certifying that the requirements set forth in this Section 2.5.1 have been satisfied;

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

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

(x) Borrower shall pay all costs and expenses of Lender incurred in connection with the Total Defeasance Event, including Lender’s reasonable attorneys’ fees and expenses and Rating Agency fees and expenses; and

(xi) All of the Other Borrowers shall have elected to voluntarily defease the entire amount of all of the Other Loans and obtain a release of the lien of the Other Mortgages encumbering all the Other Properties, and the Other Borrowers shall have satisfied all of the conditions for a “Total Defeasance Event” (as defined in the Other Loan Agreements) set forth in Section 2.5.1 of the Other Loan Agreements.

(b) If Borrower has elected to defease the entire Note and the requirements of this Section 2.5 have been satisfied, all of the Individual Properties shall be released from the

lien of the Mortgage and security agreements or pledges entered into as, or in connection with, the other Loan Documents, and the Total Defeasance Collateral pledged pursuant to the Security Agreement shall be the sole source of collateral securing the Note. Notwithstanding anything to the contrary set forth herein or in any other Loan Document, none of the Individual Properties shall be released from the Mortgage or any of the other Loan Documents unless the Other Borrowers have elected to voluntarily defease the entire amount of all of the Other Loans and obtain a release of the lien of the Other Mortgages encumbering all the Other Properties, and the Other Borrowers have satisfied all of the conditions for a "Total Defeasance Event" (as defined in the Other Loan Agreements) set forth in Section 2.5.1 of the Other Loan Agreements. In connection with the release of the Liens, Borrower shall submit to Lender, not less than thirty (30) days prior to the Defeasance Date (or such shorter time as is acceptable to Lender in its sole discretion), a release of Lien (and related Loan Documents) for execution by Lender. Such release shall be in a form appropriate in the jurisdiction in which the Individual Properties are 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 Legal Requirements, and (ii) will effect such releases in accordance with the terms of this Agreement. Borrower shall pay all costs, taxes and expenses associated with the releases of the lien of the Mortgage, including Lender's reasonable attorneys' fees. Except as set forth in this Section 2.5, 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 any Mortgage on any of the Individual Properties.

2.5.2 Intentionally Deleted.

2.5.3 Additional Partial Defeasance. (a) If (1) a "Total Defeasance Event" (as defined in the Other Loan Documents) or a "Partial Defeasance Event" (as defined in the Other Loan Agreements) has occurred, and (2) the Lender and the Other Lenders have determined, in their reasonable discretion (after consultation with the Borrowers and the Other Borrowers) that all or a portion of the "Excess Release Amount" (as defined in the Other Loan Agreements) with respect to the Other Loans that are being defeased shall be allocated to one or more Individual Properties and subject to the terms and provisions of this Section 2.5.3 (an "Additional Partial Defeasance Event"), then Borrowers shall satisfy each of the following provisions:

(i) Borrower shall pay to Lender (A) all payments of principal and interest due on the Loan to and including the Monthly Payment Date on which the "Total Defeasance Event" (as defined in the Other Loan Agreements) or the "Partial Defeasance Event" (as defined in the Other Loan Agreements) of the applicable Other Loan is to occur (the "Additional Partial Defeasance Date") and (B) all other sums then due under the Note, this Agreement, the applicable Mortgage and the other Loan Documents with respect to the Individual Property or Individual Properties which Lender and the Other Lenders have selected as the properties to be subject to this Section 2.5.3;

(ii) Borrower shall deposit the Additional Partial Defeasance Collateral relating to the "Excess Release Amount" (as defined in the Other Loan Agreements

pursuant to which the Other Loans were defeased) which Lender and the Other Lenders have allocated to one or more of the Individual Properties into the Defeasance Collateral Account and otherwise comply with the provisions of Sections 2.5.4 and 2.5.5 hereof;

(iii) Borrower shall prepare all necessary documents to modify this Agreement and to amend and restate the Note and issue two substitute notes (or, if the Note consists of separate component notes, two groups of component notes), one note (or one group of component notes) having an aggregate principal balance equal to the portion of the "Excess Release Amount" (as defined in the Other Loan Agreement pursuant to which the Other Loans were defeased) that is allocated to the Loan and the subject Individual Property or Individual Properties, as the case may be (the "Defeased Note"), and the other note (or group of component notes) having an aggregate principal balance equal to the outstanding principal balance of the Note immediately prior to the Additional Partial Defeasance Event minus the principal amount of the Defeased Note executed in connection with such Additional Partial Defeasance Event (the "Undefeased Note"). The Defeased Note and Undefeased Note shall have identical terms as the Note except for the principal balance and the monthly payment amount. The Defeased Note and the Undefeased Note shall be cross defaulted and cross collateralized unless the Rating Agencies shall require otherwise or unless a Successor Borrower that is not an Affiliate of the Borrower is established pursuant to Section 2.5.4. A Defeased Note may not be the subject of any further defeasance;

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

(v) Borrower shall deliver to Lender an opinion of counsel for Borrower that is standard in commercial lending transactions and subject only to customary qualifications, assumptions and exceptions opining, among other things, that (A) Lender has a legal and valid perfected first priority security interest in the Defeasance Collateral Account and the Additional Partial Defeasance Collateral, (B) if a Securitization has occurred, the REMIC Trust formed pursuant to such Securitization will not fail to maintain its status as a "real estate mortgage investment conduit" within the meaning of Section 860D of the Code as a result of the Additional Partial Defeasance Event pursuant to this Section 2.5.3, (C) the Additional Partial Defeasance Event will not result in a deemed exchange for purposes of the Code and will not adversely affect the status of the Defeased Note and the Undefeased Note as indebtedness for federal income tax purposes, (D) delivery of the Additional Partial Defeasance Collateral and the grant of a security interest therein to Lender shall not constitute an avoidable preference under Section 547 of the Bankruptcy Code or applicable state law and (E) a non-consolidation opinion with respect to the Successor Borrower;

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

(vii) Borrower shall deliver to Lender a certificate of a "Big Four" or other nationally recognized public accounting firm acceptable to Lender certifying that the Additional Partial Defeasance Collateral will generate monthly amounts equal to or greater than the Scheduled Defeasance Payments;

(viii) Borrower shall deliver to Lender an Officer's Certificate certifying that the requirements set forth in this Section 2.5.3(a) have been satisfied; and

(ix) Borrower shall pay all costs and expenses of Lender incurred in connection with the Additional Partial Defeasance Event, including Lender's reasonable attorneys' fees and expenses.

(b) No defeasance of all or any portion of the Note pursuant to this Section 2.5.3 shall cause, give rise to a right to require, or otherwise result in, the release of the Lien of any Mortgage or Second Mortgage on any of the Individual Properties.

2.5.4 Defeasance Collateral Account. On or before the date on which Borrower delivers the Total Defeasance Collateral or Additional Partial Defeasance Collateral, Borrower shall open at any Eligible Institution the defeasance collateral account (the "Defeasance Collateral Account") which shall at all times be an Eligible Account. The Defeasance Collateral Account shall contain only (i) Total Defeasance Collateral or Additional Partial Defeasance Collateral, and (ii) cash from interest and principal paid on the Total Defeasance Collateral or Additional Partial Defeasance Collateral. All cash from interest and principal payments paid on the Total Defeasance Collateral or Additional Partial Defeasance Collateral shall be paid over to Lender on each Monthly Payment Date and applied to accrued and unpaid interest and on the Maturity Date, shall be first applied to accrued and unpaid interest and then to principal. Any cash from interest and principal paid on the Total Defeasance Collateral or Additional Partial Defeasance Collateral not needed to pay the Scheduled Defeasance Payments shall be retained in the Defeasance Collateral Account and applied to payments due on subsequent Monthly Payment Dates or released to Borrower upon the payment and satisfaction in full of the Debt. Borrower shall cause the Eligible Institution at which the Total Defeasance Collateral or Additional Partial Defeasance Collateral is deposited to enter an agreement with Borrower and Lender, satisfactory to Lender in its reasonable discretion, pursuant to which such Eligible Institution shall agree to hold and distribute the Total Defeasance Collateral or Additional Partial Defeasance Collateral in accordance with this Agreement. Borrower or Successor Borrower, as applicable, shall be the owner of the Defeasance Collateral Account and shall report all income accrued on Total Defeasance Collateral or Additional Partial 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.

2.5.5 Successor Borrower. In connection with a Total Defeasance Event or Additional Partial Defeasance Event under this Section 2.5, Borrower shall, if required by the Rating Agencies or if Borrower elects to do so, establish or designate a successor entity (the "Successor Borrower") which shall be a single purpose bankruptcy remote entity and which shall be approved by the Rating Agencies. Any such Successor Borrower may, at Borrower's option, be an Affiliate of the Borrower unless the Rating Agencies shall require otherwise. Borrower shall transfer and assign all obligations, rights and duties under and to the Note or the Defeased

Note, as applicable, together with the Total Defeasance Collateral or Additional Partial Defeasance Collateral, as applicable, to such Successor Borrower. Such Successor Borrower shall assume the obligations under the Note or the Defeased Note, as applicable, and the Security Agreement and Borrower that owned the Individual Property released pursuant to Section 2.5 hereof shall be relieved of its obligations under such documents except to the extent of any cross-collateralization required hereunder. 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, as applicable, and the Security Agreement. Borrower shall pay all costs and expenses incurred by Lender, including Lender's attorney's fees and expenses, incurred in connection therewith.

III. REPRESENTATIONS AND WARRANTIES

Section 3.1 Borrower Representations.

Borrower represents and warrants that:

3.1.1 Organization. (a) Borrower and each SPC Party is duly organized, validly existing and in good standing with full power and authority to own its assets and conduct its business, and is duly qualified in all jurisdictions in which the ownership of its property or the conduct of its business requires such qualification, except where the failure to be so qualified would not have a material adverse effect on its ability to perform its obligations hereunder, and Borrower has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents by it, and has the power and authority to execute, deliver and perform under this Agreement, the other Loan Documents and all the transactions contemplated hereby.

(b) Borrower's exact legal name is correctly set forth in the first paragraph of this Agreement. Borrower is an organization of the type specified in the first paragraph of this Agreement. Borrower is incorporated or organized under the laws of the state specified in the first paragraph of this Agreement. Borrower's principal place of business and chief executive office, and the place where Borrower keeps its books and records, including recorded data of any kind or nature, regardless of the medium of recording, including software, writings, plans, specifications and schematics, has been for the preceding four (4) months (or, if less than four (4) months, the entire period of the existence of Borrower) and will continue to be the address of Borrower set forth in the first paragraph of this Agreement (unless Borrower notifies Lender in writing at least thirty (30) days prior to the date of such change). The organizational identification number of Borrower, assigned by the state of its organization is 3590370 and its federal tax identification number is 20-1087755. Borrower is not subject to back-up withholding taxes.

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

3.1.3 No Conflicts. The execution and delivery of this Agreement and the other Loan Documents by Borrower and the performance of its obligations hereunder and thereunder will not conflict with any provision of any law or regulation to which Borrower is subject, or conflict with, result in a breach of, or constitute a default under, any of the terms, conditions or provisions of any of Borrower's organizational documents or any agreement or instrument to which Borrower is a party or by which it is bound, or any order or decree applicable to Borrower, or result in the creation or imposition of any lien on any of Borrower's assets or property (other than the Individual Properties and pursuant to the Loan Documents).

3.1.4 Litigation. There is no action, suit, proceeding or investigation pending or, to Borrower's knowledge, threatened against Borrower in any court or by or before any other Governmental Authority which would materially and adversely affect the ability of Borrower to carry out the transactions contemplated by this Agreement.

3.1.5 Agreements. Borrower is not in default with respect to any order or decree of any court or any order, regulation or demand of any Governmental Authority, which default might have consequences that would materially and adversely affect the condition (financial or other) or operations of Borrower or its properties or might have consequences that would adversely affect its performance hereunder.

3.1.6 Consents. No consent, approval, authorization or order of any court or Governmental Authority is required for the execution, delivery and performance by Borrower of, or compliance by Borrower with, this Agreement or the consummation of the transactions contemplated hereby, other than those which have been obtained by Borrower.

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

3.1.8 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 the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), whether or not subject to Title I of ERISA, or a “plan” as defined in Section 4975 of the Code, (b) none of the assets of Borrower constitutes or will constitute “plan assets” of one or more such plans within the meaning of U.S. Department of Labor Regulation 29 C.F.R. Section 2510.3-101 (the “Plan Assets Regulation”), and (c) transactions by or with Borrower are not and will not be subject to any state statute regulating investments of, or fiduciary obligations with respect to, governmental plans, as defined in Section 3(32) of ERISA.

3.1.9 Compliance. Except as set forth on Schedule XI attached hereto, Borrower and each of the Individual Properties and the use thereof comply in all material respects with all applicable Legal Requirements, including, without limitation, building and zoning ordinances and codes and Prescribed Laws. Borrower is not in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority, the violation of which might materially adversely affect the condition (financial or otherwise) or business of Borrower. Borrower has not committed any act which may give any Governmental Authority the right to cause Borrower to forfeit any of the Individual Properties or any part thereof or any monies paid in performance of the Borrower’s obligations under any of the Loan Documents.

3.1.10 Financial Information. All financial data, including, without limitation, the statements of cash flow and income and operating expense, that have been delivered to Lender in respect of each of the Individual Properties (i) are true, complete and correct in all material respects, (ii) accurately represent the financial condition of each Individual Property as of the date of such reports, and (iii) have been prepared in accordance with GAAP throughout the periods covered, except as disclosed therein. Borrower has no 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 materially adverse effect on any of the Individual Properties or the operation thereof, except as referred to or reflected in said financial statements. Since the date of the financial statements, there has been no material adverse change in the financial condition, operations or business of Borrower or the Individual Properties from that set forth in said financial statements.

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

3.1.12 Utilities and Public Access. Each of the Individual Properties has rights of access to public ways and is served by water, sewer, sanitary sewer and storm drain facilities adequate to service such Individual Property for its respective intended uses.

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

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

3.1.15 Enforceability. The Loan Documents are not subject to any right of rescission, set off, counterclaim or defense by Borrower, 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, and Borrower has not asserted any right of rescission, set off, counterclaim or defense with respect thereto.

3.1.16 Assignment of Leases. The Assignment of Leases creates a valid assignment of, or a valid security interest in, certain rights under the Leases, subject only to (a) a license granted to Borrower to exercise certain rights and to perform certain obligations of the lessor under the Leases, including the right to operate the Property, and (b) solely with respect to Lender's rights under the Assignment of Leases to cause the Tenants under the NASA and OCC Leases to direct Rents to an account specified by Lender, subject to the delivery by Lender, on or after the closing of the Loan, of a notice (a "GSA Notice") to the contracting officer of OCC and NASA directing Rent to be deposited into the Clearing Account; provided, that, any failure by Lender to deliver such notice will not affect in any manner the validity or enforceability of the assignments of, or the validity, enforceability and/or perfection of Lender's security interest in, the rights of Borrower under the NASA and OCC Leases provided by the Assignment of Leases. No Person other than Lender has any interest in or assignment of the Leases or any portion of the Rents due and payable or to become due and payable thereunder. Lender agrees that it shall not revoke either GSA Notice prior to an Event of Default.

3.1.17 Insurance. Borrower has obtained and has delivered to Lender certificates evidencing the insurance coverage provided under the Policies, with all premiums prepaid thereunder, reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. Except as set forth on Schedule XI attached hereto, no claims have been made under any of the Policies, and no Person, including Borrower, has done, by act or omission, anything which would impair the coverage of any of the Policies.

3.1.18 Licenses. All permits and approvals, including without limitation, certificates of occupancy required by any Governmental Authority for the use, occupancy and operation of each of the Individual Properties in the manner in which such Individual Property is currently being used, occupied and operated have been obtained and are in full force and effect.

3.1.19 Flood Zone. Except as may be shown on a Survey, none of the Improvements on any of the Individual Properties are located in an area identified by the Federal Emergency Management Agency as a special flood hazard area.

3.1.20 Physical Condition. Except as may be disclosed in the engineering reports described on Schedule XI attached hereto, each of the Individual Properties, including, without limitation, all buildings, improvements, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and all structural components, are in good condition, order and repair in all material respects; there exists no structural or other material defects or damages in any of the Individual Properties,

whether latent or otherwise, and Borrower has not received any notice from any insurance company or bonding company of any defects or inadequacies in any of the Individual Properties, or any part thereof, which would adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or of any termination or threatened termination of any policy of insurance or bond.

3.1.21 Boundaries. Except as may be shown on a Survey, all of the improvements which were included in determining the appraised value of each Individual Property lie wholly within the boundaries and building restriction lines of such Individual Property, and no improvements on adjoining properties encroach upon such Individual Property, and no easements or other encumbrances affecting the applicable Individual Property encroach upon any of the improvements, so as to affect the value or marketability of the applicable Individual Property except those which are insured against by title insurance.

3.1.22 Leases. Except as set forth on Schedule XI attached hereto, Borrower represents and warrants to Lender with respect to the Leases at the Individual Properties: (a) each rent roll attached hereto as Schedule I(A) and Schedule I(B) is true, complete and correct and none of the Individual Properties are subject to any Leases other than the Leases for such Individual Property that are described in the applicable Schedule I, (b) the Leases identified on Schedule I(A) and Schedule I(B) are in full force and effect and there are no defaults thereunder by either party (other than non-material defaults by Tenants that it is commercially reasonable for the Borrower to excuse), (c) the copies of the Leases delivered to Lender are true and complete, and there are no oral agreements with respect thereto, (d) no Rent (including security deposits) has been paid more than one (1) month in advance of its due date, (e) all work to be performed by Borrower under each Lease has been performed as required and has been accepted by the applicable Tenant, (f) any payments, free rent, partial rent, rebate of rent or other payments, credits, allowances or abatements required to be given by Borrower to any Tenant has already been received by such Tenant and (g) all security deposits are being held in accordance with Legal Requirements.

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

3.1.24 Single Purpose. Borrower hereby represents and warrants to, and covenants with, Lender that as of the date hereof and until such time as the Debt shall be paid in full:

(a) Borrower does not own and will not own any asset or property other than (i) the Individual Properties, and (ii) incidental personal property or other assets necessary for the ownership or operation of the Individual Properties.

(b) Borrower will not engage in any business other than the ownership, management and operation of the Individual Properties, entering into the Loan as a co-borrower and Borrower will conduct and operate its business as presently conducted and operated.

(c) Borrower will not enter into any contract or agreement with any Affiliate of Borrower, any constituent party of Borrower or any Affiliate of any constituent party, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arm's-length basis with third parties other than any such party.

(d) Borrower has not incurred and will not incur any Indebtedness other than (i) the Debt, (ii) unsecured trade payables and operational debt not evidenced by a note and (iii) Indebtedness incurred in the financing of equipment and other personal property used at the Individual Properties; provided that any Indebtedness incurred pursuant to subclauses (ii) and (iii) shall be (x) for each Individual Property, not in excess of three percent (3%) of the Allocated Loan Amount for such Individual Property in the aggregate, (y) paid not more than sixty (60) days from the date incurred as to the matters in subclause (ii) above and not more than sixty (60) days from the date due as to the matters in subclause (iii) above, subject only to Borrower's right to diligently prosecute a good faith dispute as to amounts due and payable in accordance with the provisions of this Agreement and (z) incurred in the ordinary course of business. No Indebtedness other than the Debt may be secured (subordinate or pari passu) by any of the Individual Properties.

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

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

(g) Borrower has done or caused to be done and will do all things necessary to observe organizational formalities and preserve its existence, and Borrower will not, nor will Borrower permit any constituent party to amend, modify or otherwise change the partnership certificate, partnership agreement, articles of incorporation and bylaws, operating agreement, trust or other organizational documents of Borrower or such constituent party without the prior consent of Lender in any manner that (i) violates the single purpose covenants set forth in this Section 3.1.24, or (ii) amends, modifies or otherwise changes any provision thereof that by its terms cannot be modified at any time when the Loan is outstanding or by its terms cannot be modified without Lender's consent.

(h) Borrower will maintain all of its books, records, financial statements and bank accounts separate from those of its Affiliates and any constituent party. Borrower's assets will not be listed as assets on the financial statement of any other Person; provided, however, that

Borrower's assets may be included in a consolidated financial statement of its Affiliates provided that (i) appropriate notation shall be made on such consolidated financial statements (or the notes thereto) 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 will file its own tax returns (to the Borrower is required to file any such tax returns) and will not file a consolidated federal income tax return with any other Person except to the extent Borrower is a disregarded entity for federal income tax purposes. Borrower shall maintain its books, records, resolutions and agreements as official records.

(j) Borrower will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any Affiliate of Borrower or any constituent party of Borrower), shall correct any known misunderstanding regarding its status as a separate entity, shall conduct business in its own name, shall not identify itself or any of its Affiliates as a division or part of the other.

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

(l) Neither Borrower nor any constituent party will seek or effect the liquidation, dissolution, winding up, liquidation, consolidation or merger, in whole or in part, of Borrower.

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

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

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

(p) If Borrower is a limited partnership or a limited liability company (other than a single member limited liability company), each general partner or managing member (each, an "SPC Party"), as applicable, shall be a corporation or a Delaware single member limited liability company acceptable to Lender whose sole asset is its interest in Borrower and each such SPC Party will at all times comply, and will cause Borrower to comply, with each of the representations, warranties, and covenants contained in this Section 3.1.24 as if such representation, warranty or covenant was made directly by such SPC Party. Upon the withdrawal or the disassociation of an SPC Party from Borrower, Borrower shall immediately appoint a new SPC Party whose articles of incorporation are substantially similar to those of such SPC Party and deliver a new non-consolidation opinion to the Rating Agency or Rating Agencies, as applicable, with respect to the new SPC Party and its equity owners.

(ii) If Borrower or any SPC Party of Borrower is a single member limited liability company, Borrower or such SPC Party shall have at least two (2) springing members, one of which, upon the dissolution of such sole member or the withdrawal or the disassociation of the sole member from Borrower or such SPC Party, shall immediately become the sole member of Borrower or such SPC Party, and the other of which shall become the sole member of Borrower or such SPC Party if the first such springing member no longer is available to serve as such sole member.

(p) Borrower shall at all times cause there to be at least two (2) duly appointed members of the board of directors of each SPC Party and the Borrower who are provided by a nationally recognized company that provides professional independent directors (each, an “Independent Director”) and which are reasonably satisfactory to Lender who shall not have been at the time of such individual’s appointment or at any time while serving as a director of such SPC Party and Borrower, and may not have been at any time during the preceding five years (i) a stockholder, director (other than as an Independent Director), officer, employee, partner, attorney or counsel of such SPC Party, Borrower or any Affiliate of either of them, (ii) a customer, supplier or other Person who derives any of its purchases or revenues from its activities with such SPC Party, Borrower or any Affiliate of either of them (other than as an Independent Director), (iii) a Person or other entity controlling or under common control with any such stockholder, partner, customer, supplier or other Person, or (iv) a member of the immediate family of any such stockholder, director, officer, employee, partner, customer, supplier or other Person. A natural person who otherwise satisfies the foregoing definition of Independent Director except for being the independent director, manager or special member of a “special purpose entity” affiliated with the Borrower that does not own a direct or indirect equity interest in the Borrower shall not be disqualified from serving as an Independent Director if such individual is at the time of initial appointment, or at any time while serving as an Independent Director, is an independent manager, director or special member provided by a nationally-recognized company that provides professional independent managers, directors or special members. As used in this definition, the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise.

(q) Borrower shall not cause or permit the board of directors of any SPC Party and Borrower to take any action which, under the terms of any certificate of incorporation, by-laws or any voting trust agreement with respect to any common stock or under any organizational document of Borrower or SPC Party, requires a unanimous vote of the board of directors of each SPC Party and Borrower unless at the time of such action there shall be at least two members who are each an Independent Director.

(r) Borrower shall conduct its business so that the assumptions made with respect to Borrower in the Non-Consolidation Opinion shall be true and correct in all respects. In connection with the foregoing, Borrower hereby covenants and agrees that it will comply with or cause the compliance with, (i) all of the facts and assumptions (whether regarding the Borrower or any other Person) set forth in the Non-Consolidation Opinion, (ii) all the representations, warranties and covenants in this Section 3.1.24, and (iii) all the organizational documents of the Borrower and any SPC Party.

(s) Borrower will not permit any Affiliate or constituent party independent access to its bank accounts other than a Manager approved by Lender, and then in such circumstances, only in accordance with the terms of its respective Management Agreement.

(t) Borrower shall pay the salaries of its own employees (if any) from its own funds and maintain a sufficient number of employees (if any) in light of its contemplated business operations.

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

3.1.25 Pre-Existing Borrower Entity. Borrower hereby represents with respect to Borrower that from the date of such entity's formation on November 12, 2002 to the date of this Agreement: (a) 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; (b) has no judgments or liens of any nature against it except for tax liens not yet due; (c) is in compliance with all laws, regulations, and orders applicable to it and has received all permits necessary for it to operate; (d) is not involved in any dispute with any taxing authority; (e) has paid all taxes which it owes; (f) 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; (g) 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; (h) has provided Lender with (i) complete financial statements of the REIT, which financial statements reflect the REIT's ownership of Borrower and otherwise reflect a fair and accurate view of those combined entities' financial condition, and (ii) complete financial statements of Borrower, which financial statements reflect a fair and accurate view of what the Borrower's financial condition will be after the Closing; (i) has materially complied with the separateness covenants referred to in the Nonconsolidation Opinion since its formation; and (j) has no material contingent or actual obligations not related to the Property.

3.1.26 Pre-Existing Borrower Separateness. Borrower hereby represents from the date of such entity's formation on November 12, 2002 to the date of this Agreement that it: (a) 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 (individually, a "Related Party" and collectively, the "Related Parties"), 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; (b) has paid all of its debts and liabilities from its assets, except that certain professional services provided to Borrower, in its capacity as a subsidiary of the REIT, such as tax, accounting and legal services, have been paid for by the REIT; (c) has done or caused to be done all things necessary to observe all organizational formalities applicable to it and to preserve its existence; (d) has maintained all of its books, records, financial statements and bank accounts relating to operation of the Individual Properties separate from those of any other Person, provided however, that the REIT may have listed, on various documents and filings, (1) that it owns the Borrower and/or (2) that the Individual Properties might be an asset of the REIT without clearly enunciating that the Individual Properties were owned by Borrower, and thus that the REIT had only an indirect interest in the

Individual Properties through the REIT's ownership of Borrower; (e) has, with respect to the day-to-day operation of the Individual Properties, at all times held itself out to the public as a legal entity separate and distinct from any other Person (including any Affiliate or other Related Party); (f) has corrected any known misunderstanding regarding its status as a separate entity; (g) has, with respect to operation of the Individual Properties, conducted all of its business and held all of its assets in its own name; (k) has not, except for the Bank of America Guaranty (as defined below), held itself out as being responsible for the debts or obligations of any other Person; (l) has not guaranteed or become obligated for the debts of any other Person, except that the Borrower has guaranteed the obligations of certain affiliates pursuant to that certain credit agreement dated as of April 23, 2003 between (1) certain of Borrower's affiliates and (2) Bank of America, N.A., in its capacity as Administrative Agent, Swingline Lender and L/C Issuer and the associated lenders thereto, which obligation shall be discharged upon the Closing (the "Bank of America Guaranty"); (m) has not pledged its assets to secure the obligations of any other Person and, as of the Closing, no such pledge remains outstanding except in connection with the Loan; (n) has maintained adequate capital in light of its contemplated business operations; (o) has maintained, on its own or through Related Parties, a sufficient number of employees in light of its contemplated business operations and, with respect to the day-to-day operations of the Individual Properties, has paid the costs of third parties' services required for the Individual Properties from its own funds; (p) has not owned any subsidiary or any equity interest in any other entity; (q) has not incurred any indebtedness that is still outstanding other than indebtedness that is permitted under the Loan Documents; and (r) has not had any of its obligations guaranteed by an Affiliate, except for (1) the Bank of America Guaranty which will be discharged as a result of the closing of the Loan, or (2) guarantees that are expressly contemplated by the Loan Documents.

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

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

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

3.1.30 Organizational Chart. The organizational chart attached as Schedule III hereto, relating to Borrower and certain Affiliates and other parties, is true, complete and correct on and as of the date hereof.

3.1.31 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.

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

3.1.33 Investment Company Act. Borrower is not (1) an “investment company” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended; (2) 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 (3) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

3.1.34 Access/Utilities. All public utilities necessary to the continued use and enjoyment of each Individual Property as presently used and enjoyed are located in the public right-of-way abutting such Individual Property. All roads necessary for the full utilization of each Individual Property for its current purpose have been completed and dedicated to public use and accepted by all governmental authorities or are the subject of access easements for the benefit of such Individual Property.

3.1.35 No Bankruptcy Filing. Borrower is not contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidation of its assets or property, and Borrower has no knowledge of any Person contemplating the filing of any such petition against it.

3.1.36 Full and Accurate Disclosure. To the best of Borrower’s knowledge, no information contained in this Agreement, the other Loan Documents or any written statement furnished by or on behalf of Borrower pursuant to the terms of this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not materially misleading in light of the circumstances under which they were made. There is no material fact or circumstance presently known to

Borrower which have not been disclosed to Lender and which materially adversely affects, or is reasonably likely to materially adversely affect, the Individual Properties, Borrower, or its business, operations or condition (financial or otherwise).

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

3.1.38 No Change in Facts or Circumstances; Disclosure. To the best of Borrower’s knowledge, there has been no material adverse change in any condition, fact, circumstance or event that would make the financial statements, rent rolls, reports, certificates or other documents submitted in connection with the Loan inaccurate, incomplete or otherwise misleading in any material respect or that otherwise materially and adversely affects the business operations or the financial condition of Borrower or the Individual Properties.

3.1.39 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 (as defined in the Cash Management Agreement) 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;

(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;

(c) Pursuant and subject to the terms of the Cash Management Agreement, Agent has agreed to comply with all instructions originated by Lender, without further consent by Borrower, directing disposition of the Accounts and all sums at any time held, deposited or invested therein, together with any interest or other earnings thereon, and all proceeds thereof (including proceeds of sales and other dispositions), whether accounts, general intangibles, chattel paper, deposit accounts, instruments, documents or securities; and

(d) The Accounts are not in the name of any Person other than Borrower, as pledgor, or Lender, as pledgee. Borrower has not consented to Agent’s complying with instructions with respect to the Accounts from any Person other than Lender.

3.1.40 REA. Except as disclosed on Schedule XI attached hereto, each REA is in full force and effect and Borrower and, to Borrower’s knowledge, all other parties to any REA, are not in default thereunder, and to the best of Borrower’s knowledge, there are no conditions which, with the passage of time or the giving of notice, or both, would constitute a default thereunder. Except as set forth on Schedule VII, the REA has not been modified, amended or supplemented.

Section 3.2 Survival of Representations

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

IV. BORROWER COVENANTS

Section 4.1 Borrower Affirmative Covenants.

Borrower hereby covenants and agrees with Lender that:

4.1.1 Existence; Compliance with Legal Requirements. Borrower shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, licenses, permits and franchises and comply with all Legal Requirements applicable to it and the Individual Properties, including, without limitation, Prescribed Laws.

4.1.2 Taxes and Other Charges. Borrower shall pay all Taxes and Other Charges now or hereafter levied or assessed or imposed against the Individual Properties or any part thereof as the same become due and payable; provided, however, Borrower's obligation to directly pay Taxes shall be suspended for so long as Borrower is required to make deposits of Tax Funds and in such case complies with the terms and provisions of Section 6.2 hereof. Borrower shall furnish to Lender receipts for the payment of the Taxes and the Other Charges prior to the date the same shall become delinquent; provided, however, that Borrower is not required to furnish such receipts for payment of Taxes in the event that such Taxes have been paid by Lender with Tax Funds on deposit with Lender pursuant to Section 6.2 hereof. Borrower shall not permit or suffer and shall promptly discharge any lien or charge against the Individual Properties. After prior notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, conducted in good faith and with due diligence, the amount or validity 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 all applicable statutes, laws and ordinances; (iii) no Individual 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 Taxes or Other Charges from the applicable Individual Property; and (vi) to the extent required by law, Borrower shall have paid under protest or deposited with the appropriate taxing authority any such security as may be required by applicable law (which must be in an amount equal to at least 100% of Taxes plus interest thereon for an additional period of three (3) years) to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon, provided, that, if the applicable taxing authority does not require Borrower to deliver cash as security while Taxes or Other Charges are being contested by Borrower, Borrower shall deposit cash with Lender or, in lieu of a cash deposit, a Letter of Credit, in the amount required above as security for the payment of such Taxes or Other Charges, as the case may be. Lender may pay over any such cash, Letter of Credit or other security held by Lender to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established.

4.1.3 Litigation. Borrower shall give prompt notice to Lender of any litigation or governmental proceedings pending or threatened against Borrower which might materially adversely affect any of the Individual Properties or Borrower's ability to perform its obligations hereunder or under the other Loan Documents.

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

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

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

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

4.1.6 Financial Reporting. (a) Borrower shall keep and maintain or will cause to be kept and maintained proper and accurate books and records, in accordance with GAAP, reflecting the financial affairs of Borrower. Lender shall have the right from time to time during normal business hours upon reasonable notice to Borrower to examine such books and records at the office of Borrower or other Person maintaining such books and records and to make such copies or extracts thereof as Lender shall desire.

(b) Borrower shall furnish Lender annually, within one hundred twenty (120) days following the end of each Fiscal Year, a complete copy of Borrower's annual financial statements audited by a "Big Four" accounting firm or other independent certified public accountant acceptable to Lender prepared in accordance with GAAP covering the Individual Properties on a combined basis, such financial statements to include statements of income and expense and cash flow for Borrower and the Individual Properties and a balance sheet for Borrower. Such statements shall set forth gross revenue and operating expenses for each Individual Property. Borrower's annual financial statements shall be accompanied by a certificate executed by the chief financial officer of Borrower stating that such annual financial statement presents fairly the financial condition and the results of operations of Borrower and the Individual Properties being reported on. Borrower shall furnish a balance sheet and income statement for the preceding Fiscal Year for the Individual Properties, certified by the chief financial officer of Borrower that each statement fairly presents the financial condition and results of operations of such Individual Property. Together with Borrower's annual financial statements, Borrower shall furnish to Lender an Officer's Certificate certifying as of the date

thereof whether to the best of Borrower's knowledge there exists an event or circumstance which constitutes a Default or Event of Default by Borrower under the Loan Documents and if such Default or Event of Default exists, the nature thereof, the period of time it has existed and the action then being taken to remedy the same.

(c) Borrower will furnish Lender on or before the sixtieth (60th) day after the end of each fiscal quarter (based on Borrower's Fiscal Year), the following items, accompanied by a certificate from the chief financial officer of Borrower, certifying that such items are true, correct, accurate and complete and fairly present the financial condition and results of the operations of Borrower and each Individual Property in accordance with GAAP as applicable:

(i) quarterly and year-to-date statements of income and expense prepared for such quarter with respect to each Individual Property, with a balance sheet for such quarter for Borrower;

(ii) a calculation reflecting the Debt Service Coverage Ratio as of the last day of such quarter, for such quarter and the last four quarters;

(iii) a current rent roll for each Individual Property;

(iv) a comparison of the budgeted income and expenses and the actual income and expenses for such quarter and year to date for each Individual Property, together with a detailed explanation of any variances of more than five percent (5%) between budgeted and actual amounts for such period and year to date; and

(v) with respect to any Major Leases, any notice received from a Tenant threatening non-payment of Rent or other default, alleging or acknowledging a default by landlord, requesting a termination of a Lease or a material modification of any Lease or notifying Borrower of the exercise or non-exercise of any option provided for in such Tenant's Lease, or any other similar material correspondence received by Borrower from Tenants during the subject fiscal quarter.

(d) Prior to the last Securitization of any portion of the Loan and upon request by Lender, Borrower will furnish Lender on or before the thirty-fifth (35th) day after the end of each calendar month, the following items, accompanied by a certificate from the chief financial officer of Borrower, certifying that such items are true, correct, accurate, and complete and fairly present the financial condition and results of the operations of Borrower and each Individual Property in a manner consistent with GAAP, as applicable:

(i) monthly and year-to-date statements of income and expense and cash flow prepared for such month with respect to each Individual Property; and

(ii) a current rent roll for each Individual Property.

(e) Borrower shall submit a proposed draft of the Annual Budget to Lender not later than thirty (30) days prior to the commencement of each Fiscal Year and a final Annual Budget to Lender not later than ten (10) days prior to the commencement of each Fiscal Year. Lender shall have the right to approve each Annual Budget covering any period of time after the

occurrence of a Trigger Event. In the event that Lender objects to a proposed Annual Budget (draft or final) submitted by Borrower at any time after a Trigger Event, Lender shall advise Borrower of such objections within fifteen (15) days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and Borrower shall promptly revise such Annual Budget and resubmit the same to Lender. Lender shall advise Borrower of any objections to its revised Annual Budget within ten (10) days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and Borrower shall promptly revise the same in accordance with the process described in this subsection until Lender approves the Annual Budget. Until such time that Lender approves a proposed Annual Budget, which approval shall not be unreasonably withheld, conditioned or delayed unless an Event of Default exists, in which case Lender's approval shall be in its sole and absolute discretion, the most recent Annual Budget (or the most recent Approved Annual Budget, if such previous Annual Budget was subject to Lender's approval) shall apply; provided that, such Annual Budget (or Approved Annual Budget, as applicable) shall be adjusted to reflect actual increases in Taxes, Insurance Premiums, utility expenses and management fees under the Management Agreement. Each Annual Budget approved by Lender shall hereinafter be referred to as an "Approved Annual Budget." In the event that, after the occurrence of a Trigger Event, Borrower incurs an extraordinary operating expense or extraordinary capital expenditure not set forth in the applicable Annual Budget (each, an "Extraordinary Expense"), then Borrower shall promptly deliver to Lender a reasonably detailed explanation of such proposed Extraordinary Expense for Lender's approval.

(f) Borrower shall furnish to Lender, within ten (10) Business Days after request (or as soon thereafter as may be reasonably possible), such further detailed information with respect to the operation of any of the Individual Properties and the financial affairs of Borrower as may be reasonably requested by Lender, including, without limitation, a comparison of the budgeted income and expenses and the actual income and expenses for a quarter and year to date for each Individual Property, together with a detailed explanation of any variances of more than the greater of five percent (5%) or \$10,000 between budgeted and actual amounts for such period and year to date.

4.1.7 Title to the Individual Properties. Borrower will warrant and defend the validity and priority of the Liens of the Mortgage and the Assignment of Leases on each Individual Property against the claims of all Persons whomsoever, subject only to Permitted Encumbrances and, in the case of the Second Mortgage and the Second Assignment of Leases, the First Mortgage and the First Assignment of Leases.

4.1.8 Estoppel Statement. (a) After request by Lender, Borrower shall within ten (10) Business Days furnish Lender with a statement, duly acknowledged and certified, stating (i) the unpaid principal amount of the Note, (ii) the Interest Rate of the Note, (iii) the date installments of interest and/or principal were last paid, (iv) any offsets or defenses to the payment of the Debt, if any, and (v) that this Agreement, the other Loan Documents have not been modified or if modified, giving particulars of such modification.

(b) After request by Borrower, Lender shall within ten (10) Business Days furnish Borrower with a statement, duly acknowledged and certified, stating (i) the unpaid principal amount of the Note, (ii) the Interest Rate of the Note, (iii) the date installments of interest and/or principal were last paid and (iv) whether or not Lender has sent any notice of default under the Loan Documents which remains uncured in the opinion of Lender.

(c) Borrower shall deliver to Lender, upon request, an estoppel certificate from each Tenant under any Lease (provided that Borrower shall only be required to use commercially reasonable efforts to obtain an estoppel certificate from any Tenant not required to provide an estoppel certificate under its Lease); provided that such certificate may be in the form required under such Lease; provided, further, that Borrower shall not be required to deliver such certificates more frequently than once in any calendar year (or twice during any calendar year in which a Securitization occurs).

(d) Borrower shall deliver to Lender, upon request, estoppel certificates from each party under the REA; provided that such certificates may be in the form required under the REA; provided, further, that Borrower shall not be required to deliver such certificates more than three (3) times 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).

4.1.9 Leases. (a) All Leases and all renewals of Leases executed after the date hereof shall (i) provide for rental rates comparable to existing local market rates for similar properties, (ii) be on commercially reasonable terms, (iii) provide that such Lease is subordinate to the Mortgage encumbering the related Individual Property and that the lessee will attorn to Lender and any purchaser at a foreclosure sale and (iv) not contain any terms which would materially adversely affect Lender's rights under the Loan Documents. All Major Leases and all renewals, amendments and modifications thereof executed after the date hereof shall be subject to Lender's prior approval, which approval shall not be unreasonably withheld or delayed. Lender shall execute and deliver a Subordination Non-Disturbance and Attornment Agreement in the form annexed as Schedule IV to Tenants under future Major Lease approved by Lender promptly upon request with such commercially reasonable changes as may be requested by Tenants, from time to time, and which are reasonably acceptable to Lender.

(b) Borrower (i) shall observe and perform the obligations imposed upon the lessor under the Leases in a commercially reasonable manner; (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 without Lender's prior approval, not to be unreasonably withheld or delayed in the event of a material default under a Major Lease; (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 alter, modify or change any Major 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 without Lender's prior written approval, such approval not to be unreasonably withheld or delayed if no Trigger Event has occurred and is continuing; and (vi) shall hold all security deposits under all Leases in accordance with Legal Requirements. Upon request, Borrower shall furnish Lender with executed copies of all Leases.

(c) Notwithstanding anything to the contrary contained in this Section 4.1.9:

(i) whenever Lender's approval or consent is required pursuant to the provisions of this Section 4.1.9, Borrower shall have the right to submit a term sheet of such transaction to Lender for Lender's approval, such approval not to be unreasonably withheld or delayed. Any such term sheet submitted to Lender shall set forth all material terms of the proposed transaction including, without limitation, identity of tenant, square footage, term, rent, rent credits, abatements, work allowances and tenant improvements to be constructed by Borrower. Lender shall use good faith efforts to respond within ten (10) Business Days after Lender's receipt of the Borrower's written request for approval or consent of such term sheet. If Lender fails to respond to such request within ten (10) Business Days, and the Borrower sends a second request containing a legend in bold letters stating that Lender's failure to respond within five (5) Business Days shall be deemed consent or approval, Lender shall be deemed to have approved or consented to such term sheet if Lender fails to respond to such second written request before the expiration of such five (5) Business Day period;

(ii) whenever Lender's approval or consent is required pursuant to the provisions of this Section 4.1.9 for any matter that Lender has not previously approved a term sheet pursuant to Section 4.1.9(c)(i) above, Lender shall use good faith efforts to respond within ten (10) Business Days after Lender's receipt of Borrower's written request for such approval or consent. If Lender fails to respond to such request within ten (10) Business Days, and Borrower sends a second request containing a legend in bold letters stating that Lender's failure to respond within ten (10) Business Days shall be deemed consent or approval, Lender shall be deemed to have approved or consented to the matter for which Lender's consent or approval was sought if Lender fails to respond to such second written request before the expiration of such ten (10) Business Day period;

(iii) whenever Lender's approval or consent is required pursuant to the provisions of this Section 4.1.9 for any matter that Lender has previously approved a term sheet pursuant to Section 4.1.9(c)(i) above, Lender shall use good faith efforts to respond within five (5) Business Days after Lender's receipt of Borrower's written request for such approval or consent. If Lender fails to respond to such request within five (5) Business Days, and Borrower sends a second request containing a legend in bold letters stating that Lender's failure to respond within five (5) Business Days shall be deemed consent or approval, Lender shall be deemed to have approved or consented to the matter for which Lender's consent or approval was sought if Lender fails to respond to such second written request before the expiration of such five (5) Business Day period, provided that there have been no material deviations from the term sheet and that the aggregate economics of the transaction are no less favorable to Borrower than as set forth in the term sheet;

(iv) in the event that Lender shall have approved (or be deemed to have approved) a term sheet submitted by Borrower with respect to a certain Lease, Lender shall not withhold its approval or consent with respect to such Lease on the basis of any provisions of such Lease dealing with the items contained in the approved term sheet; and

(v) Borrower shall have the right, without the consent or approval of Lender in any instance, to terminate or accept a surrender of any Lease that is not a Major Lease.

4.1.10 Alterations. Lender's prior approval shall be required in connection with any alterations to any Improvements (except tenant improvements under any Lease approved by Lender or under any Lease for which approval was not required by Lender under this Agreement) at any Individual Property (a) that may have a material adverse effect on Borrower's financial condition, the value of the related Individual Property or the ongoing revenues and expenses of the related Individual Property, or (b) the cost of which (including any related alteration, improvement or replacement), is reasonably anticipated to exceed the Alteration Threshold, which approval may be granted or withheld in Lender's sole discretion. If the total unpaid amounts incurred and to be incurred with respect to such alterations to the Improvements shall at any time exceed the Alteration Threshold, Borrower shall 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) Letters of Credit, (iii) U.S. Obligations, (iv) other securities acceptable to Lender, provided that Lender shall have received a Rating Agency Confirmation as to the form and issuer of same, or (v) 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 on the Individual Property (other than such amounts to be paid or reimbursed by Tenants under the Leases) over the Alteration Threshold.

4.1.11 Intentionally Deleted.

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

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

4.1.14 Costs of Enforcement/Remedying Defaults. In the event (a) that the Mortgage is foreclosed in whole or in part or the Note or any other Loan Document or Security Document is put into the hands of an attorney for collection, suit, action or foreclosure, (b) of the foreclosure of any Lien or Mortgage prior to or subsequent to the Mortgage in which proceeding Lender is made a party, (c) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Borrower or Guarantor or an assignment by Borrower or Guarantor for

the benefit of its creditors, or (d) Lender shall remedy or attempt to remedy any Event of Default hereunder, Borrower shall be chargeable with and agree to pay all costs incurred by Lender as a result thereof, including costs of collection and defense (including reasonable attorneys', experts', consultants' and witnesses' fees and disbursements) in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, which shall be due and payable on demand, together with interest thereon from the date incurred by Lender at the Default Rate, and together with all required service or use taxes.

4.1.15 Business and Operations. Borrower will continue to engage in the businesses currently conducted by them as and to the extent the same are necessary for the ownership and leasing of the Individual Properties. Borrower will qualify to do business and will remain in good standing under the laws of each jurisdiction as and to the extent the same are required for the ownership and leasing of the related Individual Property. Borrower shall at all times cause each Individual Property to be maintained as an office building.

4.1.16 Loan Fees. Borrower shall pay all fees and costs (including, without limitation, all origination and commitment fees) required of Borrower pursuant to the terms of that certain summary of terms letter between Wells Real Estate Funds and Morgan Stanley Mortgage Capital, Inc. dated March 2, 2004.

Section 4.2 Borrower Negative Covenants.

Borrower covenants and agrees with Lender that:

4.2.1 Due on Sale and Encumbrance; Transfers of Interests. Without the prior written consent of Lender, Borrower nor any other Person having a direct or indirect ownership or beneficial interest in Borrower shall sell, convey, mortgage, grant, bargain, encumber, pledge, assign or transfer any interest, direct or indirect, in Borrower, any of the Individual Properties or any part thereof, whether voluntarily or involuntarily, in violation of the covenants and conditions set forth in the Mortgage and this Agreement.

4.2.2 Liens. Borrower shall not create, incur, assume or suffer to exist any Lien on any portion of the any of the Individual Properties except for Permitted Encumbrances.

4.2.3 Dissolution. Borrower shall not (i) engage in any dissolution, liquidation or consolidation or merger with or into any other business entity, (ii) engage in any business activity not related to the ownership and operation of the Individual Properties, (iii) transfer, lease or sell, in one transaction or any combination of transactions, all or substantially all of the properties or assets of Borrower except to the extent expressly permitted by the Loan Documents, or (iv) cause, permit or suffer any SPC Party to (A) dissolve, wind up or liquidate or take any action, or omit to take an action, as a result of which such SPC Party would be dissolved, wound up or liquidated in whole or in part, or (B) amend, modify, waive or terminate the certificate of incorporation, limited partnership or formation, as applicable, or bylaws, partnership agreement or operating agreement, as applicable, of such SPC Party, in each case without obtaining the prior consent of Lender, but only to the extent such action requires consent of the Lender pursuant to the terms of the partnership agreement or operating agreement delivered to Lender in connection with the closing of the Loan.

4.2.4 Change in Business. Borrower shall not enter into any line of business other than the ownership and operation of the Individual Properties.

4.2.5 Debt Cancellation. Borrower shall not cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to Borrower by any Person, except for adequate consideration and in the ordinary course of Borrower's business, provided, that, nothing contained in this Section shall in and of itself require Borrower to pursue collection of debts in a manner that is not commercially reasonable.

4.2.6 Affiliate Transactions. Borrower shall not enter into, or be a party to, any transaction with an Affiliate of Borrower or any of the partners or members of Borrower except in the ordinary course of business and on terms which are fully disclosed to Lender in advance and are no less favorable to Borrower or such Affiliate than would be obtained in a comparable arm's length transaction with an unrelated third party.

4.2.7 Zoning. Borrower shall not initiate or consent to any zoning reclassification of any portion of any of the Individual Properties or seek any variance under any existing zoning ordinance or use or permit the use of any portion of any of the Individual Properties in any manner that could result in such use becoming a non conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, without the prior consent of Lender which shall not be unreasonably withheld or delayed if such action is required to be undertaken by Borrower pursuant to a Lease that Lender has approved.

4.2.8 Assets. Borrower shall not purchase or own any properties other than the Individual Properties and any property necessary or incidental for the operation of the Individual Properties.

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

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

4.2.11 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 the ERISA or Section 4975 of the Code.

(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 "plan" within the meaning of Section 4975 of the Code;

(B) Borrower is not subject to any state statute regulating investments of, or fiduciary obligations with respect to, governmental plans as defined in Section 3(32) of ERISA; and (C) one or more of the following circumstances is true:

- (i) Equity interests in Borrower are publicly offered securities, within the meaning of the Plan Assets Regulation;
- (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 the Plan Assets Regulation; or
- (iii) Borrower qualifies as an “operating company” or a “real estate operating company” within the meaning of the Plan Assets Regulation.

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

4.2.13 REA. Borrower agrees that without the prior consent of Lender, Borrower will not execute modifications to any REA it is a party to if such modifications will have a material adverse effect on the use, operation or value (including the Underwritable Cash Flow) of such Individual Property, taken as a whole, or the ability of Borrower to pay its obligations in respect of the Loan.

V. INSURANCE, CASUALTY AND CONDEMNATION

Section 5.1 Insurance.

5.1.1 Insurance Policies. (a) Borrower shall obtain and maintain, or cause to be maintained, insurance for Borrower and each of the Individual Properties providing at least the following coverages:

- (i) comprehensive all risk insurance on the Improvements and the personal property, if any, owned by the respective Borrower at each of the Individual Properties, including contingent liability from Operation of Building Laws, Demolition Costs and Increased Cost of Construction Endorsements, in each case (A) in an amount equal to one hundred percent (100%) of the “Full Replacement Cost,” which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation, but the amount shall in no event be less than the Allocated Loan Amount for the related

Individual Property; (B) containing an agreed amount endorsement with respect to the Improvements and personal property at each of the Individual Properties waiving all co-insurance provisions; (C) providing for deductibles no greater than \$250,000 for all such insurance coverage (provided, that, upon request of Borrower a higher deductible may be approved by Lender in its reasonable discretion, such approval or rejection to be based on then-current insurance market conditions and the then-current amount of equity that the Borrower has in the subject Individual Property); and (D) containing an "Ordinance or Law Coverage" or "Enforcement" endorsement if any of the Improvements or the use of any Individual Property shall at any time constitute legal non-conforming structures or uses. In addition, Borrower shall obtain: (y) if any portion of the Improvements is currently or at any time in the future located in an area identified by the Federal Emergency Management Agency as a "special flood hazard area," flood hazard insurance in an amount equal to the lesser of (1) the Allocated Loan Amount for the related Individual Property or (2) the maximum amount of such insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended or such greater amount as Lender shall require or (3) \$50,000,000 for flood zones A& C and \$250,000,000 for other flood coverage; and (z) earthquake insurance in amounts and in form and substance satisfactory to Lender in the event the Individual Property is located in a seismic area designated as a Zone 3 or 4 by the Rating Agencies (Source: ICBC 1994 Uniform Building Code, or similar designation under successor standards), provided that the insurance pursuant to clauses (y) and (z) hereof shall be on terms consistent with the comprehensive all risk insurance policy required under this subsection (i).

(ii) commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about each of the Individual Property, such insurance (A) to be on the so-called "occurrence" form with a combined limit, excluding umbrella coverage, of not less than One Million and No/100 Dollars (\$1,000,000) per occurrence and \$2,000,000 in the aggregate; (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) blanket contractual liability for all legal contracts; and (5) contractual liability covering the indemnities contained in Article 9 of the Mortgage to the extent the same is available;

(iii) business income insurance (A) with loss payable to Lender; (B) covering all risks required to be covered by the insurance provided for in subsection (i) above for a period commencing at the time of loss for such length of time as it takes to repair or replace with the exercise of due diligence and dispatch; (C) containing an extended period of indemnity endorsement which provides that after the physical loss to the Improvements and Personal Property has been repaired, the continued loss of income at the related Individual Property will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of twelve (12) months from the date that the related Individual 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; and (D) in an amount equal to one hundred percent (100%) of the

projected gross income (less non-continuing expenses) from the related Individual Property for a period from the date of loss to a date (assuming total destruction) which is twelve (12) months from the date that the related Individual Property is repaired or replaced and operations are resumed. The amount of such business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on the related Borrower's reasonable estimate of the gross income (less non-continuing expenses) from each Individual Property for the succeeding twenty-four (24) month period. All proceeds payable to Lender pursuant to this subsection shall be held by Lender and shall be applied to the obligations secured by the Loan Documents from time to time due and payable hereunder and under the Note; provided, however, that nothing herein contained shall be deemed to relieve Borrower of its obligations to pay the obligations secured by the Loan Documents on the respective dates of payment provided for in the Note and the other Loan Documents except to the extent such amounts are actually paid out of the proceeds of such business income insurance;

(iv) at all times during which structural construction, repairs or alterations are being made with respect to the Improvements, and only if the Property coverage form does not otherwise apply, (A) owner's contingent or protective liability insurance covering claims not covered by or under the terms or provisions of the above mentioned commercial general liability insurance policy; and (B) the insurance provided for in subsection (i) above written in a so-called builder's risk completed value form (1) on a non-reporting basis, (2) against all risks insured against pursuant to subsection (i) above, (3) including permission to occupy the applicable Individual Property, and (4) with an agreed amount endorsement waiving co-insurance provisions;

(v) workers' compensation, subject to the statutory limits of the state in which each Individual Property is located, and employer's liability insurance, in an amount satisfying statutory requirements, in respect of any work or operations on or about each Individual Property, or in connection with each Individual Property or its operation (if applicable), provided, that, Borrower shall not be required to maintain insurance pursuant to this clause (v) for such time that it does not have any employees;

(vi) comprehensive boiler and machinery insurance, if applicable, in amounts as shall be reasonably required by Lender on terms consistent with the commercial property insurance policy required under subsection (i) above;

(vii) umbrella liability insurance in addition to primary coverage in an amount not less than Fifty Million and No/100 Dollars (\$50,000,000) per occurrence on terms consistent with the commercial general liability insurance policy required under subsection (ii) above and (viii) below;

(viii) motor vehicle liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence, including umbrella coverage, of One Million and No/100 Dollars (\$1,000,000), provided, that, Borrower shall not be required to maintain insurance pursuant to this clause (viii) for such time that it does not own any automobiles or require any employees to use automobiles in their business duties;

(ix) so-called “dramshop” insurance or other liability insurance required in connection with the sale of alcoholic beverages, provided, that, Borrower shall not be required to maintain insurance pursuant to this clause (ix) for such time that Borrower does not operate a business at any Individual Property that would cause a prudent lender to require such coverage;

(x) insurance against employee dishonesty in an amount not less than one (1) month of gross revenue from each Individual Property and with a deductible reasonably approved by Lender, provided, that, Borrower shall not be required to maintain insurance pursuant to this clause (x) for such time that it does not have any employees;

(xi) (A) during any period of the term of the Loan that TRIA is in effect, if “acts of terrorism” or other similar acts or events are hereafter excluded from Borrower’s comprehensive all risk insurance policy (including business income), Borrower shall obtain an endorsement to such policy, or a separate policy from an insurance provider which maintains at least an investment grade rating from Moody’s (that is, “Baa3”) and/or S&P (that is, “BBB-”) (provided that neither Moody’s nor S&P rates such provider less than investment grade), insuring against all “certified acts of terrorism” as defined by TRIA and “fire following”, each in an amount equal to one hundred percent (100%) of the “Full Replacement Cost,” of each Individual Property, which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation, but the amount shall in no event be less than the total outstanding Allocated Loan Amount for such Individual Property; provided, however, the total annual premium payable by Borrower for each of the Individual Properties shall not exceed the Terrorism Insurance Premium Limit for such coverage for such Individual Property. The endorsement or policy shall be in form and substance reasonably satisfactory to Lender and shall meet Rating Agency criteria for securitized loans; or

(B) during any period of the term of the Loan that TRIA is not in effect, if “acts of terrorism” or other similar acts or events or “fire following” are hereafter excluded from Borrower’s comprehensive all risk insurance policy or business income insurance coverage, Borrower shall obtain an endorsement to such policy, or a separate policy from an insurance provider which maintains at least an investment grade rating from Moody’s (that is, “Baa3”) and/or S&P (that is, “BBB-”) (provided that neither Moody’s nor S&P rates such provider less than investment grade), insuring against all such excluded acts or events, to the extent such policy or endorsement is available, in an amount determined by Lender in its sole discretion (but in no event greater than the total insurable value plus business income insurance coverage satisfying the provisions of clause (iii) above; provided, however, Borrower shall not be required to pay annual premiums in excess of the Terrorism Insurance Premium Limit for such coverage. The endorsement or policy shall be in form and substance reasonably satisfactory to Lender and shall meet Rating Agency criteria for securitized loans; and

(xii) upon sixty (60) days’ notice, such other reasonable insurance and in such reasonable 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 any Individual Property located in or around the region in which such Individual Property is located.

(b) All insurance provided for in Section 5.1.1(a) shall be obtained under valid and enforceable policies (collectively, the “Policies” or, in the singular, the “Policy”) and, to the extent not specified above, shall be subject to the reasonable approval of Lender as to deductibles, loss payees and insureds. Borrower shall deliver to Lender certified copies of the Policies promptly upon Lender’s request therefor. Not less than ten (10) days prior to the expiration dates of the Policies theretofore furnished to Lender, certificates of insurance evidencing the Policies accompanied by evidence satisfactory to Lender of payment of the premiums then due thereunder (the “Insurance Premiums”), shall be delivered by Borrower to Lender.

(c) Any blanket insurance Policy shall specifically allocate to each Individual Property the amount of coverage from time to time required hereunder and shall otherwise provide the same protection as would a separate Policy insuring only the related Individual Property in compliance with the provisions of Section 5.1.1(a).

(d) All Policies of insurance provided for or contemplated by Section 5.1.1(a) shall be primary coverage and, except for the Policy referenced in Section 5.1.1(a)(v), shall name Borrower as the insured and Lender and its successors and/or assigns as the additional insured, as its interests may appear, and in the case of property damage, boiler and machinery, flood, earthquake and terrorism insurance, shall contain a so-called New York standard non-contributing mortgagee clause or similar endorsement in favor of Lender providing that the loss thereunder shall be payable to Lender. Borrower shall not procure or permit any of its constituent entities to procure any other insurance coverage which would be on the same level of payment as the Policies or would adversely impact in any way the ability of Lender or Borrower to collect any proceeds under any of the Policies.

(e) All Policies of insurance provided for in Section 5.1.1(a), except for the Policies referenced in Section 5.1.1(a)(v) and (a)(viii) shall contain clauses or endorsements to the effect that:

(i) with respect to the insurance coverage obtained pursuant to Section 5.1.1(a)(i), (iii), (iv) and (vi) above, no act or negligence of Borrower, or anyone acting for Borrower, or of any Tenant or other occupant, or failure to comply with the provisions of any Policy, which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Lender is concerned;

(ii) the Policy shall not be canceled without at least thirty (30) days’ written notice to Lender and any other party named therein as an additional insured and, if obtainable by Borrower using commercially reasonable efforts, shall not be materially changed (other than to increase the coverage provided thereby) without such a thirty (30) day notice; and

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

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

(g) In the event of foreclosure of any Mortgage with respect to any Individual Property or other transfer of title to any Individual Property in extinguishment in whole or in part of the Debt, all right, title and interest of the Borrower in and to the Policies that are not blanket Policies then in force concerning such Individual Property and all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure or Lender or other transferee in the event of such other transfer of title.

5.1.2 Insurance Company. The Policies shall be issued by financially sound and responsible insurance companies authorized to do business in the state in which the subject Individual Property is located and having a claims paying ability rating of “A” or better by S&P and Fitch and an insurance financial strength rating of “Aa2” by Moody’s. If a Securitization occurs, (i) the foregoing required insurance company rating by a Rating Agency not rating any Securities shall be disregarded and (ii) if the insurance company complies with the aforesaid S&P required rating (and S&P is rating the Securities) and the other Rating Agencies rating the Securities do not rate the insurance company, such insurance company shall be deemed acceptable with respect to such Rating Agency not rating such insurance company. If a Securitization occurs and S&P is not a Rating Agency, each of the insurance companies shall have a claims paying ability rating of at least A- by Fitch and an insurance financial strength rating of A3 by Moody’s and at least sixty-seven percent (67%) of the coverage shall be provided by insurance companies having claims paying ability ratings of AA by Fitch and an insurance financial strength rating of Aa2 by Moody’s; provided, however, if Fitch or Moody’s shall not provide a rating for an insurance company, then an A.M. Best rating of A(X) shall be substituted for each of the foregoing rating requirements of Fitch or Moody’s, as applicable. Notwithstanding the foregoing, Borrower shall be permitted to maintain the Policies with insurance companies which do not meet the foregoing requirements (an “Otherwise Rated Insurer”), provided Borrower obtains a “cut-through” endorsement (that is, an endorsement which permits recovery against the provider of such endorsement) with respect to any Otherwise Rated Insurer from an insurance company which meets the claims paying ability ratings required above. Moreover, if Borrower desires to maintain insurance required hereunder from an insurance company which does not meet the claims paying ability ratings set forth herein but the parent of such insurance company, which owns at least fifty-one percent (51%) of such insurance company, maintains such ratings, Borrower may use such insurance companies if approved by the Rating Agencies (such approval may be conditioned on items required by the Rating Agencies including a requirement that the parent guarantee the obligations of such insurance company).

Section 5.2 Casualty and Condemnation.

5.2.1 Casualty. If any Individual Property shall sustain a Casualty, the Borrower that owns such Individual Property shall give prompt notice of such Casualty to Lender and shall promptly commence and diligently prosecute to completion the repair and restoration of such Individual Property as nearly as possible to the condition such Individual Property was in immediately prior to such Casualty (a “Restoration”) and otherwise in accordance with Section 5.3, it being understood, however, that Borrower shall not be obligated to restore such Individual Property to the precise condition of such Individual Property prior to such Casualty provided such Individual Property is restored, to the extent practicable, to be of at least equal value and of substantially the same character as prior to the Casualty. 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 the applicable Borrower. In the event of a Casualty where the loss does not exceed Restoration Threshold, Borrower may settle and adjust such claim; provided that (a) no Event of Default has occurred and is continuing and (b) such adjustment is carried out in a commercially reasonable and timely manner. In the event of a Casualty where the loss exceeds the Restoration Threshold or if an Event of Default then exists, Borrower may settle and adjust such claim only with the consent of Lender (which consent shall not be unreasonably withheld or delayed) and Lender shall have the opportunity to participate, at Borrower’s cost, in any such adjustments. Notwithstanding any Casualty, 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.

5.2.2 Condemnation. Borrower shall give Lender prompt notice of any actual or threatened Condemnation by any Governmental Authority of all or any part of any Individual Property and shall deliver to Lender a copy of any and all papers served in connection with such proceedings. Provided no Event of Default has occurred and is continuing, in the event of a Condemnation where the amount of the taking does not exceed the Restoration Threshold, Borrower may settle and compromise such Condemnation; provided that the same is effected in a commercially reasonable and timely manner. In the event a Condemnation where the amount of the taking exceeds the Restoration Threshold or if an Event of Default then exists, Borrower may settle and compromise the Condemnation only with the consent of Lender (which consent shall not be unreasonably withheld or delayed) and Lender shall have the opportunity to participate, at Borrower’s cost, in any litigation and settlement discussions in respect thereof and Borrower shall from time to time deliver to Lender all instruments requested by Lender to permit such participation. Borrower shall, at its 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 Condemnation, 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. Lender shall not be limited to the interest paid on the Award by any Governmental Authority but shall be entitled to receive out of the Award interest at the rate or rates provided herein or in the Note. If any Individual Property or any portion thereof is taken by any Governmental Authority, Borrower shall promptly commence and diligently prosecute the Restoration of such Individual Property and otherwise comply with the provisions of Section 5.3. If such Individual 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.

5.2.3 Business Interruption Insurance Proceeds. Notwithstanding the second-to-last sentence of Section 5.1.1(a)(iii) and provided no Event of Default exists hereunder, proceeds received by Lender on account of the business interruption insurance specified in Subsection 5.1.1(a)(iii) above with respect to any Casualty shall be deposited by Lender directly into the Clearing Account; however, during the continuance of a Trigger Period such proceeds shall be deposited directly into the Deposit Account (as defined in the Cash Management Agreement) but (a) only to the extent it reflects a replacement for (i) lost Rents that would have been due under Leases existing on the date of such Casualty, and/or (ii) lost Rents under Leases that had not yet been executed and delivered at the time of such Casualty which Borrower has proven to the insurance company would have been due under such Leases (and then only to the extent such proceeds disbursed by the insurance company reflect a replacement for such past due Rents) and (b) only to the extent necessary to fully make the disbursements required by Section 3.3(a)(i) through 3.3(a)(vii) of the Cash Management Agreement. All other such proceeds shall be held by Lender and disbursed in accordance with Section 5.3 hereof.

Section 5.3 Delivery of Net Proceeds.

5.3.1 Minor Casualty or Condemnation. If a Casualty or Condemnation has occurred to any Individual Property and the Net Proceeds shall be less than the Restoration Threshold and the costs of completing the Restoration shall be less than the Restoration Threshold, and provided no Event of Default shall have occurred and remain uncured, the Net Proceeds will be disbursed by Lender to Borrower. Promptly after receipt of the Net Proceeds, Borrower shall commence and satisfactorily complete with due diligence the Restoration in accordance with the terms of this Agreement. If any Net Proceeds are received by Borrower and may be retained by Borrower pursuant to the terms hereof, such Net Proceeds shall, until completion of the Restoration, be held in trust for Lender and shall be segregated from other funds of Borrower to be used to pay for the cost of Restoration in accordance with the terms hereof.

5.3.2 Major Casualty or Condemnation. (a) If a Casualty or Condemnation has occurred to any Individual Property and the Net Proceeds are equal to or greater than the Restoration Threshold or the costs of completing the Restoration is equal to or greater than the Restoration Threshold, Lender shall make the Net Proceeds available for the Restoration, provided that each of the following conditions are met:

(i) no Event of Default shall have occurred and be continuing;

(ii) (A) in the event the Net Proceeds are insurance proceeds, less than thirty-three percent (33%) of the total floor area of the Improvements at such Individual Property that has been damaged, destroyed or rendered unusable as a result of such Casualty or (B) in the event the Net Proceeds are an Award, less than ten percent (10%) of the land constituting the affected Individual Property is taken, and such land is located along the perimeter or periphery of such Individual Property, and no portion of the Improvements is the subject of the Condemnation;

(iii) Leases requiring payment of annual rent equal to eighty percent (80%) of the Gross Revenue at such Individual Property received by Borrower during the twelve (12) month period immediately preceding the Casualty or Condemnation and all Major Leases shall remain in full force and effect during and after the completion of the Restoration without abatement of rent beyond the time required for Restoration, notwithstanding the occurrence of such Casualty or Condemnation.

(iv) Borrower shall commence the Restoration as soon as reasonably practicable (but in no event later than ninety (90) days after such Casualty or Condemnation, whichever the case may be, occurs) and shall diligently pursue the same to satisfactory completion;

(v) Lender shall be satisfied that any operating deficits and all payments of principal and interest under the Note will be paid during the period required for Restoration from (A) the Net Proceeds, or (B) other funds of Borrower;

(vi) Lender shall be satisfied that the Restoration will be completed on or before the earliest to occur of (A) the date six (6) months prior to the Maturity Date, (B) the earliest date required for such completion under the terms of any Lease at the related Individual Property or other Leases necessary to meet the condition set forth in clause (iii) above, (C) such time as may be required under applicable Legal Requirements in order to repair and restore such Individual Property to the condition it was in immediately prior to such Casualty or to as nearly as possible the condition it was in immediately prior to such Condemnation, as applicable or (D) the expiration of the insurance coverage referred to in Section 5.1.1(a)(iii) unless Borrower deposits with Lender additional amounts necessary to pay Debt Service and Operating Expenses for the period not covered by the insurance referred to in Section 5.1.1(a)(iii) through completion of the Restoration (provided, that, in no event shall Borrower's deposit of additional funds extend the deadline for completion of the Restoration otherwise set forth in (A)-(C) of this clause (vi));

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

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

(ix) such Casualty or Condemnation, as applicable, does not result in the loss of access to such Individual Property or the related Improvements.

(b) The Net Proceeds shall be paid directly to Lender and held by Lender in an interest-bearing account and, until disbursed in accordance with the provisions of this Section 5.3.2, shall constitute additional security for the Debt. The Net Proceeds shall be disbursed by Lender to, or as directed by, Borrower from time to time during the course of the Restoration, upon receipt of evidence satisfactory to Lender that (A) all requirements set forth in Section 5.3.2(a) have been satisfied, (B) all materials installed and work and labor performed

(except to the extent that they are to be paid for out of the requested disbursement) in connection with the Restoration have been paid for in full, and (C) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Individual Property arising out of the Restoration 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.

(c) All plans and specifications required in connection with the Restoration shall be subject to prior approval of Lender (such approval not to be unreasonably withheld or delayed) and an independent architect selected by Lender (the "Casualty Consultant"). The plans and specifications shall require that the Restoration be completed in a first-class workmanlike manner at least equivalent to the quality and character of the original work in the Improvements (provided, however, that in the case of a partial Condemnation, the Restoration shall be done to the extent reasonable practicable after taking into account the consequences of such partial Condemnation), so that upon completion thereof, the Individual Property shall be at least equal in value and general utility to such Individual Property prior to the damage or destruction; it being understood, however, that Borrower shall not be obligated to restore the Individual Property to the precise condition of such Individual Property prior to such Casualty provided such Individual Property is restored, to the extent practicable, to be of at least equal value and of substantially the same character as prior to the Casualty. Borrower shall restore all Improvements such that when they are fully restored and/or repaired, such Improvements and their contemplated use fully comply with all applicable material Legal Requirements. The identity of the general contractor and material subcontractors and materialmen engaged in the Restoration, as well as the contracts under which they have been engaged, shall be subject to approval of Lender and the Casualty Consultant, such approval not to be unreasonably withheld or delayed. All costs and expenses incurred by Lender in connection with recovering, holding and advancing the Net Proceeds for the Restoration including, without limitation, reasonable attorneys' fees and disbursements and the Casualty Consultant's fees and disbursements, shall be paid by Borrower.

(d) In no event shall Lender be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the costs actually incurred from time to time for work in place as part of the Restoration, as certified by the Casualty Consultant, less the Casualty Retainage. The term "Casualty Retainage" shall mean, as to each contractor, subcontractor or materialman engaged in the Restoration, an amount equal to ten percent (10%) of the costs actually incurred for work in place as part of the Restoration, as certified by the Casualty Consultant, until the Restoration has been completed. The Casualty Retainage shall in no event, and notwithstanding anything to the contrary set forth above in this Section 5.3.2(d), be less than the amount actually held back by Borrower from contractors, subcontractors and materialmen engaged in the Restoration. The Casualty Retainage shall not be released until the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Section 5.3.2(d) and that all approvals necessary for the re-occupancy and use of the affected Individual Property have been obtained from all appropriate Governmental Authorities, and Lender receives evidence satisfactory to Lender that the costs of the Restoration have been paid in full or will be paid in full out of the Casualty Retainage; provided, however, that Lender will release the portion of the Casualty Retainage being held with respect to any

contractor, subcontractor or materialman engaged in the Restoration as of the date upon which 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, the contractor, subcontractor or materialman delivers the lien waivers and evidence of payment in full of all sums due to the contractor, subcontractor or materialman as may be reasonably requested by Lender or by the title company issuing the Title Insurance Policy, and Lender receives an endorsement to the Title Insurance Policy insuring the continued priority of the lien of the related Mortgage and evidence of payment of any premium payable for such endorsement. If required by Lender, the release of any such portion of the Casualty Retainage shall be approved by the surety company, if any, which has issued a payment or performance bond with respect to the contractor, subcontractor or materialman.

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

(f) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the opinion of Lender in consultation with the Casualty Consultant, be sufficient to pay in full the balance of the costs 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 5.3.2 shall constitute additional security for the Debt.

(g) 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 5.3.2, 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 any of the Loan Documents; provided, however, the amount of such excess returned to Borrower in the case of a Condemnation shall not exceed the amount of Net Proceeds Deficiency deposited by Borrower with the balance being applied to the Debt in the manner provided for in Subsection 5.3.2(h).

(h) All Net Proceeds not required (i) to be made available for the Restoration or (ii) to be returned to Borrower as excess Net Proceeds pursuant to Section 5.3.2(g) may be retained and applied by Lender toward the payment of the Components, whether or not due and payable, in the manner and priority specified in Section 2.4.2 or, at the discretion of Lender, the same may be paid, either in whole or in part, to Borrower for such purposes as Lender shall designate.

VI. RESERVE FUNDS

Section 6.1 Required Repair Fund.

6.1.1 Deposit of Required Repair Funds. Borrower shall perform the repairs at the Individual Properties as more particularly set forth on Schedule II hereto (such repairs hereinafter referred to as “Required Repairs”) and shall complete each of the Required Repairs on or before the respective deadline for each repair as set forth on Schedule II. On the Closing Date, Borrower shall deposit with Agent the amount for each Individual Property set forth on such Schedule II hereto to perform the Required Repairs for such Individual Property. Amounts deposited pursuant to this Section 6.1.1 are referred to herein as the “Required Repair Funds.”

6.1.2 Release of Required Repair Funds. Lender shall direct Agent to disburse to the applicable Borrower the Required Repair Funds upon satisfaction by Borrower of each of the following conditions: (a) Borrower shall submit a written request for payment to Lender at least ten (10) days prior to the date on which Borrower requests such payment be made and specifies the Required Repairs to be paid, (b) on the date such request is received by Lender and on the date such payment is to be made, no Event of Default shall exist and remain uncured, (c) Lender shall have received an Officer's Certificate (i) stating that all Required Repairs to be funded by the requested disbursement have been completed in a good and workmanlike manner and in accordance with all applicable Legal Requirements, such certificate to be accompanied by a copy of any license, permit or other approval by any Governmental Authority required in connection with the Required Repairs, (ii) identifying the general contractor and material subcontractors and suppliers that supplied materials or labor in connection with the Required Repairs performed at such Individual Property to be funded by the requested disbursement, and (iii) stating that each such Person has been paid in full or will be paid in full upon such disbursement, such certificate to be accompanied by lien waivers or other evidence of payment satisfactory to Lender, (d) at Lender's option, a title search for such Individual Property for which Required Repair Funds are being disbursed indicating that such Individual Property is free from all liens, claims and other encumbrances not previously approved by Lender, (e) at Lender's option, if the cost of the Required Repairs exceeds \$500,000, 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 required repairs, and (f) Lender shall have received such other evidence as Lender shall reasonably request that the Required Repairs to be funded by the requested disbursement have been completed and are paid for or will be paid upon such disbursement to Borrower. Lender shall not be required to disburse Required Repair Funds more frequently than once each calendar month, or with respect to any Individual Property unless such requested disbursement is in an amount greater than the Minimum Disbursement Amount (or a lesser amount if the total Required Repair Funds is less than the Minimum Disbursement Amount, in which case only one disbursement of the amount remaining in the account shall be made).

Section 6.2 Tax Funds.

6.2.1 Deposits of Tax Funds. During the continuance of a Trigger Period only, pursuant to the Cash Management Agreement there shall be deposited on each Monthly Payment Date an amount equal to one-twelfth 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. Amounts deposited pursuant to this Section 6.2.1 are referred to herein as the “Tax Funds.” If at any time Lender reasonably determines that the Tax 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 three (3) Business Days after its receipt of such notice.

6.2.2 Release of Tax Funds. Provided no Event of Default has occurred and is continuing, Lender shall apply the Tax Funds, if any, 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 Funds shall exceed the amounts due for Taxes, Lender shall, in its sole discretion, return any excess to Borrower or credit such excess against future payments to be made to the Tax Funds. Any Tax Funds remaining after the Debt has been paid in full shall be returned to Borrower.

Section 6.3 Insurance Funds.

6.3.1 Deposits of Insurance Funds. During the continuance of a Trigger Period only, pursuant to the Cash Management Agreement there shall be deposited on each Monthly Payment Date an amount equal to one-twelfth 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. Any amounts deposited pursuant to this Section 6.3.1 are referred to herein as the “Insurance Funds.” If at any time Lender reasonably determines that the Insurance 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.

6.3.2 Release of Insurance Funds. Provided no Event of Default has occurred and is continuing, Lender shall apply the Insurance Funds, if any, 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 Funds shall exceed the amounts due for Insurance Premiums, Lender shall, in its sole discretion, return any excess to Borrower or credit such excess against future payments to be made to the Insurance Funds. Any Insurance Funds remaining after the Debt has been paid in full shall be returned to Borrower.

Section 6.4 Capital Expenditure Funds.

6.4.1 Deposits of Capital Expenditure Funds. During the continuance of a Trigger Period only, Borrowers shall deposit with Lender on each Monthly Payment Date an

aggregate amount equal to one-twelfth of the Cap Ex Amount for each Individual Property for annual Capital Expenditures approved by Lender in the Approved Annual Budget that has been approved by Lender under Section 4.1.10 hereof or otherwise approved by Lender, which approval shall not be unreasonably withheld or delayed. Any amounts deposited pursuant to this Section 6.4.1 are referred to herein as the “Capital Expenditure Funds.” Lender may reassess its estimate of the amount necessary for capital expenditures from time to time and, and may require Borrower to increase the monthly deposits required pursuant to this Section 6.4.1 upon thirty (30) days notice to Borrower if Lender determines in its reasonable discretion that an increase is necessary to maintain proper operation of any Individual Properties.

6.4.2 Release of Capital Expenditure Funds. (a) Lender shall direct Agent to disburse Capital Expenditure Funds only for Capital Expenditures.

(b) Lender shall direct Agent to disburse to Borrower the Capital Expenditure Funds upon satisfaction by the requesting Borrower of each of the following conditions: (i) Borrower shall submit a written request for payment to Lender at least ten (10) days prior to the date on which Borrower requests such payment be made and specifies the Capital Expenditures to be paid, (ii) on the date such request is received by Lender and on the date such payment is to be made, no Event of Default shall exist and remain uncured, (iii) Lender shall have received an Officer's Certificate (A) stating that the items to be funded by the requested disbursement are Capital Expenditures, (B) stating that all Capital Expenditures at the applicable Individual Property to be funded by the requested disbursement have been completed in a good and workmanlike manner and in accordance with all applicable Legal Requirements, such certificate to be accompanied by a copy of any license, permit or other approval required by any Governmental Authority in connection with the Capital Expenditures, (C) identifying the general contractor and material subcontractors and suppliers that supplied materials or labor in connection with the Capital Expenditures performed at such Individual Property to be funded by the requested disbursement, and (D) stating that each such Person has been paid in full or will be paid in full upon such disbursement, such certificate to be accompanied by lien waivers or other evidence of payment satisfactory to Lender, (iv) at Lender's option, a title search for such Individual Property for which Capital Expenditure Funds are being disbursed indicating that such Individual Property is free from all Liens, claims and other encumbrances not previously approved by Lender, and (v) at Lender's option, if the cost of any individual Capital Expenditure exceeds \$500,000, 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 required repairs, and (vi) Lender shall have received such other evidence as Lender shall reasonably request that the Capital Expenditures at such Individual Property to be funded by the requested disbursement have been completed and are paid for or will be paid upon such disbursement to Borrower. Lender shall not be required to disburse Capital Expenditure Funds more frequently than once each calendar month, or with respect to any Individual Property unless such requested disbursement is in an amount greater than the Minimum Disbursement Amount (or a lesser amount if the total amount of Capital Expenditure Funds is less than the Minimum Disbursement Amount, in which case only one disbursement of the amount remaining in the account shall be made).

(c) Nothing in this Section 6.4.2 shall (i) make Lender responsible for making or completing the Capital Expenditures Work; (ii) require Lender to expend funds in addition to

the Capital Expenditure Funds to complete any Capital Expenditures Work; (iii) obligate Lender to proceed with the Capital Expenditures Work; or (iv) obligate Lender to demand from Borrower additional sums to complete any Capital Expenditures Work.

(d) Borrower shall permit Lender and Lender's agents and representatives (including, without limitation, Lender's engineer, architect, or inspector) or third parties to enter onto the applicable Individual Property during normal business hours (subject to the rights of Tenants under their Leases) to inspect the progress of any Capital Expenditures Work and all materials being used in connection therewith and to examine all plans and shop drawings relating to such Capital Expenditures Work. 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 6.4.2(d).

(e) If a disbursement will exceed \$[250,000], Lender may require an inspection of the applicable Individual Property at Borrower's expense prior to making a disbursement of Capital Expenditure Funds in order to verify completion of the Capital Expenditures Work for which reimbursement is sought. Lender may require that such inspection be conducted by an appropriate independent qualified professional selected by Lender and may require a certificate of completion by an independent qualified professional architect acceptable to Lender prior to the disbursement of Capital Expenditure Funds. Borrower shall pay the expense of the inspection as required hereunder, whether such inspection is conducted by Lender or by an independent qualified professional architect.

(f) 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 Capital Expenditures Work. All such policies shall be in form and amount reasonably satisfactory to Lender.

Section 6.5 Rollover Funds.

6.5.1 Deposits of Rollover Funds. During the continuance of a Trigger Period only, Borrowers shall deposit with Lender on each Monthly Payment Date an aggregate amount equal to one-twelfth of the Rollover Amount for each Individual Property for tenant improvements and leasing commissions that may be incurred at each Individual Property following the date hereof. Any amounts deposited pursuant to this Section 6.5.1 are referred to herein as the "Rollover Funds."

6.5.2 Release of Rollover Funds. Lender shall direct Agent to disburse to Borrower the Rollover Funds upon satisfaction by Borrower of each of the following conditions: (i) the requesting Borrower shall submit a written request for payment to Lender at least ten (10) days prior to the date on which Borrower requests such payment be made and specifies the tenant improvement costs and leasing commissions to be paid, (ii) on the date such request is received by Lender and on the date such payment is to be made, no Event of Default shall exist and remain uncured, (iii) the Lease in respect of which Borrower is obligated to pay or reimburse certain tenant improvement costs and leasing commissions shall (A) have been approved or deemed approved by Lender pursuant to the terms of this Agreement or (B) not be subject to

Lender approval pursuant to the terms of this Agreement, (iv) to the extent not set forth in the Approved Annual Budget, Lender shall have received and approved a budget for tenant improvement costs and a schedule of leasing commissions payments and the requested disbursement will be used to pay all or a portion of such costs and payments, (v) Lender shall have received an Officer's Certificate (A) stating that all tenant improvements at the applicable Individual Property to be funded by the requested disbursement have been completed in good and workmanlike manner and in accordance with all applicable federal, state and local laws, rules and regulations, such certificate to be accompanied by a copy of any license, permit or other approval by any Governmental Authority required in connection with such tenant improvements, (B) identifying the general contractor and material subcontractors and suppliers that supplied materials or labor in connection with the tenant improvements performed at such Individual Property to be funded by the requested disbursement, and (C) stating that each such Person has been paid in full or will be paid in full upon such disbursement, such certificate to be accompanied by lien waivers or other evidence of payment satisfactory to Lender, (vi) at Lender's option, a title search for such Individual Property for which Rollover Funds are being disbursed indicating that such Individual Property is free from all Liens, claims and other encumbrances not previously approved by Lender, and (vii) Lender shall have received such other evidence as Lender shall reasonably request that the tenant improvements at such Individual Property to be funded by the requested disbursement have been completed and are paid for or will be paid upon such disbursement to the requesting Borrower. Lender shall not be required to disburse Rollover Funds more frequently than once each calendar month, or with respect to any Individual Property unless such requested disbursement is in an amount greater than the Minimum Disbursement Amount (or a lesser amount if the total amount of Rollover Funds is less than the Minimum Disbursement Amount, in which case only one disbursement of the amount remaining in the account shall be made).

Section 6.6 Lease Termination Rollover Funds.

6.6.1 Deposits of Rollover Funds. In the event that Borrower receives a fee, payment or other compensation from any Tenant relating to or in exchange for the termination of such Tenant's Lease (a "Lease Termination Fee"), Borrower shall, during the continuance of a Trigger Period only, immediately deposit such Lease Termination Fee with Lender, to be utilized for tenant improvements and leasing commissions that may be incurred with respect to the space relating to such Lease Termination Fee (a "Termination Space") and, in the event that there is a Rent Deficiency (as hereinafter defined) for the Termination Space from and after the date that the Lease for the Termination Space was terminated, in replacement of Rent. Amounts deposited pursuant to this Section 6.6.1 are referred to herein as the "Lease Termination Rollover Funds."

6.6.2 Release of Lease Termination Rollover Funds. (a) Lender shall direct Agent to disburse to the applicable Borrower the Lease Termination Rollover Funds upon satisfaction by the requesting Borrower of each of the following conditions: (i) the requesting Borrower shall submit a written request for payment to Lender at least ten (10) days prior to the date on which Borrower requests such payment be made and (A) specifies the tenant improvement costs and leasing commissions to be paid for the Termination Space or (B) specifies the amount by which the rent expected to be obtained by Borrower for the Termination Space during the next succeeding calendar month pursuant to the Lease or Leases for such Termination Space (a "Replacement Lease") is less than the amount of monthly rent

received from the previous Tenant in the Termination Space pursuant to its Lease prior to such termination (the “Rent Deficiency”), (ii) on the date such request is received by Lender and on the date such payment is to be made, no Event of Default shall exist and remain uncured, (iii) the Replacement Lease in respect of which Borrower is obligated to pay or reimburse certain tenant improvement costs and leasing commissions shall (A) have been approved or deemed approved by Lender pursuant to the terms of this Agreement or (B) not be subject to Lender approval pursuant to the terms of this Agreement, (iv) with respect to any Lease Termination Rollover Funds to be released by Lender for tenant improvements or leasing commissions pursuant to a Replacement Lease, Lender shall have received a budget for tenant improvement costs and a schedule of leasing commissions payments and the requested disbursement will be used to pay all or a portion of such costs and payments, (v) with respect to any Lease Termination Rollover Funds to be released by Lender for tenant improvements or leasing commissions pursuant to a Replacement Lease, Lender shall have received an Officer’s Certificate from Borrower (A) stating that all tenant improvements at the applicable Individual Property to be funded by the requested disbursement have been completed in good and workmanlike manner and in accordance with all applicable federal, state and local laws, rules and regulations, such certificate to be accompanied by a copy of any license, permit or other approval by any Governmental Authority required in connection with the Capital Expenditures, (B) identifying the general contractor and material subcontractors and suppliers that supplied materials or labor in connection with the tenant improvements performed at such Individual Property to be funded by the requested disbursement, and (C) stating that each such Person has been paid in full or will be paid in full upon such disbursement, such certificate to be accompanied by lien waivers or other evidence of payment satisfactory to Lender, (vi) with respect to any Lease Termination Rollover Funds to be released by Lender for tenant improvements or leasing commissions pursuant to a Replacement Lease, at Lender’s option, a title search for such Individual Property for which Lease Termination Rollover Funds are being disbursed indicating that such Individual Property is free from all Liens, claims and other encumbrances not previously approved by Lender and (vii) with respect to any Lease Termination Rollover Funds to be released by Lender for tenant improvements or leasing commissions pursuant to a Replacement Lease, Lender shall have received such other evidence as Lender shall reasonably request that the tenant improvements at such Individual Property to be funded by the requested disbursement have been completed and are paid for or will be paid upon such disbursement to the Borrower. Lender shall not be required to disburse Lease Termination Rollover Funds more frequently than once each calendar month, or with respect to any Individual Property, unless such requested disbursement is in an amount greater than the Minimum Disbursement Amount (or a lesser amount if the total amount of Lease Termination Rollover Funds is less than the Minimum Disbursement Amount, in which case only one disbursement of the amount remaining in the account shall be made). All Rent Deficiency disbursements made by Lender shall be deposited into the Deposit Account as if such sums were received by Borrower as Rent during the calendar month after such request is made by Borrower.

(b) Notwithstanding the foregoing, upon receipt by Lender of evidence that, with respect to any new Replacement Lease with a term of at least five (5) years, all tenant improvements required to be completed by the applicable Borrower pursuant to the Replacement Lease, if any, have been completed and all leasing commissions required to be paid by Borrower with respect to the Replacement Lease, if any, have been paid, and provided no Event of Default then exists, Lender shall direct Agent to disburse to Borrower the Lease Termination Rollover

Funds on deposit with respect to such Termination Space provided that the rent to be obtained by Borrower for such Termination Space during the next succeeding sixty (60) calendar months pursuant to the respective Replacement Lease is equal to or greater than the sum of the monthly rent last received from the previous Tenant in such Termination Space pursuant to its Lease multiplied by sixty (60).

Section 6.7 Intentionally Deleted.

Section 6.8 Application of Reserve Funds.

Upon the occurrence of an Event of Default, Lender, at its option, may withdraw the Reserve Funds and apply the Reserve Funds to the items for which the Reserve Funds were established or to payment of the Debt in such order, proportion and priority as Lender may determine in its sole discretion. Lender's right to withdraw and apply the Reserve Funds shall be in addition to all other rights and remedies provided to Lender under the Loan Documents.

Section 6.9 Security Interest in Reserve Funds.

6.9.1 Grant of Security Interest. Borrower shall be the owner of the Reserve Funds. Borrower hereby pledges, assigns and grants a security interest to Lender, as security for payment of the Debt and the performance of all other terms, conditions and covenants of the Loan Documents on Borrower's part to be paid and performed, in all of Borrower's right, title and interest in and to the Reserve Funds. The Reserve Funds shall be under the sole dominion and control of Lender.

6.9.2 Income Taxes. Borrower shall report on its federal, state and local income tax returns all interest or income accrued on the Reserve Funds to the extent that it constitutes reportable income.

6.9.3 Prohibition Against Further Encumbrance. Borrower shall not, without the prior consent of Lender, further pledge, assign or grant any security interest in the Reserve Funds or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto.

Section 6.10 Letters of Credit.

6.10.1 Delivery of Letters of Credit. (a) In lieu of making the payments to any of the Reserve Funds as required pursuant to the terms hereof, Borrower may deliver to Lender a Letter of Credit in accordance with the provisions of this Section 6.10. Additionally, Borrower may deliver to Lender a Letter of Credit in accordance with the provisions of this Section 6.10 in lieu of deposits previously made to the Reserve Funds. The aggregate amount of any Letter of Credit and cash on deposit with respect to the Capital Expenditure Funds, the Required Repair Funds and Rollover Funds shall at all times be at least equal to the aggregate amount which Borrower is required to have on deposit in such Reserve Fund pursuant to this Agreement. The aggregate amount of any Letter

of Credit and cash on deposit with respect to the Tax Funds shall at all times be at least equal to the aggregate which Borrower would be required to deposit in such Reserve Fund over the next twelve (12) month period. The aggregate amount of any Letter of Credit and cash on deposit with respect to the Insurance Funds shall at all times be at least equal to the aggregate which Borrower would be required to deposit in such Reserve Fund over the next twelve (12) month period. In the event that a Letter of Credit is delivered in lieu of any portion of the Tax Funds or the Insurance Funds, Borrower shall be responsible for the payment of Taxes or Insurance Premiums, as applicable, and Lender shall not be responsible therefor. In the event that a Letter of Credit is delivered in lieu of any portion of the Tax Funds or the Insurance Funds, Lender shall return to Borrower any cash deposits that are no longer required to be on deposit (based on the provisions of this clause(a)).

(b) Borrower shall give Lender no less than thirty (30) days notice of Borrower's election to deliver a Letter of Credit and Borrower shall pay to Lender all of Lender's reasonable out-of-pocket costs and expenses in connection therewith. Borrower shall not be entitled to draw from any such Letter of Credit. Upon thirty (30) days notice to Lender, Borrower may replace a Letter of Credit with a cash deposit to the applicable Reserve Fund if a Letter of Credit has been outstanding for more than six (6) months. Prior to the return of a Letter of Credit, Borrower shall deposit an amount equal to the amount that would have accumulated in the applicable Reserve Fund and not been disbursed in accordance with this Agreement if such Letter of Credit had not been delivered.

(c) Borrower shall provide Lender with notice of any increases in the annual payments for Taxes and Insurance Premiums, thirty (30) days prior to the effective date of any such increase and any applicable Letter of Credit shall be increased by such increased amount at least ten (10) days prior to the effective date of such increase.

Section 6.11 Provisions Regarding Letters of Credit.

6.11.1 Security for Debt. Each Letter of Credit delivered under this Agreement shall be additional security for the payment of the Debt. Upon the occurrence of an Event of Default, Lender shall have the right, at its option, to draw on any Letter of Credit and to apply all or any part thereof to the payment of the items for which such Letter of Credit was established or to apply each such Letter of Credit to payment of the Debt in such order, proportion or priority as Lender may determine. Any such application to the Debt shall be subject to the Yield Maintenance Premium. On the Maturity Date, any such Letter of Credit may be applied to reduce the Debt.

6.11.2 Additional Rights of Lender. In addition to any other right Lender may have to draw upon a Letter of Credit pursuant to the terms and conditions of this Agreement, Lender shall have the additional rights to draw in full any Letter of Credit: (a) with respect to any evergreen Letter of Credit, if Lender has received a notice from the issuing bank that the Letter of Credit will not be renewed and a substitute Letter of Credit is not provided at least thirty (30) days prior to the date on which the outstanding Letter of Credit is scheduled to expire; (b) with respect to any Letter of Credit with a stated expiration date, if Lender has not received a notice from the issuing bank that it has renewed the Letter of Credit at least thirty (30) days prior to the date on which such Letter of Credit is scheduled to expire and a substitute Letter of Credit is not provided at least thirty (30) days prior to the date on which the outstanding Letter of Credit is scheduled to expire; (c) upon receipt of notice from the issuing bank that the Letter of Credit will be terminated (except if the termination of such Letter of Credit is permitted pursuant to the

terms and conditions of this Agreement or a substitute Letter of Credit is provided); or (d) if Lender has received notice that the bank issuing the Letter of Credit shall cease to be an Eligible Institution. Notwithstanding anything to the contrary contained in the above, Lender is not obligated to draw any Letter of Credit upon the happening of an event specified in (a), (b), (c) or (d) above and shall not be liable for any losses sustained by Borrower due to the insolvency of the bank issuing the Letter of Credit if Lender has not drawn the Letter of Credit. Provided no Event of Default is continuing, draws of a Letter of Credit under this Section 6.1.1.2 shall thereafter be held as Reserve Funds in accordance with this Agreement.

VII. PROPERTY MANAGEMENT

Section 7.1 The Management Agreement. Borrower shall cause the Manager of the Individual Properties to manage the applicable Individual Property substantially in accordance with its Management Agreement. Borrower shall (i) diligently perform and observe all of the material terms, covenants and conditions of its Management Agreement on the part of Borrower to be performed and observed, (ii) promptly notify Lender of any notice to Borrower of any default by Borrower in the performance or observance of any of the terms, covenants or conditions of its Management Agreement on the part of Borrower to be performed and observed, and (iii) upon request of Lender, promptly deliver to Lender a copy of each financial statement, business plan, capital expenditures plan, report and estimate received by it under each Management Agreement. 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, then, without limiting Lender's other rights or remedies under this Agreement or the other Loan Documents, and without waiving or releasing Borrower from any of its obligations hereunder or under such Management Agreement, upon five (5) Business Days' prior notice to Borrower, Lender shall have the right, but shall be under no obligation, to pay any sums and to perform any act as may be appropriate to cause all the material terms, covenants and conditions of such Management Agreement on the part of the Borrower to be performed or observed.

Section 7.2 Prohibition Against Termination or Modification. Borrower shall not surrender, terminate, cancel, modify, renew or extend any Management Agreement, or enter into any other agreement relating to the management or operation of any Individual Property with Manager or any other Person, or consent to the assignment by the Manager of its interest under the related Management Agreement, in each case without the express consent of Lender, which consent shall not be unreasonably withheld; provided, however, with respect to a new manager such consent may be conditioned upon Borrower delivering a Rating Agency Confirmation as to such new manager and management agreement and, if such new manager is an Affiliate of Borrower, upon delivery of a non-consolidation opinion acceptable to the Rating Agencies. If at any time Lender consents to the appointment of a new manager, such new manager and the applicable Borrower shall, as a condition of Lender's consent, execute a subordination of management agreement in the form then used by Lender. Notwithstanding anything contained in this Section 7.2 to the contrary, Wells Management Company, Inc. is hereby approved by Lender as a substitute property manager for any Manager currently managing an Individual Property, provided, that, prior to Wells Management Company, Inc. becoming the manager of any Individual Property, Borrower shall be required to satisfy each of the conditions set forth in this Section other than obtaining Lender's approval or a Rating Agency Confirmation.

Section 7.3 Replacement of Manager. Lender shall have the right to require Borrower to replace any Manager at any Individual Property with a Person which is not an Affiliate of, but is chosen by, Borrower and approved by Lender upon the occurrence of any one or more of the following events: (i) from and after the Maturity Date, (ii) at any time following the occurrence of an Event of Default, (iii) if at any time the Debt Service Coverage Ratio falls below 1.20 to 1.0 (the “Manager Termination Ratio”), as determined by Lender in its sole discretion on a quarterly basis and/or (iv) if such Manager shall be in monetary default or any other material default under its Management Agreement beyond any applicable notice and cure period or if at any time such Manager has engaged in gross negligence, fraud or willful misconduct. Notwithstanding the provisions of clause (iii) above, the applicable Borrower shall nevertheless have the right to retain such Manager if, prior to the replacement of such Manager, Borrower shall provide additional collateral in the form of Letters of Credit for a portion of the Loan, satisfactory to Lender, such that the Manager Termination Ratio can be maintained on the Loan Amount net of such additional collateral. Lender may require the Borrower to increase the additional collateral to the extent such Debt Service Coverage Ratio continues to decline in subsequent quarters. Such additional collateral shall be released to Borrower when the Debt Service Coverage Ratio equals or exceeds the Manager Termination Ratio for six (6) consecutive months and provided no Event of Default has occurred. Letters of Credit provided under this section shall be additional security for the repayment of the Indebtedness and may be drawn upon by Lender upon the occurrence of an Event of Default and applied by Lender in such order and priority as Lender may determine in its sole discretion.

VIII. PERMITTED TRANSFERS

Section 8.1 Permitted Transfer of the Individual Properties. Lender shall not withhold its consent to the one-time conveyance of the Individual Properties to a Permitted Transferee provided that (a) Lender has received a Rating Agency Confirmation as to the conveyance of the applicable Individual Properties to the Permitted Transferee, (b) Lender has received an agreement, acceptable to it in its sole discretion, pursuant to which Permitted Transferee assumes all of Borrower’s obligations under the Loan Documents, (c) Lender receives a transfer fee equal to one percent (1.0%) of the original Loan Amount; (d) Lender shall have received such documents, certificates and legal opinions as it may reasonably request, and (e) the Other Borrowers simultaneously transfer the Other Properties to such Transferee and satisfy the conditions set forth in Section 8.1 of each of the Other Loan Agreements.

Section 8.2 Permitted Transfers of Interest in Borrower. The restrictions on Transfers of ownership interests in the Borrower set forth in Article 6 of the Mortgage shall not apply to the issuance, sale, transfer or pledge of publicly traded shares of the REIT or the issuance, transfer or pledge of limited partnership interests (including the conversion of general partnership interests to limited partnership interests) in Wells Operating Partnership, L.P. (“the OP”), provided that (x) no one Person or its Affiliates owns more than forty-nine percent (49%) of the REIT or the OP (other than the REIT pursuant to clause (ii) below) and the REIT shall at all times (i) be and remain the sole general partner of the OP and have the right and power to direct the management, policies and day-to-day business and affairs of the OP and (ii) directly

own a minimum of ninety percent (90%) of the interests in the OP, (y) the REIT at all times owns at least one hundred percent (100%) of the direct ownership interests in Borrower and retains control of the Borrower and the day-to-day management of the Individual Properties and (z) if after giving effect to such transfer and all prior transfers, more than forty-nine percent (49%) in the aggregate of direct or indirect interests in any individual Borrower are owned by any Person and its Affiliates that owned less than a forty-nine percent (49%) direct or indirect interest in Borrower as of the Closing Date, Lender receives a non-consolidation opinion acceptable to Lender and the Rating Agencies.

Section 8.3 Permitted Easements. Lender shall not unreasonably withhold or delay its consent to grants of easements, restrictions, covenants, reservations and rights of way in the ordinary course of business for water and sewer lines, telephone and telegraph lines, electric lines and other utilities or for other similar purposes, provided that no such grant shall materially impair the utility and operation of any Individual Property or materially adversely affect the value of any Individual Property or materially adversely affect Borrower's ability to pay the Loan.

IX. SALE AND SECURITIZATION OF MORTGAGE

Section 9.1 Sale of Mortgage and Securitization.

(a) Lender shall have the right (i) to sell or otherwise transfer the Loan 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) 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, including, without limitation, to:

(i) (A) provide updated financial and other information with respect to the Individual Properties, the business operated at the Individual Properties, Borrower and, to the extent reasonably available to Borrower, each Manager, (B) provide updated budgets relating to the Individual Properties and (C) at Lender's expense provide updated appraisals, market studies, environmental reviews (Phase I's and, if appropriate, Phase II's), property condition reports and other due diligence investigations of the Individual Properties (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, fraudulent conveyance, and true sale or any other opinion customary

in Secondary Market Transactions or required by the Rating Agencies with respect to the Individual Properties and Borrower and Affiliates, which counsel and opinions shall be satisfactory 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 substantially similar to the representations and warranties contained in the Loan Documents as the Rating Agencies may require; and

(iv) execute amendments to the Loan Documents and Borrower's organizational documents reasonably requested by Lender; provided, however, that Borrower shall not be required to modify or amend any Loan Document if such modification or amendment would (A) change the interest rate, the stated maturity or the amortization of principal as set forth herein or in the Note, (B) modify or amend any other material economic term of the Loan, or (C) materially decrease the rights or materially increase the obligations of the Borrower.

Any reports, statements or other information required to be delivered under this Section 9.1 shall be delivered in paper form or transmitted electronically in PDF or other similar format or Borrower may deliver such reports, statements and other information (A) on a diskette, or (B) in electronic form and prepared using Microsoft Word for Windows or WordPerfect for Windows files (which files may be prepared using a spreadsheet program and saved as word processing files), provided, that, delivery of such reports, statements and other information in such formats shall be subject to Borrower's satisfaction of the reporting and delivery obligations and requirements of the Servicer. Notwithstanding the foregoing, Borrower shall be required to deliver original opinions, agreements, amendments, certificates of the Borrower or its Affiliates, and title insurance policies or endorsements, and Borrower shall be required to deliver originals of any other agreements, documents, certificates and reports if such originals are reasonably requested by Lender, the Servicer or the Rating Agencies or otherwise required pursuant to the Loan Documents.

Section 9.2 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, to the best of Borrower's knowledge, each

such Disclosure Document, as it relates to Borrower, Borrower's Affiliates, the Individual Properties, Manager 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 9.2, Lender hereunder shall include its officers and directors), the Affiliate of Morgan Stanley Dean Witter & Co. ("Morgan Stanley") 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 "Morgan Stanley Group"), and Morgan Stanley, and any other placement agent or underwriter with respect to the Securitization, each of their respective directors and each Person who controls Morgan Stanley 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 Morgan Stanley 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 Morgan Stanley Group and/or the Underwriter Group for any legal or other expenses reasonably incurred by Lender, the Morgan Stanley 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 Individual Properties. This indemnity agreement 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 Morgan Stanley Group and the Underwriter Group for Liabilities to which Lender, the Morgan Stanley 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 Morgan Stanley Group or the Underwriter Group for any legal or other expenses reasonably incurred by Lender, the Morgan Stanley Group or the Underwriter Group in connection with defending or investigating the Liabilities; provided, however, that Borrower will be liable in any such case under clauses (i) or (ii) 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 Individual Properties. This indemnity agreement will be in addition to any liability which Borrower may otherwise have.

(d) Promptly after receipt by an indemnified party under this Section 9.2 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 9.2, 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 reasonably satisfactory to such indemnified party. After notice from the indemnifying party to such indemnified party under this Section 9.2, 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 9.2(b) or (c) 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 9.2(b) or (c), 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) Morgan Stanley'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) The liabilities and obligations of both of Borrower and Lender under this Section 9.2 shall survive the termination of this Agreement and the satisfaction and discharge of the Debt.

X. DEFAULTS

Section 10.1 Event of Default.

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

(i) if (A) any monthly installment of principal and/or interest due under the Note or the payment due on the Maturity Date is not paid when due or (B) any other portion of the Debt is not paid when due and such non-payment continues for five (5) days following notice to Borrower that the same is due and payable;

(ii) if any of the Taxes or Other Charges are not paid when due;

(iii) if the Policies are not kept in full force and effect;

(iv) if Borrower breaches or permits or suffers a breach of Article 6 of the Mortgage;

(v) if any representation or warranty made by Borrower herein or in any other Loan Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished to Lender shall have been false or misleading in any material respect as of the date the representation or warranty was made;

(vi) if Borrower, any SPC Party, any of the Other Borrowers or Guarantor shall make an assignment for the benefit of creditors;

(vii) if a receiver, liquidator or trustee shall be appointed for Borrower, any SPC Party, any of the Other Borrowers or Guarantor or if Borrower, any SPC Party, any of the Other Borrowers or Guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower, any SPC Party, any of the Other Borrowers or Guarantor, or if any proceeding for the dissolution or liquidation of Borrower, any SPC Party, any of the Other Borrowers or Guarantor shall be instituted; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, and SPC Party, any of the Other Borrowers or Guarantor, upon the same not being discharged, stayed or dismissed within sixty (60) days;

(viii) if Borrower attempts to assign its rights under this Agreement or any of the other Loan Documents or any interest herein or therein in contravention of the Loan Documents;

(ix) if any of the assumptions contained in the Non-Consolidation Opinion, or in any other non-consolidation opinion delivered to Lender in connection with the Loan, or in any other non-consolidation delivered subsequent to the closing of the Loan, is or shall become untrue in any material respect;

(x) if Borrower breaches any representation, warranty or covenant contained in Section 3.1.24 hereof;

(xi) if Borrower fails to comply with the covenants as to Prescribed Laws set forth in Section 4.1.1, provided, that, it shall not be an Event of Default under this clause (xi) if Borrower's failure to comply with Prescribed Laws (A) is unintentional, (B) occurs after the date of this Agreement, (C) is susceptible of cure in the reasonable discretion of the Lender and is actually cured within thirty (30) days of the date upon which Borrower receives notice of, or becomes aware of, any breach of the covenant with respect to Prescribed Laws as set forth in Section 4.1.1 hereof, (D) can be cured within such thirty (30) day period in such a way so that Lender will not incur any damages or liability and (E) is due to the direct or indirect action(s) of an unaffiliated third party with which Borrower or its Affiliates is then doing business;

(xii) if Borrower breaches any of the negative covenants contained in Sections 4.2.12 or 4.2.13 hereof or acts or neglects to act in such a manner as to be considered a default under the Operating Agreements and such failure is not cured within ten (10) days of written notice from Lender;

(xiii) intentionally omitted;

(xiv) if Guarantor breaches in any material respect any covenant, warranty or representation contained in the Guaranty which is not cured within any applicable notice and cure period provided therein;

(xv) if Borrower shall continue to be in Default under any of the other terms, covenants or conditions of this Agreement not specified in Subsections (i) to (xiv) above, for ten (10) days after notice to Borrower from Lender, in the case of any Default which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other Default; provided, however, that if such non monetary Default is susceptible of cure but cannot reasonably be cured within such 30 day period and provided further that Borrower shall have commenced to cure such Default within such 30 day period and thereafter diligently and expeditiously proceeds to cure the same, such 30 day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed sixty (60) days plus time permitted for Excusable Delays;

(xvi) an "Event of Default" shall occur under, and as defined in, any of the Other Loan Documents; or

(xvii) 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 any of the Individual Properties, or if any other such event shall occur or condition

shall exist, if the effect of such event or condition is to accelerate the maturity of any portion of the Debt or to permit Lender to accelerate the maturity of all or any portion of the Debt.

(b) Upon the occurrence of an Event of Default (other than an Event of Default described in clause (vi), (vii) or (viii) above) and at any time thereafter Lender may, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and in and to all or any of the Individual Properties, including, without limitation, declaring the Debt to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents against Borrower and any or all of the Individual Properties, including, without limitation, all rights or remedies available at law or in equity; and upon any Event of Default described in clauses (vi), (vii) or (viii) above, the Debt and all other obligations of Borrower hereunder and under the other Loan Documents shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document to the contrary notwithstanding.

Section 10.2 Remedies.

(a) Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement or any of the other Loan Documents executed and delivered by, or applicable to, Borrower or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Debt shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to all or any of the Individual Properties. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, if an Event of Default is continuing (i) Lender is not subject to any "one action" or "election of remedies" law or rule, and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against the Individual Properties and the Mortgage has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Debt or the Debt has been paid in full.

(b) With respect to the Borrower and the Individual Properties, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to any Individual Property for the satisfaction of any of the Debt in preference or priority to any other Individual Property, and Lender may seek satisfaction out of all of the Individual Properties or any part thereof, in its absolute discretion in respect of the Debt. In addition, Lender shall have the right from time to time to partially foreclose the Mortgage in any manner and for any amounts secured by the Mortgage then due and payable as determined by Lender in

its sole discretion including, without limitation, the following circumstances: (i) in the event Borrower default beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose one or more Mortgage 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 one or more Mortgage to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by one or more Mortgage as Lender may elect. Notwithstanding one or more partial foreclosures, the Individual Properties shall remain subject to the Mortgage to secure payment of sums secured by the Mortgage and not previously recovered.

(c) Lender shall have the right from time to time to sever the Note and the other Loan Documents into one or more separate notes and mortgages (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 their 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. Except as may be required in connection with a Securitization pursuant to Section 9.1 hereof, (i) 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 (ii) the Severed Loan Documents shall not contain any representations, warranties or covenants not contained in the Loan Documents and any such representations and warranties contained in the Severed Loan Documents will be given by Borrower only as of the Closing Date.

(d) Any amounts recovered from any Individual 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 Components and/or any other amounts due under the Loan Documents in such order, priority and proportions as Lender in its sole discretion shall determine.

Section 10.3 Right to Cure Defaults. Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder or 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 any Individual Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in any Individual Property for such purposes, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 10.3, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any action or proceeding shall bear

interest at the Default Rate, for the period after such cost or expense was incurred until the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by the liens, claims and security interests provided to Lender under the Loan Documents and shall be immediately due and payable upon demand by Lender therefore.

Section 10.4 Remedies Cumulative. The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole 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.

XI. MISCELLANEOUS

Section 11.1 Successors and Assigns. 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 11.2 Lender's Discretion. Whenever pursuant to this Agreement Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Lender and shall be final and conclusive. Prior to a Securitization, whenever pursuant to this Agreement the Rating Agencies are given any right to approve or disapprove, or any arrangement or term is to be satisfactory to the Rating Agencies, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory, based upon Lender's determination of Rating Agency criteria, shall be substituted therefore.

Section 11.3 Governing Law.

(A) THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, AND THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER

AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW (THE "GOL")) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES (I) THE PROVISIONS OF THIS AGREEMENT GOVERNING THE CREATION, PERFECTION, PRIORITY AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT HERETO WITH RESPECT TO THE PROPERTY (OTHER THAN AS DESCRIBED IN SUBSECTION II BELOW) SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE APPLICABLE INDIVIDUAL PROPERTY AND FIXTURES ARE LOCATED AND (II) WITH RESPECT TO THE LIENS AND SECURITY INTERESTS CREATED BY THIS AGREEMENT IN PROPERTY COVERED BY ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE (OTHER THAN THE ACCOUNTS), THE LAW OF THE JURISDICTION APPLICABLE IN ACCORDANCE WITH SECTIONS 9-301 THROUGH 9-307 OF THE UNIFORM COMMERCIAL CODE IN EFFECT IN THE STATE WHERE THE APPLICABLE INDIVIDUAL PROPERTY IS LOCATED SHALL GOVERN THE PERFECTION, THE EFFECT OF PERFECTION OR NON-PERFECTION, AND THE PRIORITY THEREOF. 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 AND THE NOTE, AND THIS AGREEMENT AND THE NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE GOL 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 HEREBY DESIGNATES AND APPOINTS:

CT CORPORATION SYSTEM
111 EIGHTH AVENUE
NEW YORK, NEW YORK 10011
ATTN: SERVICE OF PROCESS DEPT.

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON THEIR 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 THEIR 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 THEIR AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

Section 11.4 Modification, Waiver in Writing. No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement or of any other Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances.

Section 11.5 Delay Not a Waiver. Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under any other Loan Document or Security Document, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement or any other Loan Document or Security Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement or the other Loan Documents or Security Document, or to declare a default for failure to effect prompt payment of any such other amount. Lender shall have the right to waive or reduce any time periods that Lender is entitled to under the Loan Documents in its sole and absolute discretion.

Section 11.6 Notices. All notices, demands, requests, consents, approvals or other communications (any of the foregoing, a “Notice”) required, permitted, or desired to be given hereunder shall be in writing sent by registered or certified mail, postage prepaid, return receipt requested, or delivered by hand or reputable overnight courier addressed to the party to be so notified at its address hereinafter set forth, or to such other address as such party may hereafter specify in accordance with the provisions of this Section 11.6. Any Notice shall be deemed to have been received: (a) three (3) days after the date such Notice is mailed, (b) on the date of delivery by hand if delivered during business hours on a Business Day (otherwise on the next Business Day), and (c) on the next Business Day if sent by an overnight commercial courier, in each case addressed to the parties as follows:

If to Lender: Morgan Stanley Mortgage Capital Inc.
1221 Avenue of the Americas, 27th Floor
New York, New York 10020
Attention: James Flaum and Kevin Swartz

with a copy to: Cadwalader, Wickersham & Taft LLP
100 Maiden Lane
New York, New York 10038
Attention: John M. Zizzo, Esq.

If to Borrower: c/o Wells Real Estate Funds
6200 The Corners Parkway, Suite 250
Norcross, Georgia 30092-6040
Attention: Finance Department

with a copy to: Alston & Bird LLP
1201 West Peachtree Street
Atlanta, Georgia 30309-3424
Attention: Steven D. Collier, Esq.

Section 11.7 Trial by Jury. BORROWER AND LENDER EACH HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY THE BORROWER AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH PARTY IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.

Section 11.8 Headings. The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 11.9 Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Section 11.10 Preferences. Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrower to any portion of the obligations 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 bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

Section 11.11 Waiver of Notice. Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or the other Loan Documents specifically and expressly provide for the giving of notice by Lender to Borrower and except with respect to matters for which Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice. Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Agreement or the other Loan Documents do not specifically and expressly provide for the giving of notice by Lender to Borrower.

Section 11.12 Remedies of Borrower. In the event that a claim or adjudication is made that Lender or its agents have acted unreasonably or unreasonably delayed acting in any case where, by law or under this Agreement or the other Loan Documents, Lender or such agent, as the case may be, has an obligation to act reasonably or promptly, neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedy shall be limited to commencing an action seeking injunctive relief or declaratory judgment. Any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment.

Section 11.13 Expenses; Indemnity.

(a) Borrower shall pay or, if Borrower fails to pay, reimburse Lender upon receipt of notice from Lender, for all reasonable costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Lender in connection with (i) Borrower's ongoing performance of and compliance with Borrower's agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date, including, without limitation, confirming compliance with environmental and insurance requirements; (ii) Lender's ongoing performance of and compliance with all agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date; (iii) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters requested by Borrower; (iv) the filing and recording fees and expenses, title insurance and reasonable fees and expenses of counsel for providing to Lender all required legal opinions, and other similar expenses incurred, in creating and perfecting the Liens in favor of Lender pursuant to this Agreement and the other Loan Documents; (v) enforcing or preserving any rights, in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation or otherwise, in each case against, under or affecting Borrower, this Agreement, the other Loan Documents, the Individual Properties, or any other security given for the Loan; and (vi) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents, or with respect to the Individual Properties or in connection with any refinancing or restructuring of the credit arrangements

provided under this Agreement in the nature of a “work out” or of any insolvency or bankruptcy proceedings; provided, however, that Borrower shall not be liable for the payment of any such costs and expenses to the extent the same arise by reason of the gross negligence, illegal acts, fraud or willful misconduct of Lender. Any costs due and payable to Lender may be paid to Lender pursuant to the Cash Management Agreement.

(b) Borrower shall indemnify, defend and hold harmless Lender and its officers, directors, agents, employees (and the successors and assigns of the foregoing) (the “**Lender Indemnitees**”) from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for the Lender Indemnitees in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not the Lender Indemnitees shall be designated a party thereto), that may be imposed on, incurred by, or asserted against the Lender Indemnitees in any manner relating to or arising out of (i) any breach by Borrower of its obligations under, or any material misrepresentation by Borrower contained in, this Agreement or the other Loan Documents, or (ii) the use or intended use of the proceeds of the Loan (collectively, the “**Indemnified Liabilities**”); provided, however, that Borrower shall not have any obligation to the Lender Indemnitees hereunder to the extent that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of the Lender Indemnitees. To the extent that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall pay the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by the Lender Indemnitees.

Section 11.14 Schedules Incorporated. The Schedules annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

Section 11.15 Offsets, Counterclaims and Defenses. Any assignee of Lender’s interest in and to this Agreement and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

Section 11.16 No Joint Venture or Partnership; No Third Party Beneficiaries.

(a) Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy in common, or joint tenancy relationship between Borrower and Lender nor to grant Lender any interest in the Individual Properties other than that of mortgagee, beneficiary or lender.

(b) This Agreement and the other Loan Documents are solely for the benefit of Lender and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender 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.

Section 11.17 Publicity. All news releases, publicity or advertising by either party to this Agreement through any media intended to reach the general public which refers to the Loan Documents, to the parties, or any of their Affiliates shall be subject to the prior approval of the other party, not to be unreasonably withheld or delayed.

Section 11.18 Waiver of Marshalling of Assets. To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's partners and others with interests in Borrower, and of the Individual Properties, or to a sale in inverse order of alienation in the event of foreclosure of the Mortgage, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Individual Properties for the collection of the Debt without any prior or different resort for collection or of the right of Lender to the payment of the Debt out of the net proceeds of the Individual Properties in preference to every other claimant whatsoever. In addition, Borrower, for itself and its successors and assigns, waives in the event of foreclosure of the Mortgage, any equitable right otherwise available to Borrower which would require the separate sale of the Individual Properties or require Lender to exhaust its remedies against any Individual Property or any combination of the Individual Properties before proceeding against any other Individual Property or combination of Individual Properties; and further in the event of such foreclosure Borrower hereby expressly consents to and authorizes, at the option of Lender, the foreclosure and sale either separately or together of any combination of the Individual Properties.

Section 11.19 Waiver of Offsets/Defenses/Counterclaims. Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents or otherwise to offset any obligations to make the payments required by the Loan Documents. No failure by Lender to perform any of its obligations hereunder shall be a valid defense to, or result in any offset against, any payments which Borrower is obligated to make under any of the Loan Documents.

Section 11.20 Conflict; Construction of Documents; Reliance. In the event of any conflict between the provisions of this Agreement and any of the other Loan Documents, the provisions of this Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of

the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same. Borrower acknowledges that, with respect to the Loan, Borrower shall rely solely on their own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower or its Affiliates.

Section 11.21 Brokers and Financial Advisors. Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement. Borrower shall indemnify, defend and hold Lender harmless from and against any and all claims, liabilities, costs and expenses of any kind (including Lender's attorneys' fees and expenses) in any way relating to or arising from a claim by any Person that such Person acted on behalf of Borrower or Lender in connection with the transactions contemplated herein. The provisions of this Section 11.21 shall survive the expiration and termination of this Agreement and the payment of the Debt.

Section 11.22 Exculpation. Subject to the qualifications below, Lender shall not enforce the liability and obligation of Borrower to perform and observe the obligations contained in the Note, this Agreement, the Mortgage, the other Loan Documents by any action or proceeding wherein a money judgment shall be sought against Borrower, except that Lender may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Lender to enforce and realize upon its interest under the Note, this Agreement, the Mortgage and the other Loan Documents, or in the Individual Properties, 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 Individual Properties, in the Rents and in any other collateral given to Lender, and Lender, by accepting the Note, this Agreement, the Mortgage, the other Loan Documents, shall not sue for, seek or demand any deficiency judgment against Borrower in any such action or proceeding under or by reason of or under or in connection with the Note, this Agreement, the Mortgage, the other Loan Documents. The provisions of this Section shall not, however, (a) constitute a waiver, release or impairment of any obligation evidenced or secured by any of the Loan Documents; (b) impair the right of Lender to name Borrower as a party defendant in any action or suit for foreclosure and sale under the Mortgage; (c) affect the validity or enforceability of any guaranty made in connection with the Loan or any of the rights and remedies of Lender thereunder; (d) impair the right of Lender to obtain the appointment of a receiver; (e) impair the enforcement of any of the Assignments of Leases; (f) constitute a prohibition against Lender to seek a deficiency judgment against Borrower in order to fully realize on any security given by Borrower in connection with the Loan or to commence any other appropriate action or

proceeding in order for Lender to exercise its remedies against such security; or (g) constitute a waiver of the right of Lender to enforce the liability and obligation of Borrower, by money judgment or otherwise, to the extent of any loss, damage, cost, expense, liability, claim or other obligation incurred by Lender (including attorneys' fees and costs reasonably incurred) arising out of or in connection with the following:

(i) fraud or intentional misrepresentation by Borrower, any Other Borrower or any guarantor in connection with the Loan or any of the Other Loans;

(ii) the gross negligence or intentionally tortious conduct of Borrower or any Other Borrower;

(iii) the breach of any representation, warranty, covenant or indemnification provision in the Environmental Indemnity, in the Mortgage or in any Other Loan Documents by Borrower or the Other Borrowers, respectively, concerning environmental laws, hazardous substances and asbestos and any indemnification of Lender with respect thereto in either document;

(iv) the removal or disposal of any portion of the Individual Properties or the Other Properties after an Event of Default;

(v) the misapplication or conversion by Borrower or any of the Other Borrowers of (A) any insurance proceeds paid by reason of any loss, damage or destruction to the Individual Properties or any of the Other Properties, respectively, (B) any Awards or other amounts received in connection with the Condemnation of all or a portion of the Individual Properties or any of the Other Properties, respectively, (C) any Rents following an Event of Default or (D) any Rents (as defined in the Other Loan Agreements) following an Event of Default;

(vi) failure to pay charges for labor or materials or other charges that can create Liens on any portion of the Individual Properties or the Other Properties unless Borrower or the applicable Other Borrowers promptly bonds off the resulting Lien from the affected Individual Property or the affected Other Properties, as applicable, to the reasonable satisfaction of the Lender and in compliance with applicable law;

(vii) any security deposits, advance deposits or any other deposits collected with respect to the Individual Properties or the Other Properties which are not delivered to Lender upon a foreclosure of the Individual Properties or any of the Other Properties, as applicable, or action in lieu thereof, except to the extent any such security deposits were applied in accordance with the terms and conditions of any of the Leases prior to the occurrence of the Event of Default that gave rise to such foreclosure or action in lieu thereof;

(viii) Borrower's indemnification of Lender set forth in Section 9.2 hereof or the Other Borrowers' indemnification of Lender pursuant to Section 9.2 of their respective Other Loan Agreements;

(ix) Borrower's failure to obtain the prior consent of Lender as required pursuant to this Agreement in connection with any amendment, modification or termination of the NASA Lease (this clause (ix) shall survive payment of the Note and the satisfaction of all other obligations of Borrower under this Agreement and the Loan Documents);

(x) The failure of any Other Borrower to obtain the prior consent of Lender as required pursuant to the Other Loan Agreements in connection with any amendment, modification or termination of any of the following Leases: the Aventis Lease, Gemini Lease, Harcourt Lease and State Street Lease (as such terms are defined in the Other Loan Agreement entered into by the Other Borrowers (other than Wells REIT – Orange County, CA, L.P.)) (this clause (x) shall survive payment of the Note and the satisfaction of all other obligations of (1) the Other Borrowers under the Other Loan Agreements and the Other Loan Documents) and (2) the Borrower under this Agreement and the Loan Documents);

(xi) any mortgage recordation taxes or assessments (or similar charges) which are, or become, due and owing in connection with the Loan or any assignment or transfer thereof from Lender in connection with a Securitization (this clause (xi) shall survive payment of the Note and the satisfaction of all other obligations of Borrower under this Agreement and the Loan Documents); and

(xii) the breach of any representation or warranty of Borrower set forth in Sections 3.1.25 or 3.1.26 of this Agreement.

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) Borrower or the Other Borrowers fail to obtain Lender's prior written consent to any subordinate financing or other voluntary Lien encumbering the Individual Properties or the Other Properties; (ii) Borrower or the Other Borrowers fail to obtain Lender's prior written consent to any assignment, transfer, or conveyance of the Individual Properties or the Other Properties or any interest therein as required by the Mortgage or this Agreement or the Other Loan Documents, respectively; (iii) Borrower or any of the Other Borrowers file a voluntary petition under the Bankruptcy code or any other Federal or state bankruptcy or insolvency law; (iv) an Affiliate, officer, director, or representative which controls, directly or indirectly, Borrower or any Other Borrower files, or joins in the filing of, an involuntary petition against Borrower or any Other Borrower under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or solicits or causes to be solicited petitioning creditors for any involuntary petition against Borrower or any Other Borrower from any Person; (v) Borrower or any Other Borrower files an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or solicits or causes to be solicited petitioning creditors for any involuntary petition from any Person; (vi) any Affiliate, officer, director, or representative which controls Borrower or any

Other Borrower consents to or acquiesces in or joins in an application for the appointment of a custodian, receiver, trustee, or examiner for Borrower or any Other Borrower or any portion of the Individual Properties or any of the Other Properties; or (vii) Borrower or any Other Borrower makes an assignment for the benefit of creditors, or admits, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due.

Section 11.23 Prior Agreements. This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, are superseded by the terms of this Agreement, the other Loan Documents.

Section 11.24 Servicer.

(a) At the option of Lender, the Loan may be serviced by a servicer (the "Servicer") selected by Lender and Lender may delegate all or any portion of its responsibilities under this Agreement, the other Loan Documents to the Servicer pursuant to a servicing agreement (the "Servicing Agreement") between Lender and Servicer. Borrower shall be responsible for any reasonable set-up fees or any other costs relating to or arising under the Servicing Agreement, including the payment, on a monthly basis, of the monthly servicing fee due to the Servicer under the Servicing Agreement in an amount not to exceed one basis point on the amount of the Loan per annum. Servicer shall also be entitled to reimbursement of costs and expenses as and to the same extent (but without duplication) as Lender is entitled thereto under the applicable provisions of this Agreement and the other Loan Documents.

(b) Upon notice thereof from Lender, Servicer shall have the right to exercise all rights of Lender and enforce all obligations of Borrower pursuant to the provisions of this Agreement, the Note and the other Loan Documents.

(c) Provided Borrower shall have been given notice of Servicer's address by Lender, Borrower shall deliver to Servicer duplicate originals of all notices and other instruments which Borrower may or shall be required to deliver to Lender pursuant to this Agreement, the Note, the other Loan Documents (and no delivery of such notices or other instruments by Borrower shall be of any force or effect unless delivered to Lender and Servicer as provided above).

Section 11.25 Joint and Several Liability. If Borrower is comprised of more than one Person, all representations, warranties, covenants (both affirmative and negative) and all other Obligations hereunder shall be the joint and several obligation of each entity making up Borrower and a Default or Event of Default by any such Person shall be deemed a Default or Event of Default by all such entities and Borrower. The representations, covenants and warranties contained herein or in any other Loan Document shall be read to apply to the individual entities comprising Borrower when the context so requires but a breach of any such representation, covenant or warranty or a breach of any obligation under the Loan Documents shall be deemed a breach by all such entities and Borrower, entitling the Lender to exercise all of its rights and remedies under all the Loan Documents and under applicable law.

Section 11.26 Creation of Security Interest. Notwithstanding any other provision set forth in this Agreement, the Note, the Mortgage, the other Loan Documents, Lender may at any time create a security interest in all or any portion of its rights under this Agreement, the Note, the Mortgage, the Loan Documents and any other Security Document (including, without limitation, the advances owing to it) in favor of any Federal Reserve Bank in accordance with Regulation A of the Board of Governors of the Federal Reserve System.

Section 11.27 Assignments and Participations.

(a) The Lender may assign to one or more Persons all or a portion of its rights and obligations under this Agreement, the Note, the Mortgage, any Loan Document and any Security Document.

(b) Upon such execution and delivery, from and after the effective date of any such Assignment, the assignee thereunder shall be a party hereto and have the rights and obligations of Lender hereunder.

(c) Lender may sell participations to one or more Persons in or to all or a portion of its rights and obligations under this Agreement; provided, however, that (i) Lender's obligations under this Agreement shall remain unchanged, (ii) Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) Lender shall remain the holder of any Note for all purposes of this Agreement and (iv) Borrower shall continue to deal solely and directly with Lender in connection with Lender's rights and obligations under and in respect of this Agreement and the other Loan Documents.

(d) Lender may, in connection with any assignment or participation or proposed assignment or participation pursuant to this Section 11.27, disclose to the assignee or participant or proposed assignee or participant, as the case may be, any information relating to Borrower or any of its Affiliates or to any aspect of the Loan that has been furnished to the Lender by or on behalf of Borrower or any of its Affiliates.

Section 11.28 Set-Off. In addition to any rights and remedies of Lender provided by this Loan Agreement and by law, the Lender shall have the right, without prior notice to Borrower, any such notice being expressly waived by Borrower to the extent permitted by applicable law, upon any amount becoming due and payable by Borrower hereunder (whether at the stated maturity, by acceleration or otherwise) and the expiration of any applicable grace, notice and cure periods, to set-off and appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by Lender or any Affiliate thereof to or for the credit or the account of Borrower. Lender agrees promptly to notify Borrower after any such set-off and application made by Lender; provided that the failure to give such notice shall not affect the validity of such set-off and application.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

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.

LENDER:

MORGAN STANLEY MORTGAGE CAPITAL
INC., a New York corporation

ATTEST:

By: _____
Name:
Title:

Secretary
(Corporate Seal)

BORROWER:

WELLS REIT – INDEPENDENCE SQUARE,
LLC, a Delaware limited liability company

ATTEST:

By: _____
Name:
Title:

Secretary
(Corporate Seal)

LOAN AGREEMENT (CALIFORNIA PROPERTY)

Dated as of May 21, 2004

Between

WELLS REIT – ORANGE COUNTY, CA, L.P.,
as Borrower

and

MORGAN STANLEY MORTGAGE CAPITAL INC.,
as Lender

TABLE OF CONTENTS

	Page
	<hr/>
I. DEFINITIONS; PRINCIPLES OF CONSTRUCTION	
Section 1.1 Definitions	1
Section 1.2 Principles of Construction	20
II. THE LOAN	
Section 2.1 The Loan	20
2.1.1 Agreement to Lend and Borrow	20
2.1.2 Single Disbursement to Borrower	20
2.1.3 The Note	20
2.1.4 Use of Proceeds	20
2.1.5 Modification of the Components.	20
Section 2.2 Interest Rate	21
2.2.1 Interest Rate	21
2.2.2 Default Rate	21
2.2.3 Interest Calculation	21
2.2.4 Usury Savings	21
Section 2.3 Loan Payments	22
2.3.1 Payment Before Maturity Date	22
2.3.2 Payment on Maturity Date	22
2.3.3 Late Payment Charge	22
2.3.4 Method and Place of Payment	22
Section 2.4 Prepayments	22
2.4.1 Voluntary Prepayments	22
2.4.2 Mandatory Prepayments	23
2.4.3 Prepayments After Default	23
Section 2.5 Defeasance	24
2.5.1 Total Defeasance	24
2.5.2 Intentionally Deleted	26
2.5.3 Additional Partial Defeasance Collateral	26
2.5.4 Defeasance Collateral Account	28
2.5.5 Successor Borrower	28
Section 2.6 Substitution of Properties	29
III. REPRESENTATIONS AND WARRANTIES	
Section 3.1 Borrower Representations	36
3.1.1 Organization	36
3.1.2 Proceedings	37
3.1.3 No Conflicts	37

3.1.4	Litigation	37
3.1.5	Agreements	37
3.1.6	Consents	37
3.1.7	Title	38
3.1.8	No Plan Assets	38
3.1.9	Compliance	38
3.1.10	Financial Information	39
3.1.11	Condemnation	39
3.1.12	Utilities and Public Access	39
3.1.13	Separate Lots	39
3.1.14	Assessments	39
3.1.15	Enforceability	39
3.1.16	Assignment of Leases	39
3.1.17	Insurance	40
3.1.18	Licenses	40
3.1.19	Flood Zone	40
3.1.20	Physical Condition	40
3.1.21	Boundaries	40
3.1.22	Leases	40
3.1.23	Filing and Recording Taxes	41
3.1.24	Single Purpose	41
3.1.25	Tax Filings	44
3.1.26	Solvency	45
3.1.27	Federal Reserve Regulations	45
3.1.28	Organizational Chart	45
3.1.29	Bank Holding Company	45
3.1.30	No Other Debt	45
3.1.31	Investment Company Act	45
3.1.32	Access/Utilities	45
3.1.33	No Bankruptcy Filing	46
3.1.34	Full and Accurate Disclosure	46
3.1.35	Foreign Person	46
3.1.36	No Change in Facts or Circumstances; Disclosure	46
3.1.37	Perfection of Accounts	46
3.1.38	REA	47
Section 3.2	Survival of Representations	47
IV. BORROWER COVENANTS		
Section 4.1	Borrower Affirmative Covenants	47
4.1.1	Existence; Compliance with Legal Requirements	47
4.1.2	Taxes and Other Charges	47
4.1.3	Litigation	48
4.1.4	Access to the Individual Property	48
4.1.5	Further Assurances; Supplemental Mortgage Affidavits	48
4.1.6	Financial Reporting	48

4.1.7	Title to the Individual Property	51
4.1.8	Estoppel Statement	51
4.1.9	Leases	51
4.1.10	Alterations	53
4.1.11	Intentionally Deleted	53
4.1.12	Material Agreements	53
4.1.13	Performance by Borrower	54
4.1.14	Costs of Enforcement/Remedying Defaults	54
4.1.15	Business and Operations	54
4.1.16	Loan Fees	54
Section 4.2	Borrower Negative Covenants	54
4.2.1	Due on Sale and Encumbrance; Transfers of Interests	54
4.2.2	Liens	55
4.2.3	Dissolution	55
4.2.4	Change in Business	55
4.2.5	Debt Cancellation	55
4.2.6	Affiliate Transactions	55
4.2.7	Zoning	55
4.2.8	Assets	55
4.2.9	No Joint Assessment	56
4.2.10	Principal Place of Business	56
4.2.11	ERISA	56
4.2.12	Material Agreements	56
4.2.13	REA	56
V. INSURANCE, CASUALTY AND CONDEMNATION		
Section 5.1	Insurance.	57
5.1.1	Insurance Policies	57
5.1.2	Insurance Company	61
Section 5.2	Casualty and Condemnation	62
5.2.1	Casualty	62
5.2.2	Condemnation	62
5.2.3	Business Interruption Insurance Proceeds	63
Section 5.3	Delivery of Net Proceeds.	63
5.3.1	Minor Casualty or Condemnation	63
5.3.2	Major Casualty or Condemnation	64
VI. RESERVE FUNDS		
Section 6.1	Required Repair Fund	67
6.1.1	Deposit of Required Repair Funds	67
6.1.2	Release of Required Repair Funds	67
Section 6.2	Tax Funds.	68
6.2.1	Deposits of Tax Funds	68
6.2.2	Release of Tax Funds	68

Section 6.3	Insurance Funds.	68
6.3.1	Deposits of Insurance Funds	68
6.3.2	Release of Insurance Funds	69
Section 6.4	Capital Expenditure Funds	69
6.4.1	Deposits of Capital Expenditure Funds	69
6.4.2	Release of Capital Expenditure Funds	69
Section 6.5	Rollover Funds.	71
6.5.1	Deposits of Rollover Funds	71
6.5.2	Release of Rollover Funds	71
Section 6.6	Lease Termination Rollover Funds.	71
6.6.1	Deposits of Rollover Funds	71
6.6.2	Release of Lease Termination Rollover Funds	72
Section 6.7	Ground Rent Funds.	73
6.7.1	Deposits of Ground Rent Funds.	73
6.7.2	Release of Ground Rent Funds.	73
Section 6.8	Application of Reserve Funds	73
Section 6.9	Security Interest in Reserve Funds	74
6.9.1	Grant of Security Interest	74
6.9.2	Income Taxes	74
6.9.3	Prohibition Against Further Encumbrance	74
Section 6.10	Letters of Credit	74
6.10.1	Delivery of Letters of Credit	74
Section 6.11	Provisions Regarding Letters of Credit	75
6.11.1	Security for Debt	75
6.11.2	Additional Rights of Lender	75
VII. PROPERTY MANAGEMENT		
Section 7.1	The Management Agreement	76
Section 7.2	Prohibition Against Termination or Modification	76
Section 7.3	Replacement of Manager	76
VIII. PERMITTED TRANSFERS		
Section 8.1	Permitted Transfer of the Individual Property	77
Section 8.2	Permitted Transfers of Interest in Borrower	77
Section 8.3	Permitted Easements	77
IX. SALE AND SECURITIZATION OF MORTGAGE		
Section 9.1	Sale of Mortgage and Securitization	78
Section 9.2	Securitization Indemnification	79
X. DEFAULTS		
Section 10.1	Event of Default	81

Section 10.2	Remedies	84
Section 10.3	Right to Cure Defaults	86
Section 10.4	Remedies Cumulative	86
XI. MISCELLANEOUS		
Section 11.1	Successors and Assigns	86
Section 11.2	Lender's Discretion	86
Section 11.3	Governing Law	87
Section 11.4	Modification, Waiver in Writing	88
Section 11.5	Delay Not a Waiver	88
Section 11.6	Notices	89
Section 11.7	Trial by Jury	89
Section 11.8	Headings	90
Section 11.9	Severability	90
Section 11.10	Preferences	90
Section 11.11	Waiver of Notice	90
Section 11.12	Remedies of Borrower	90
Section 11.13	Expenses; Indemnity	90
Section 11.14	Schedules Incorporated	92
Section 11.15	Offsets, Counterclaims and Defenses	92
Section 11.16	No Joint Venture or Partnership; No Third Party Beneficiaries	92
Section 11.17	Publicity	92
Section 11.18	Cross Default; Cross-Collateralization; Waiver of Marshalling of Assets	92
Section 11.19	Waiver of Offsets/Defenses/Counterclaims	93
Section 11.20	Conflict; Construction of Documents; Reliance	93
Section 11.21	Brokers and Financial Advisors	93
Section 11.22	Exculpation	94
Section 11.23	Prior Agreements	95
Section 11.24	Servicer	96
Section 11.25	Joint and Several Liability	96
Section 11.26	Creation of Security Interest	96
Section 11.27	Assignments and Participations	97
Section 11.28	Set-Off	97

SCHEDULES

Schedule I	–	Rent Roll
Schedule II	–	Required Repairs
Schedule III	–	Organizational Chart
Schedule IV	–	Form of Subordination, Non-Disturbance and Attornment Agreement
Schedule V	–	[Reserved]
Schedule VI	–	[Reserved]
Schedule VII	–	Description of REA
Schedule VIII	–	[Reserved]
Schedule IX	–	The Other Loans
Schedule X	–	Managers and Management Agreements
Schedule XI	–	Exceptions to Representations and Warranties
Schedule XII	–	Form of Estoppel Letter
Schedule XIII	–	Form of Ground Lessor Estoppel

LOAN AGREEMENT (CALIFORNIA PROPERTY)

THIS LOAN AGREEMENT (CALIFORNIA PROPERTY), dated as of May 21, 2004 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this “Agreement”), between MORGAN STANLEY MORTGAGE CAPITAL INC., a New York corporation, having an address at 1221 Avenue of the Americas, 27th Floor, New York, New York 10020 (“Lender”), and WELLS REIT – ORANGE COUNTY, CA, L.P., a Delaware limited partnership, having an address at c/o Wells Real Estate Funds, 6200 The Corners Parkway, Norcross, Georgia 30092-6040 (“Borrower”).

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

W I T N E S S E T H:

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

WHEREAS, Lender is willing to make the Loan to Borrower, subject to and in accordance with the conditions and terms of this Agreement and the other Loan Documents.

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

I. DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1 Definitions.

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

“Acquired Properties” shall have the meaning set forth in Section 9.1(c)

“Acquired Property Statements” shall have the meaning set forth in Section 9.1(c).

“Additional Partial Defeasance Collateral” shall mean, in connection with an Additional Partial Defeasance Event, U.S. Obligations which provide payments (i) on or prior to, but as close as possible to, the Business Day immediately preceding all Monthly Payment Dates and other scheduled payment dates, if any, under the Defeased Note issued in connection with such Additional Partial Defeasance Event after the Defeasance Date and up to and including the Maturity 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.

“Additional Partial Defeasance Date” shall have the meaning set forth in Section 2.5.3(a)(i).

“Additional Partial Defeasance Event” shall have the meaning set forth in Section 2.5.3(a).

“Affiliate” shall mean, as to any Person, any other Person that, directly or indirectly, owns more than forty percent (40%) 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. As used in this definition, the term **“control”** means the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise.

“Agent” shall mean LaSalle Bank, National Association, and any successor Eligible Institution thereto.

“Allocated Loan Amount” shall mean \$10,700,000.00. The Allocated Loan Amount shall be reduced by the principal amount that the Loan is prepaid pursuant to this Agreement in connection with a Condemnation or Casualty affecting the Individual Property and if the Individual Property is the subject of an Additional Partial Defeasance Event the Allocated Loan Amount shall be reduced by the principal amount of the Defeased Note attributable to the Individual Property.

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

“Alteration Threshold” shall mean three percent (3%) of the Allocated Loan Amount.

“Annual Budget” shall mean the operating and capital budget for the Individual Property setting forth the Borrower’s good faith estimate of Gross Revenue, Operating Expenses, and Capital Expenditures for the applicable Fiscal Year.

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

“Assignment of Leases” shall mean, collectively, the First Assignment of Leases and the Second Assignment of Leases.

“Assignment of Management Agreement” shall mean that certain Assignment of Management Agreement and Subordination of Management Fees dated the date hereof each among Borrower, Manager and Lender, 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 the Individual 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.

“Basic Carrying Costs” shall mean the sum of the following costs associated with the Individual Property for the relevant Fiscal Year or payment period: (i) Taxes and (ii) Insurance Premiums.

“Borrower” shall mean WELLS REIT – ORANGE COUNTY, CA, L.P., a Delaware limited partnership, together with its permitted successors and permitted assigns.

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

“Cap Ex Amount” shall mean, an annual amount equal to the product of (a) \$0.25 multiplied by (b) the number of square feet in the Improvements at the Individual Property.

“Capital Expenditures” for any period shall mean amounts expended for replacements and alterations to the Individual Property and required to be capitalized according to GAAP.

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

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

“Cash Management Agreement” shall mean that certain Portfolio Cash Management Agreement of even date herewith among Lender, Borrower, Wells REIT – Bridgewater, NJ, LLC, Wells REIT – Austin, TX, L.P., Wells REIT – Nashville, TN, LLC, Wells REIT – Multi-State Owner, LLC, Agent and the Manager as defined therein.

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

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

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

“Clearing Account Agreement” shall mean that certain Clearing Account Agreement (Multi-State) dated as of the date hereof, among Borrower, Wells REIT – Bridgewater, NJ, LLC, Wells REIT – Austin, TX, L.P., Wells REIT – Nashville, TN, LLC, Wells REIT – Multi-State Owner, LLC, Lender and the Clearing Bank (as defined therein).

“Clearing Account” shall mean the “Clearing Account” as defined in the Clearing Account Agreement.

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

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

“**Component A1**” shall mean that portion of the Loan in the amount of Three Million Sixty Thousand and No/100 Dollars (\$3,060,000.00) made by Lender to Borrower pursuant to this Agreement.

“**Component A1 Rate**” shall mean a rate per annum equal to four and eighty-four hundredths percent (4.84%).

“**Component A2**” shall mean that portion of the Loan in the amount of Two Million Four Hundred Fifty Thousand and No/100 Dollars (\$2,450,000.00) made by Lender to Borrower pursuant to this Agreement.

“**Component A2 Rate**” shall mean a rate per annum equal to four and eighty-four hundredths percent (4.84%).

“**Component A3**” shall mean that portion of the Loan in the amount of Two Million One Hundred Forty Thousand and No/100 Dollars (\$2,140,000.00) made by Lender to Borrower pursuant to this Agreement.

“**Component A3 Rate**” shall mean a rate per annum equal to four and eighty-four hundredths percent (4.84%).

“**Component A4**” shall mean that portion of the Loan in the amount of One Million Five Hundred Thirty Thousand and No/100 Dollars (\$1,530,000.00) made by Lender to Borrower pursuant to this Agreement.

“**Component A4 Rate**” shall mean a rate per annum equal to four and eighty-four hundredths percent (4.84%).

“**Component A5**” shall mean that portion of the Loan in the amount of Nine Hundred Twenty Thousand and No/100 Dollars (\$920,000.00) made by Lender to Borrower pursuant to this Agreement.

“**Component A5 Rate**” shall mean a rate per annum equal to four and eighty-four hundredths percent (4.84%).

“**Component A6**” shall mean that portion of the Loan in the amount of Six Hundred Thousand and No/100 Dollars (\$600,000.00) made by Lender to Borrower pursuant to this Agreement.

“**Component A6 Rate**” shall mean a rate per annum equal to four and eighty-four hundredths percent (4.84%).

“Component Rates” means, collectively, the Component A1 Rate, Component A2 Rate, Component A3 Rate, Component A4 Rate, Component A5 Rate and the Component A6 Rate.

“Components” shall mean, collectively, Component A1, Component A2, Component A3, Component A4, Component A5 and Component A6.

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

“Debt” shall mean the outstanding principal amount of the Loan together with all interest accrued and unpaid thereon (including, without limitation, any interest that would accrue on the outstanding principal amount of the Loan through and including the end of any applicable Interest Period) and all other sums (including the Yield Maintenance Premium) due to Lender in respect of the Loan under the Note, this Agreement, the Mortgage, the Environmental Indemnity, the Guaranty of Other Loans, any other Loan Document or any Guaranty Security Document.

“Debt Service” shall mean, with respect to any particular period of time, scheduled principal, if any, and interest payments under the Note.

“Debt Service Coverage Ratio” shall mean (a) with respect to the Individual Property and the Other Properties, the ratio of (i) Underwritable Cash Flow for the Individual Property and the Other Properties (to the extent then subject to the liens of the Other Mortgages) for the twelve (12) calendar month period immediately preceding the date of calculation to (ii) the projected Debt Service that would be due for the twelve (12) calendar month period immediately following such calculation under the Note and each “Note” (as defined in the Other Loan Agreements) (to the extent not theretofore prepaid) evidencing the Other Loans, assuming an annual loan constant of nine percent (9.0%) of the aggregate outstanding principal balance of the Loan and the Other Loans as of the date of such calculation and (b) with respect to the Individual Property, the ratio of (y) Underwritable Cash Flow for the Individual Property for the immediately preceding twelve (12) calendar month period to (z) the projected Debt Service that would be due with respect to the Allocated Loan Amount for the twelve (12) month period immediately following such calculation based upon an assumed loan constant for such period equal to nine percent (9%) of the Allocated Loan Amount with respect to the Individual Property as of the date of such calculation.

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

“Default Rate” shall mean, with respect to the Loan, a rate per annum equal to the lesser of (i) the maximum rate permitted by applicable law, or (ii) four percent (4.0%) above the Interest Rate.

“Defeasance Collateral Account” shall have the meaning set forth in Section 2.5.3.

“Defeased Note” shall have the meaning set forth in Section 2.5.3(a)(iii).

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

“Disclosure Document” shall have the meaning set forth in Section 9.2(a).

“Disclosure Document Date” shall have the meaning set forth in Section 9.1(c)(iv).

“Eligible Account” shall mean an identifiable and separate account which is separate from all other funds held by the holding institution that is either (a) an account or accounts maintained with a federal or state-chartered depository institution or trust company which complies with the definition of Eligible Institution or (b) a segregated trust account or accounts maintained with the corporate trust department of a federal or state chartered depository institution or trust company acting in its fiduciary capacity which, in the case of a 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 federal or state chartered depository institution or trust company insured by the Federal Deposit Insurance Corporation the short term unsecured debt obligations or commercial paper of which are rated at least A-1 by S&P, P-1 by Moody’s and F-1+ by Fitch in the case of accounts in which funds are held for thirty (30) days or less or, in the case of Letters of Credit or accounts in which funds are held for more than thirty (30) days, the long term unsecured debt obligations of which are rated at least “AA” by Fitch and S&P and “Aa2” by Moody’s.

“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.

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

“ERISA” shall have the meaning set forth in Section 3.1.8.

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

“Excess Release Amount” shall mean the amount by which the Release Amount exceeds the Allocated Loan Amount on the Total Defeasance Date.

“Exchange Act” shall have the meaning set forth in Section 9.2(a).

“Exchange Act Filing” shall have the meaning set forth in Section 9.1(c)(vi).

“Excusable Delay” shall mean a delay due to acts of God, governmental restrictions, stays, judgments, orders, decrees, enemy actions, civil commotion, fire, casualty, strikes, work stoppages, shortages of labor or materials or other causes beyond the reasonable control of Borrower, but lack of funds in and of itself shall not be deemed a cause beyond the control of Borrower.

“Extraordinary Expense” shall have the meaning set forth in Section 4.1.6(e).

“First Assignment of Leases” shall mean that certain first priority Assignment of Leases and Rents, dated as of the date hereof, executed and delivered by Borrower, as assignor, as security for its obligations under this Agreement and the Note and encumbering the Individual Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“First Mortgage” shall mean that certain first priority Deed of Trust and Security Agreement, dated as of the date hereof, executed and delivered by Borrower as security for its obligations under this Agreement and the Note, and encumbering the Individual Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Fiscal Year” shall mean each twelve month period commencing on January 1 and ending on December 31 during each year of the term of the Loan.

“Fitch” shall mean Fitch, Inc.

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

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

“Gross Revenue” shall mean all revenue, derived from the ownership and operation of the Individual Property from whatever source, including, but not limited to, Rents, but excluding sales, use and occupancy or other taxes on receipts required to be accounted for by Borrower to any Governmental Authority, non-recurring revenues as determined by Lender, proceeds from the sale or refinancing of the Individual Property, security deposits (except to the extent determined by Lender to be properly utilized to offset a loss of Rent), refunds and uncollectible accounts, proceeds of casualty insurance and Awards (other than business interruption or other loss of income insurance related to business interruption or loss of income for the period in question), and any disbursements to Borrower from the Reserve Funds or any other fund established by the Loan Documents.

“Ground Lease” shall mean any ground lease with Borrower as the tenant which now or at any time during the term of the Loan becomes a part of the collateral for the Loan in accordance with this Agreement, together with any amendments, restatements, supplements, extensions or other modifications thereto.

“Ground Rent” shall mean any rent, additional rent or other charge payable by the tenant under a Ground Lease.

“Ground Rent Funds” shall have the meaning set forth in Section 6.7.1.

“Guarantor” shall mean Wells Operating Partnership, L.P., a Delaware limited partnership.

“Guarantees” shall mean, collectively, the Guaranty and the Guaranty of Other Loans.

“Guaranty” shall mean that certain Guaranty of Recourse Carveouts of even date herewith executed by Guarantor for the benefit of Lender with respect to the Loan, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Guaranty of Other Loans” shall mean that certain Guaranty as to Other Loans executed by Borrower for the benefit of Lender of even date herewith, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Guaranty Security Documents” shall mean, collectively, the Second Mortgage, the Second Assignment of Leases, the Guaranty of Other Loans, the Subordination of Management Agreement and all other documents now or hereafter executed and/or delivered by Borrower in connection with, and/or as security for, the Guaranty of Other Loans.

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

“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, and (vi) all obligations of such Person under interest rate swaps, caps, floors, collars and other interest hedge agreements, in each case whether such Person is liable contingently or otherwise, as obligor, guarantor or otherwise, or in respect of which obligations such Person otherwise assures a creditor against loss.

“Indemnified Liabilities” shall have the meaning set forth in Section 11.13(b).

“Independent Director” shall have the meaning set forth in Section 3.1.24(p).

“Individual Property” shall mean that certain parcel of real property, the improvements thereon and all personal property owned by Borrower and encumbered by the Mortgage, together with all rights pertaining to such property and improvements, as more particularly described in the granting clauses of such Mortgages, and located at 675 Placentia Avenue, Brea, California.

“Insurance Funds” shall have the meaning set forth in Section 6.3.1.

“Insurance Premiums” shall have the meaning set forth in Section 5.1.1(b).

“Interest Period” shall mean for each interest period commencing June 7, 2004, the period commencing on (and including) the seventh (7th) day of each calendar month and ending on (and including) the sixth (6th) day of the following calendar month. Each Interest Period shall be a full month and shall not be shortened by reason of any payment of the Loan prior to the expiration of such Interest Period.

“Interest Rate” shall mean a rate per annum equal to the applicable Component Rate or the weighted average of all Component Rates, as the context requires.

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

“Lease Termination Fee” shall have the meaning set forth in Section 6.6.1.

“Lease Termination Rollover Funds” shall have the meaning set forth in Section 6.6.1.

“Legal Requirements” shall mean, with respect to Borrower and the Individual Property, all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting Borrower or the Individual Property or any part thereof for 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 the Individual Property or any part thereof, including, without limitation, any which may (i) require repairs, modifications or alterations in or to the Individual Property or any part thereof, or (ii) in any way limit the use and enjoyment thereof.

“Lender” shall mean Morgan Stanley Mortgage Capital Inc., a New York corporation, together with its successors and assigns and Participants.

“Lender Indemnitees” shall have the meaning set forth in Section 11.13(b).

“Letter of Credit” shall mean an irrevocable, unconditional, transferable, clean sight draft letter of credit acceptable to Lender and the Rating Agencies (either an evergreen letter of credit or one which does not expire until at least thirty (30) Business Days after the Maturity Date) in favor of Lender and entitling Lender to draw thereon in New York, New York, issued by a domestic Eligible Institution or the U.S. agency or branch of a foreign Eligible Institution which shall provide that if at any time the bank issuing any such Letter of Credit shall cease to be an Eligible Institution, Lender shall have the right immediately to draw down the same in full and hold the proceeds of such draw in accordance with the applicable provisions hereof.

“Liabilities” shall have the meaning set forth in Section 9.2(b).

“Lien” shall mean any mortgage, deed of trust, lien, pledge, hypothecation, assignment, security interest, or any other encumbrance, charge or transfer of, on or affecting the Individual Property or any portion thereof or any interest therein, or any interest in Borrower, including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and mechanic’s, materialmen’s and other similar liens and encumbrances.

“Loan” shall mean the loan in the original principal amount of Ten Million Seven Hundred Thousand and No/100 Dollars (\$10,700,000.00) made by Lender to Borrower pursuant to this Agreement, which loan is comprised of the Components.

“Loan Documents” shall mean, collectively, this Agreement, the Note, the First Mortgage, the First Assignment of Leases, the Cash Management Agreement, the Clearing Account Agreement, the Environmental Indemnity, the Guarantees, the Assignment of Management Agreement and any other document pertaining to the Individual Property as well as all other documents now or hereafter executed and/or delivered in connection with the Loan, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Major Lease” shall mean any Lease (i) covering more than 20,000 square feet at the Individual Property or (ii) made with a Tenant that is a Tenant under another Lease at the Individual Property or that is an Affiliate of any other Tenant under a Lease at the Individual Property, if the Leases together cover more than 20,000 square feet.

“Management Agreement” shall mean the management agreement entered into by and between Borrower and the Manager, pursuant to which the Manager is to provide management and other services with respect to the Individual Property.

“Manager” shall have the meaning set forth on Schedule X attached hereto or any other manager approved in accordance with the terms and conditions of the Loan Documents.

“Manager Termination Ratio” shall have the meaning set forth in Section 7.3.

“Material Agreements” shall mean each contract and agreement relating to the ownership, management, development, use, operation, leasing, maintenance, repair or improvement of the Individual Property, other than the Management Agreement and the Leases, under which there is an obligation of Borrower to pay more than \$1,000,000.00 per annum.

“Maturity Date” shall mean June 7, 2014 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; provided, however, (i) if a Total Defeasance Event occurs, the Maturity Date shall mean the Permitted Prepayment Date, or (ii) if an Additional Partial Defeasance Event occurs, the Maturity Date of the Defeased Note relating to such Additional Partial Defeasance Event shall mean the Permitted Prepayment Date.

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

“Minimum Disbursement Amount” shall mean Fifty Thousand and No/100 Dollars (\$50,000).

“Monthly Payment Date” shall mean the seventh (7th) day of every calendar month occurring during the term of the Loan.

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

“Morgan Stanley” shall have the meaning set forth in Section 9.2(b).

“Morgan Stanley Group” shall have the meaning set forth in Section 9.2(b).

“Mortgage” or “Mortgages” shall mean, individually or collectively, as the case may be, the First Mortgage and the Second Mortgage.

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

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

“Non-Consolidation Opinion” shall mean that certain bankruptcy nonconsolidation opinion letter dated the date hereof delivered by Alston & Bird LLP in connection with the Loan.

“Note” shall mean, collectively, Note A1, Note A2, Note A3, Note A4, Note A5 and Note A6. The definition of Note shall also include any Undeferred Notes, but shall not include any Deferred Notes.

“Note A1” shall mean that certain Promissory Note A1 dated the date hereof in the original principal amount of Component A1 from Borrower for the benefit of Lender, as the same may hereafter be amended, supplemented, split, restated, increased, extended or consolidated from time to time.

“Note A2” shall mean that certain Promissory Note A2 dated the date hereof in the original principal amount of Component A2 from Borrower for the benefit of Lender, as the same may hereafter be amended, supplemented, split, restated, increased, extended or consolidated from time to time.

“Note A3” shall mean that certain Promissory Note A3 dated the date hereof in the original principal amount of Component A3 from Borrower for the benefit of Lender, as the same may hereafter be amended, supplemented, split, restated, increased, extended or consolidated from time to time.

“Note A4” shall mean that certain Promissory Note A4 dated the date hereof in the original principal amount of Component A4 from Borrower for the benefit of Lender, as the same may hereafter be amended, supplemented, split, restated, increased, extended or consolidated from time to time.

“Note A5” shall mean that certain Promissory Note A5 dated the date hereof in the original principal amount of Component A5 from Borrower for the benefit of Lender, as the same may hereafter be amended, supplemented, split, restated, increased, extended or consolidated from time to time.

“Note A6” shall mean that certain Promissory Note A6 dated the date hereof in the original principal amount of Component A6 from Borrower for the benefit of Lender, as the same may hereafter be amended, supplemented, split, restated, increased, extended or consolidated from time to time.

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

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

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

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

“Operating Expenses” shall mean all costs and expenses relating to the operation, maintenance and management of the Individual Property, including, without limitation, utilities, repairs and maintenance, insurance, property taxes and assessments,

advertising expenses, payroll and related taxes, equipment lease payments, a management fee equal to the greater of three percent (3%) of annual rents or the actual management fee, \$0.25 per rentable square foot of the Improvements per annum with respect to capital costs and \$1.25 per rentable square foot of the Improvements per annum with respect to tenant rollover expenses, but excluding actual Capital Expenditures, depreciation, amortization, Extraordinary Expenses and deposits required to be made to the Reserve Funds; provided, however such costs and expenses shall be subject to adjustment by Lender to normalize such costs and expenses.

“Other Assignment of Leases” shall mean, individually and collectively, the Assignment of Leases (as defined in the Other Loan Agreements).

“Other Assignments of Management Agreements” shall mean, individually and collectively, the Assignments of Management Agreements (as defined in the Other Loan Agreements).

“Other Borrowers” shall mean, individually and collectively, the borrowers under any or all of the Other Loans as more particularly set forth on Schedule IX attached hereto.

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

“Other Guarantees” shall mean, individually and collectively, each “Guaranty of Other Loans” (as defined in the other Loan Agreements) executed by each of the Other Borrowers, to the extent applicable.

“Other Lenders” shall mean Morgan Stanley Mortgage Capital Inc., a New York corporation, as the lender under the Other Loan Agreements, together with its successors and assigns.

“Other Loan Agreements” shall mean, individually and collectively, the loan agreements dated as of the date hereof pursuant to which Lender has made the Other Loans to the Other Borrowers, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Other Loan Documents” shall mean, individually and collectively, the “Loan Documents” (as defined in the Other Loan Agreements), including, without limitation, the Other Loan Agreements.

“Other Loans” shall mean, individually and collectively, those loans made by the Other Lender to the Other Borrowers contemporaneously herewith, as more particularly set forth on Schedule IX attached hereto.

“Other Mortgages” shall mean, individually and collectively, the Mortgages (as defined in the Other Loan Agreements) encumbering the Other Properties.

“Other Properties” shall mean, individually and collectively, the properties owned by the Other Borrowers, as more particularly set forth on Schedule IX attached hereto.

“Otherwise Rated Insurer” shall have the meaning set forth in Section 5.1.2.

“Participant” shall mean any Person that has purchased a participation in this Loan Agreement pursuant to Section 11.27.

“Permitted Encumbrances” shall mean, collectively, (i) the Liens and security interests created by the Loan Documents and the Guaranty Security Documents, (ii) all Liens, encumbrances and other matters disclosed in the Title Insurance Policy, (iii) Liens, if any, for Taxes imposed by any Governmental Authority not yet due or delinquent, (iv) such other title and survey exceptions as Lender has approved or may approve in writing in Lender’s sole discretion, and (v) any Leases permitted hereunder.

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

“Permitted Prepayment Date” shall mean March 7, 2014.

“Permitted Transferee” shall mean a corporation, partnership or limited liability company (i) acceptable to Lender in its reasonable discretion based on then current underwriting and credit requirements for commercial mortgage loans in the secondary market secured by similar properties, (ii) that qualifies as a single purpose, bankruptcy remote entity under criteria established by the Rating Agencies and (iii) whose counsel has delivered to Lender a non-consolidation opinion acceptable to Lender and the Rating Agencies in their sole discretion.

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

“Plan Assets Regulation” shall have the meaning set forth in Section 3.1.8.

“Policies” shall have the meaning specified in Section 5.1.1(b).

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

“Prescribed Laws” shall mean, collectively, (a) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56) (the USA PATRIOT Act), (b) Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, (c) the International Emergency Economic Power Act, 50 U.S.C. §1701 et seq. and (d) all other Legal Requirements relating to money laundering or terrorism.

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

“Rating Agency Confirmation” shall mean a written affirmation from each of the Rating Agencies 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.

“REA” shall mean, collectively, as the same may be amended, restated, supplemented or otherwise modified from time to time, those certain agreements more specifically described on Schedule VII attached hereto and made a part hereof.

“Registration Statement” shall have the meaning set forth in Section 9.2(b).

“REIT” shall mean Wells Real Estate Investment Trust, Inc., a Maryland corporation.

“Related Party” or **“Related Parties”** shall have the meaning set forth in Section 3.1.26.

“Release Amount” shall mean (a) in connection with a Total Defeasance Event (as defined herein and in each of the Other Loan Agreements) of the Loan and all the Other Loans, an amount equal to one hundred percent (100%) of the Allocated Loan Amount, and (b) in connection with a Total Defeasance Event (as defined herein and in each of the Other Loan Agreements) of the Loan and less than all of the Other Loans, an amount equal to one hundred twenty percent (120%) of the Allocated Loan Amount; provided, however, that the Borrower shall be permitted to increase the Release Amount under (b) above in order to satisfy the debt service coverage ratio tests set forth in Section 2.5.1(a)(xii) hereof or to satisfy the debt service coverage ratio tests for a “Total Defeasance Event” or “Partial Defeasance Event” as defined in and as set forth in Sections 2.5.1(a)(xiii) and 2.5.2(a)(vii) of the Other Loan Agreements (if applicable).

“Release Date” shall mean the date that is two (2) years from the “startup day” (within the meaning of Section 860G(a)(9) of the Code) of the REMIC Trust established in connection with the last Securitization involving any portion of this Loan.

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

“Rent Deficiency” shall have the meaning set forth in Section 6.6.2.

“Rents” shall mean all rents, moneys payable as damages or in lieu of rent, revenues, deposits (including, without limitation, security, utility and other deposits), accounts,

cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrowers or its agents or employees from any and all sources arising from or attributable to the Individual Property.

“Replacement Lease” shall have the meaning set forth in Section 6.6.2.

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

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

“Reserve Funds” shall mean, collectively, the Capital Expenditure Funds, the Insurance Funds, the Tax Funds, the Required Repair Funds, the Rollover Funds and to the extent required hereunder, Ground Rent Funds.

“Restoration” shall have the meaning set forth in Section 5.2.1.

“Restoration Threshold” shall mean ten percent (10%) of the Allocated Loan Amount.

“Rollover Amount” shall mean, an annual amount equal to the product of (a) \$1.25 multiplied by (b) the number of square feet in the Improvements at the Individual Property.

“Rollover Funds” shall have the meaning set forth in Section 6.5.1.

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

“Scheduled Defeasance Payments” shall mean (a) in connection with a Total Defeasance Event, 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 Maturity Date (including the outstanding principal balance on the Note as of the Maturity Date), and (b) in connection with an Additional Partial Defeasance Event, scheduled payments of interest and principal under the Defeased Note created in connection with such Additional Partial Defeasance Event for all Monthly Payment Dates occurring after the Defeasance Date and up to and including the Maturity Date (including the outstanding principal balance on such Defeased Note as of the Maturity Date), and, in each case, all payments required after the Defeasance Date under the Loan Documents for servicing fees and other similar charges.

“Second Assignment of Leases” shall mean that certain second priority Second Assignment of Leases and Rents, dated as of the date hereof, executed and delivered by Borrower, as assignor, to Lender, as assignee, as security for Borrower’s obligations under the Guaranty of Other Loans and encumbering the Individual Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Second Mortgage” shall mean that certain second priority Second Deed of Trust and Security Agreement, dated as of the date hereof, executed and delivered by Borrower as security for Borrower’s obligations under the Guaranty of Other Loans and encumbering the Individual Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Secondary Market Transaction” shall have the meaning set forth in Section 9.1(a).

“Securities” shall have the meaning set forth in Section 9.1(a).

“Securities Act” shall have the meaning set forth in Section 9.2(a).

“Securitization” shall have the meaning set forth in Section 9.1(a).

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

“Servicer” shall have the meaning set forth in Section 11.24.

“Servicing Agreement” shall have the meaning set forth in Section 11.24.

“Severed Loan Documents” shall have the meaning set forth in Section 10.2(c).

“SPC Party” shall have the meaning set forth in Section 3.1.24(o).

“Standard Statement” shall have the meaning set forth in Section 9.1(c).

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

“Subordination of Management Agreement” shall mean, with respect to the Individual Property, that certain Subordination of Management Agreement and Management Fees dated the date hereof among the Borrower, Manager and Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Substitute Property” and **“Substitute Properties”** shall have the meaning set forth in Section 2.6.

“Substitute Property Loan Amount” shall have the meaning set forth in Section 2.6(k).

“Substituted Property” and **“Substituted Properties”** shall have the meaning set forth in Section 2.6.

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

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

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

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

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

“Termination Space” shall have the meaning set forth in Section 6.6.1.

“Terrorism Insurance Premium Limit” shall mean the aggregate amount of \$500,000 which shall be reasonably allocated by Borrowers and the Other Borrowers to the Individual Property and the Other Properties.

“Threshold DSCR” shall mean 1:65 to 1:00.

“Title Insurance Policies” shall mean an ALTA mortgagee title insurance policy in the form acceptable to Lender issued with respect to the Individual Property and insuring the lien of the Mortgage encumbering the Individual Property.

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

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

“Total Defeasance Event” shall have the meaning set forth in Section 2.5.1(a).

“Treasury Rate” shall mean, as of the Maturity Date, 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 noncallable 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.

“TRIA” shall mean the Terrorism Risk Insurance Act of 2002, Public Law 107-297.

“Trigger Event” shall mean the occurrence of either of the following: (a) an Event of Default or (b) Lender’s determination that the Debt Service Coverage Ratio with respect to the Individual Property and the Other Properties combined is less than 1.50 to 1.00.

“Trigger Period” shall mean the period commencing on the date upon which a Trigger Event occurs and ending on the date that Lender determines that (a) if the Trigger Event is of the type described in clause (a) of the definition thereof, the Event of Default that such Trigger Event relates to has been cured and no longer exists, or (b) if the Trigger Event is of the type described in clause (b) of the definition thereof and provided no Event of Default has occurred and is continuing, the Debt Service Coverage Ratio with respect to the Individual Property and the Other Properties combined, as calculated by Lender for each of the immediately preceding six (6) calendar months, is equal to or greater than 1.50 to 1.00.

“Trustee” shall mean any trustee holding the Loan in a Securitization.

“UCC” or **“Uniform Commercial Code”** shall mean the Uniform Commercial Code as in effect in the applicable State or Commonwealth in which the Individual Property is located; provided, however, that when used in connection with the Accounts, UCC or Uniform Commercial Code shall mean the Uniform Commercial Code as in effect in the state of New York.

“Undeferred Note” shall have the meaning set forth in Section 2.5.3(a)(iii) hereof.

“Underwritable Cash Flow” shall mean the excess of Gross Revenue over Operating Expenses. Lender’s calculation of Underwritable Cash Flow (including determination of items that do not qualify as Gross Revenue or Operating Expenses) shall be calculated by Lender based upon Lender’s determination of Rating Agency criteria and shall be final absent manifest error.

“Underwriter Group” shall have the meaning set forth in Section 9.2(b).

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

“U.S. Obligations” shall mean direct full faith and credit obligations of the United States of America that are not subject to prepayment, call or early redemption.

“Yield Maintenance Premium” shall mean an amount equal to the greater of: (i) one percent (1%) of the principal amount of the Loan being prepaid or (ii) the present value as of the Prepayment Date of the Calculated Payments from the Prepayment Date through the Maturity Date determined by discounting such payments at the Discount Rate. As used in this definition, the term **“Prepayment Date”** shall mean the date on which prepayment is made. As used in this definition, the term **“Calculated Payments”** shall mean the monthly payments of interest only which would be due based on the principal amount of the Loan being prepaid on the Prepayment Date and assuming an interest rate per annum equal to the difference (if such difference is greater than zero) between (y) the Interest Rate and (z) the Yield Maintenance Treasury Rate. As used in this definition, the term **“Discount Rate”** shall mean the rate which, when compounded monthly, is equivalent to the Yield Maintenance Treasury Rate, when

compounded semi-annually. As used in this definition, the term “Yield Maintenance Treasury Rate” shall mean the yield calculated by Lender by the linear interpolation of the yields, as reported in the Federal Reserve Statistical Release H.15-Selected Interest Rates under the heading U.S. Government Securities/Treasury Constant Maturities for the week ending prior to the Prepayment Date, of U.S. Treasury Constant Maturities with maturity dates (one longer or one shorter) most nearly approximating the Maturity Date. In the event Release H.15 is no longer published, Lender shall select a comparable publication to determine the Yield Maintenance Treasury Rate. In no event, however, shall Lender be required to reinvest any prepayment proceeds in U.S. Treasury obligations or otherwise.

Section 1.2 Principles of Construction.

All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined.

II. THE LOAN

Section 2.1 The Loan.

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

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

2.1.3 The Note. The Loan shall be evidenced by the Note in the aggregate stated principal amount of Ten Million Seven Hundred Thousand and No/100 Dollars (\$ 10,700,000.00) and shall be repaid in accordance with the terms of this Agreement and the Note.

2.1.4 Use of Proceeds. Borrower shall use proceeds of the Loan to (i) pay and discharge any existing loans relating to the Individual Property, (ii) pay all past due Basic Carrying Costs, if any, in respect of the Individual Property, (iii) deposit the Reserve Funds, (iv) pay costs and expenses incurred in connection with the closing of the Loan, as approved by Lender, (v) fund any working capital requirements of the Individual Property, as approved by Lender and (vi) retain the balance, if any.

2.1.5 Modification of the Components. Lender shall have the right, at any time prior to a Securitization, to modify the Loan in order to create additional Components, reduce the number of Components, reallocate the principal balances of the Components or eliminate the Component structure of the Loan provided that (a) the total principal balance of the Loan as of the effective date of such modification equals the outstanding principal balance of the

Loan immediately prior to such modification, (b) the weighted average interest rate of all such Components on the date created shall equal the weighted average interest rate that was applicable to the Components immediately prior to the modification of such Components and (c) any voluntary or required prepayment of the Loan shall be applied, provided no Event of Default has occurred and is continuing, on a prorata basis as to all Components. Lender shall have the right to modify the Components in accordance with this Section 2.1.5 upon notice to Borrower in which event such modification shall then be deemed effective. If requested by Lender, Borrower shall promptly execute an amendment to this Agreement, the Note, the Loan Documents and the Guaranty Security Documents to evidence such modification. Borrower shall, at Lender's expense, cooperate with all reasonable requests of Lender in order to establish the "component" notes and shall execute and deliver such documents as shall reasonably be required by Lender and any Rating Agency in connection therewith.

Section 2.2 Interest Rate.

2.2.1 Interest Rate. Interest on the outstanding principal balance of the Loan shall accrue from the Closing Date up to but excluding the Maturity Date at the Interest Rate.

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

2.2.3 Interest Calculation. Interest on the outstanding principal balance of each Component of the Loan shall be calculated by multiplying (a) the actual number of days elapsed in the period for which the calculation is being made by (b) a daily rate based on a three hundred sixty (360) day year (that is, the Interest Rate or the Default Rate, as then applicable, expressed as an annual rate divided by 360) by (c) the outstanding principal balance. The accrual period for calculating interest due on each Monthly Payment Date shall be the Interest Period immediately prior to such Monthly Payment Date.

2.2.4 Usury Savings. This Agreement and the other Loan Documents are subject to the express condition that at no time shall Borrower be required to pay interest on the principal balance of the Loan at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If by the terms of this Agreement or the other Loan Documents, Borrower is at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of the Maximum Legal Rate, the Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under the Loan, shall, to the extent permitted by 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 2.3 Loan Payments.

2.3.1 Payment Before Maturity Date Borrower shall make a payment to Lender of interest only on the Closing Date for the period from the Closing Date through June 6, 2004. On the Monthly Payment Date occurring in July 2004 and on each Monthly Payment Date thereafter to and including the Maturity Date, Borrower shall make a payment to Lender of interest accruing hereunder during the entire Interest Period in which such Monthly Payment Date occurs, calculated in the manner set forth herein. Provided no Event of Default shall have occurred, each payment shall be applied (a) first to accrued and unpaid interest on all of the Components on a pari passu basis and (b) on the Maturity Date, to the principal balance of the Components in the following order of priority: pro rata and pari passu according to the principal amount of Note A1, Note A2, Note A3, Note A4, Note A5 and Note A6.

2.3.2 Payment on Maturity Date. 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 Mortgages and the other Loan Documents.

2.3.3 Late Payment Charge. If any principal, interest or any other sum due under the Loan Documents, other than the payment of principal due on the Maturity Date, is not paid by Borrower on the date on which it is 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 Mortgages and the other Loan Documents.

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

(b) Whenever any payment to be made hereunder or under any other Loan Document shall be stated to be due on a day which is not a Business Day, the due date thereof shall be the preceding Business Day.

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

Section 2.4 Prepayments.

2.4.1 Voluntary Prepayments. Except as otherwise provided herein, Borrower shall not have the right to prepay the Loan in whole or in part. On and after the Permitted Prepayment Date, Borrower may, provided no Event of Default has occurred, at its option and upon ten (10) 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 only on any date without payment of the Yield Maintenance Premium. 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 and such amounts (i.e., principal and interest prepaid by Borrower) shall be held by Lender as collateral security for the Loan in an interest bearing account at an Eligible Institution, with interest accruing on such amounts to the benefit of Borrower; such amounts prepaid shall be applied to the Loan on the next Monthly Payment Date, with any interest on such funds paid to Borrower on such date provided no Event of Default then exists.

2.4.2 Mandatory Prepayments. On each date on which Lender actually receives a distribution of Net Proceeds, and if Lender does not make such Net Proceeds available to Borrower for Restoration of the Individual Property, Borrower shall, at Lender's option, prepay the outstanding principal balance of the Note in an amount equal to one hundred percent (100%) of such Net Proceeds together with interest that would have accrued on such amounts through the next Monthly Payment Date. No Yield Maintenance Premium shall be due in connection with any prepayment made pursuant to this Section 2.4.2. Any prepayment received by Lender pursuant to this Section 2.4.2 on a date other than a Monthly Payment Date shall be held by Lender as collateral security for the Loan in an interest bearing account, with such interest accruing to the benefit of Borrower, and shall be applied by Lender on the next Monthly Payment Date. Any prepayment made under this Section 2.4.2(a) shall be applied to the Allocated Loan Amount which will be reduced in an amount equal to any such prepayment made pursuant to this Section 2.4.2 and (b) shall be applied to the outstanding principal balance of the Components in the following order of priority: pro rata and pari passu according to the principal balance of Note A1, Note A2, Note A3, Note A4, Note A5 and Note A6.

2.4.3 Prepayments After Default. If after 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 set forth in Section 2.4.1 and Borrower, such purchaser at foreclosure or other Person shall pay the Yield Maintenance Premium, in addition to the outstanding principal balance, all accrued and unpaid interest and other amounts payable under the Loan Documents. Any amounts received by Lender while any Event of Default exists may be applied by Lender toward the payment of interest and/or principal of any of the Components and/or any other amounts due under the Loan Documents and the Guaranty Security Documents in such order, priority and proportions as Lender in its sole discretion shall deem proper.

Section 2.5 Defeasance

2.5.1 Total Defeasance. (a) Provided no Event of Default shall have occurred and remain uncured, Borrower shall have the right at any time after the Release Date and prior to the Permitted Prepayment Date, to voluntarily defease the entire Loan and obtain a release of the lien of the Mortgage encumbering the Individual Property by providing Lender with the Total Defeasance Collateral (hereinafter, a “Total Defeasance Event”), subject to the satisfaction of the following conditions precedent:

(i) Borrower shall provide Lender not less than thirty (30) days notice (or such shorter period of time if permitted by Lender in its sole discretion) specifying a date (the “Total Defeasance Date”) on which the Total Defeasance Event is to occur;

(ii) Borrower shall pay to Lender (A) all payments of principal and interest due on the Loan to and including the Total Defeasance Date and (B) all other sums, then due under the Note, this Agreement, the Mortgage and the other Loan Documents;

(iii) Borrower shall deposit the Total Defeasance Collateral into the Defeasance Collateral Account and otherwise comply with the provisions of Sections 2.5.4 and 2.5.5 hereof;

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

(v) Borrower shall deliver to Lender an opinion of counsel for Borrower that is standard in commercial lending transactions and subject only to customary qualifications, assumptions and exceptions opining, among other things, that (A) Lender has a legal and valid perfected first priority security interest in the Defeasance Collateral Account and the Total Defeasance Collateral, (B) if a Securitization has occurred, the REMIC Trust formed pursuant to such Securitization will not fail to maintain its status as a “real estate mortgage investment conduit” within the meaning of Section 860D of the Code as a result of a Total Defeasance Event pursuant to this Section 2.5.1, (C) the Total Defeasance Event will not result in a deemed exchange for purposes of the Code and will not adversely affect the status of the Note as indebtedness for federal income tax purposes, (D) delivery of the Total Defeasance Collateral and the grant of a security interest therein to Lender shall not constitute an avoidable preference under Section 547 of the Bankruptcy Code or applicable state law and (E) a non-consolidation opinion with respect to the Successor Borrower;

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

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- (vii) Borrower shall deliver an Officer's Certificate certifying that the requirements set forth in this Section 2.5.1 have been satisfied;
- (viii) Borrower shall deliver a certificate of a "big four" or other nationally recognized public accounting firm acceptable to Lender certifying that the Total Defeasance Collateral will generate monthly amounts equal to or greater than the Scheduled Defeasance Payments;
- (ix) Borrower shall deliver such other certificates, opinions, documents and instruments as Lender may reasonably request;
- (x) Borrower shall pay all costs and expenses of Lender incurred in connection with the Total Defeasance Event, including Lender's reasonable attorneys' fees and expenses and Rating Agency fees and expenses;
- (xi) If all of the Other Borrowers have not elected to voluntarily defease the entire amount of all of the Other Loans and obtain a release of the lien of the Other Mortgages encumbering all the Other Properties, or the Other Borrowers have not satisfied all of the conditions for a "Total Defeasance Event" (as defined in the Other Loan Agreements) set forth in Section 2.5.1 of the Other Loan Agreements, then Borrower shall cause the Other Borrowers to deposit with the Other Lenders the Additional Partial Defeasance Collateral into the "Defeasance Collateral Account" (as defined in the Other Loan Agreements) and shall cause the Other Borrowers to satisfy the conditions set forth in Section 2.5.3 of the Other Loan Agreements. Borrower acknowledges and agrees that Lender and the Other Lenders shall determine, in their reasonable discretion (after consultation with the Borrower), which of the Other Borrowers that are required to cause to comply with this subsection (xii) and which of the Other Loans shall be affected;
- (xii) If all of the Other Borrowers have not elected to voluntarily defease the entire amount of all of the Other Loans and obtain a release of the lien of the Other Mortgages encumbering all the Other Properties, or the Other Borrowers have not satisfied all of the conditions for a "Total Defeasance Event" (as defined in the Other Loan Agreements) set forth in Section 2.5.1 of the Other Loan Agreements, then, after giving effect to the Total Defeasance of the Loan, the Debt Service Coverage Ratio with respect to the remaining Other Properties shall not be less than the greater of (A) the Debt Service Coverage Ratio of the Individual Property encumbered by the Mortgage and the Other Properties encumbered by the Other Mortgages prior to the release and (B) the Threshold DSCR; and
- (xiii) With respect to the matters referred to in clause (xii), Borrower shall have delivered to Lender, and the Rating Agencies shall have received from Borrower, (A) statements of the Underwritable Cash Flow and Debt Service (both on a consolidated basis and separately for the Individual Property or Other Properties to be released) for the applicable measuring period and (B) based on the foregoing statements of Underwritable Cash Flow and Debt Service, calculations of the Debt Service Coverage Ratio both with and without giving effect to the proposed Total Defeasance Event and

any "Total Defeasance Event" under any of the Other Loan Agreements, and (C) calculations of the ratios referred to in such clause (xiii), accompanied by an Officer's Certificate stating that such statements, calculations and information are true, correct and complete in all material respects.

(b) If Borrower has elected to defease the Note and the requirements of this Section 2.5 have been satisfied, the Individual Property shall be released from the lien of the First Mortgage and security agreements or pledges and the Second Mortgage and the other security agreements or pledges entered into as, or in connection with, the other Guaranty Security Documents, and the Total Defeasance Collateral pledged pursuant to the Security Agreement shall be the sole source of collateral securing the Note. In connection with the release of the Liens, Borrower shall submit to Lender, not less than thirty (30) days prior to the Defeasance Date (or such shorter time as is acceptable to Lender in its sole discretion), a release of Lien (and related Loan Documents) for execution by Lender. Such release shall be in a form appropriate in the jurisdiction in which the Individual Property is located and that contains 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 Legal Requirements, and (ii) will effect such releases in accordance with the terms of this Agreement. Borrower shall pay all costs, taxes and expenses associated with the releases of the lien of each Mortgage, including Lender's reasonable attorneys' fees. Except as set forth in this Section 2.5, 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 any Mortgage on the Individual Property.

2.5.2 Intentionally Deleted.

2.5.3 Additional Partial Defeasance Collateral. (a) If (1) a "Total Defeasance Event" (as defined in the Other Loan Documents) or a "Partial Defeasance Event" (as defined in the Other Loan Agreements) has occurred, and (2) the Lender and the Other Lenders have determined, in their reasonable discretion (after consultation with the Borrower and the Other Borrowers) that all or a portion of the "Excess Release Amount" (as defined in the Other Loan Agreements) with respect to the Other Loans that are being defeased shall be allocated to one or more Individual Properties and subject to the terms and provisions of this Section 2.5.3 (an "Additional Partial Defeasance Event"), then Borrower shall satisfy each of the following provisions:

(i) Borrower shall pay to Lender (A) all payments of principal and interest due on the Loan to and including the Monthly Payment Date on which the "Total Defeasance Event" (as defined in the Other Loan Agreements) or the "Partial Defeasance Event" (as defined in the Other Loan Agreements) of the applicable Other Loan is to occur (the "Additional Partial Defeasance Date") and (B) all other sums then due under the Note, this Agreement, the Mortgage and the other Loan Documents with respect to the Individual Property;

(ii) Borrower shall deposit the Additional Partial Defeasance Collateral relating to the "Excess Release Amount" (as defined in the Other Loan

Agreement pursuant to which the Other Loans were defeased) which Lender and the Other Lenders have allocated to the Individual Property into the Defeasance Collateral Account and otherwise comply with the provisions of Sections 2.5.4 and 2.5.5 hereof;

(iii) Borrower shall prepare all necessary documents to modify this Agreement and to amend and restate the Note and issue two substitute notes (or, if the Note consists of separate component notes, two groups of component notes), one note (or one group of component notes) having an aggregate principal balance equal to the portion of the "Excess Release Amount" (as defined in the Other Loan Agreement pursuant to which the Other Loans were defeased) that is allocated to the Loan (the "Defeased Note"), and the other note (or group of component notes) having an aggregate principal balance equal to the outstanding principal balance of the Note immediately prior to the Additional Partial Defeasance Event minus the principal amount of the Defeased Note executed in connection with such Additional Partial Defeasance Event (the "Undefeased Note"). The Defeased Note and the Undefeased Note shall be cross defaulted and cross collateralized unless the Rating Agencies shall require otherwise or unless a Successor Borrower that is not an Affiliate of the Borrower is established pursuant to Section 2.5.4. A Defeased Note may not be the subject of any further defeasance;

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

(v) Borrower shall deliver to Lender an opinion of counsel for Borrower that is standard in commercial lending transactions and subject only to customary qualifications, assumptions and exceptions opining, among other things, that (A) Lender has a legal and valid perfected first priority security interest in the Defeasance Collateral Account and the Additional Partial Defeasance Collateral, (B) if a Securitization has occurred, the REMIC Trust formed pursuant to such Securitization will not fail to maintain its status as a "real estate mortgage investment conduit" within the meaning of Section 860D of the Code as a result of the Additional Partial Defeasance Event pursuant to this Section 2.5.3, (C) the Additional Partial Defeasance Event will not result in a deemed exchange for purposes of the Code and will not adversely affect the status of the Defeased Note and the Undefeased Note as indebtedness for federal income tax purposes, (D) delivery of the Additional Partial Defeasance Collateral and the grant of a security interest therein to Lender shall not constitute an avoidable preference under Section 547 of the Bankruptcy Code or applicable state law and (E) a non-consolidation opinion with respect to the Successor Borrower;

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

(vii) Borrower shall deliver to Lender a certificate of a "Big Four" or other nationally recognized public accounting firm acceptable to Lender certifying that the Additional Partial Defeasance Collateral will generate monthly amounts equal to or greater than the Scheduled Defeasance Payments;

(viii) Borrower shall deliver to Lender an Officer's Certificate certifying that the requirements set forth in this Section 2.5.3(a) have been satisfied; and

(ix) Borrower shall pay all costs and expenses of Lender incurred in connection with the Additional Partial Defeasance Event, including Lender's reasonable attorneys' fees and expenses.

(b) No defeasance of all or any portion of the Note pursuant to this Section 2.5.3 shall cause, give rise to a right to require, or otherwise result in, the release of the Lien of the First Mortgage or the Second Mortgage.

2.5.4 Defeasance Collateral Account. On or before the date on which Borrower delivers the Total Defeasance Collateral or Additional Partial Defeasance Collateral, Borrower shall open at any Eligible Institution the defeasance collateral account (the "Defeasance Collateral Account") which shall at all times be an Eligible Account. The Defeasance Collateral Account shall contain only (i) Total Defeasance Collateral or Additional Partial Defeasance Collateral, and (ii) cash from interest and principal paid on the Total Defeasance Collateral or Additional Partial Defeasance Collateral. All cash from interest and principal payments paid on the Total Defeasance Collateral or Additional Partial Defeasance Collateral shall be paid over to Lender on each Monthly Payment Date and applied to accrued and unpaid interest and on the Maturity Date, shall be first applied to accrued and unpaid interest and then to principal. Any cash from interest and principal paid on the Total Defeasance Collateral or Additional Partial Defeasance Collateral not needed to pay the Scheduled Defeasance Payments shall be retained in the Defeasance Collateral Account and applied to payments due on subsequent Monthly Payment Dates or released to Borrower upon the payment and satisfaction in full of the Debt. Borrower shall cause the Eligible Institution at which the Total Defeasance Collateral or Additional Partial Defeasance Collateral is deposited to enter an agreement with Borrower and Lender, satisfactory to Lender in its reasonable discretion, pursuant to which such Eligible Institution shall agree to hold and distribute the Total Defeasance Collateral or Additional Partial Defeasance Collateral in accordance with this Agreement. Borrower or Successor Borrower, as applicable, shall be the owner of the Defeasance Collateral Account and shall report all income accrued on Total Defeasance Collateral or Additional Partial 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.

2.5.5 Successor Borrower. In connection with a Total Defeasance Event or Additional Partial Defeasance Event under this Section 2.5, Borrower shall, if required by the Rating Agencies or if Borrower elects to do so, establish or designate a successor entity (the "Successor Borrower") which shall be a single purpose bankruptcy remote entity and which shall be approved by the Rating Agencies. Any such Successor Borrower may, at Borrower's option, be an Affiliate of the Borrower unless the Rating Agencies shall require otherwise. Borrower shall transfer and assign all obligations, rights and duties under and to the Note or the Defeased Note, as applicable, together with the Total Defeasance Collateral or Additional Partial Defeasance Collateral, as applicable, to such Successor Borrower. Such Successor Borrower shall assume the obligations under the Note or the Defeased Note, as applicable, and the Security

Agreement and Borrower that owned the Individual Property released pursuant to Section 2.5 hereof shall be relieved of its obligations under such documents except to the extent of any cross-collateralization required hereunder. 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, as applicable, and the Security Agreement. Borrower shall pay all costs and expenses incurred by Lender, including Lender's attorney's fees and expenses, incurred in connection therewith.

Section 2.6 Substitution of Properties

Subject to the terms and conditions set forth in this Section 2.6, on and after the Release Date, Borrower may obtain a release of the Lien of the Mortgage (and the Loan Documents) encumbering the Individual Property (the "Substituted Property"), by substituting therefor one or more properties of like kind and quality acquired by Borrower (individually, a "Substitute Property" and collectively, the "Substitute Properties"), provided that no such substitution may occur after the date that is eight (8) years after the date of this Agreement. In addition, any such substitution shall be subject, in each case, to the satisfaction of the following conditions precedent:

(a) Lender shall have received at least thirty (30) days prior written notice requesting the substitution and identifying the Substitute Property and the Substituted Property;

(b) The Substitute Property must be a property as to which Borrower will hold indefeasible fee or ground leasehold title free and clear of any lien or other encumbrance except for Permitted Encumbrances, Leases and easements, restrictive covenants and other title exceptions which do not have a material adverse effect on the utility or value of such property for its current use.

(c) Lender and the Rating Agencies shall have received a copy of a deed conveying all of Borrower's right, title and interest in and to the Substituted Property to an entity other than Borrower or an Affiliate of Borrower (such transferee, the "Buyer") in an arms' length transaction together with a copy of a fully executed contract of sale between the Buyer and the Borrower which contract of sale (i) at the time of substitution, is not subject to any unsatisfied contingencies, except for the payment of the purchase price by the purchaser and the delivery of title by Borrower and (ii) evidence that any good-faith deposit required under such contract of sale has been deposited into escrow.

(d) Lender and the applicable Rating Agencies shall have received an MAI appraisal of the Substitute Property dated no more than thirty (30) days prior to the substitution by an appraiser acceptable to such Rating Agencies, indicating an appraised value of the Substitute Property that is at least equal to the greater of the appraised value of the Substituted Property determined by Lender as of the date hereof or determined by an Independent Appraiser within thirty (30) days of the encumbrance of the Substitute Property by the related Mortgage.

(e) The Debt Service Coverage Ratio for the Substitute Property shall be equal to the greater of (i) the Threshold DSCR and (ii) the Debt Service Coverage Ratio, as determined by Lender in its sole and absolute discretion, immediately prior to such substitution.

(f) The Underwritten Cash Flow for the Substitute Property either (i) does not show a successive decrease over the three (3) years immediately prior to the date of substitution, or (ii) if the Substitute Property has been substantially renovated within such three (3) year period, the Underwritten Cash Flow shall not show a successive decrease for such a period of not less than twelve (12) months.

(g) The Underwritten Cash Flow for the twelve (12) month period immediately preceding the substitution for the Substitute Property shall not be less than the Underwritten Cash Flow for the twelve (12) month period immediately preceding the substitution for the Substituted Property.

(h) The Person transferring the Substitute Property is solvent and the Substitute Property was transferred to Borrower in an arm's length transaction, which may include a transfer by an Affiliate of Borrower to Borrower as long as Borrower is giving a reasonably equivalent value (as determined by the appraisal obtained pursuant to clause (d) above) for the Substitute Property.

(i) If the Loan is part of a Securitization, Lender shall have received a Rating Agency Confirmation with respect to such substitution.

(j) No Event of Default shall have occurred and be continuing and Lender and the Rating Agencies shall have received an Officer's Certificate certifying as to such absence of an Event of Default.

(k) The Borrower shall have executed, acknowledged and delivered to Lender (A) a First Mortgage and a Second Mortgage, a First Assignment of Leases and a Second Assignment of Leases and UCC Financing Statements with respect to the Substitute Property, together with a letter from Borrower countersigned by a title insurance company acknowledging receipt of such documents and agreeing to record or file, as applicable, such documents in the real estate records for the county in which the Substitute Property is located and to file one of the UCC-1 Financing Statements in the office of the Secretary of State of the state in which Borrower is organized, 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 required under local law), subject only to the Permitted Encumbrances and such other liens as are permitted pursuant to the Loan Documents, (B) an Environmental Indemnity Agreement with respect to the Substitute Property, and (C) written confirmation and acceptance from each Guarantor and the Other Borrowers of such substitution and a reaffirmation by such Guarantor and Other Borrowers with respect to guarantees executed by such Guarantor and Other Borrowers which relate to the Loan. The Mortgage, UCC-1 Financing Statements and Environmental Indemnity Agreement 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 the Substitute Property as the Individual Property and such modifications reflecting the laws of the state in which the Substitute Property is located as shall be recommended by the counsel admitted to practice in such state and delivering the opinion as to the enforceability of such documents required pursuant to clause (p) below. The First Mortgage 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 First Mortgage shall be equal to one hundred twenty-five percent (125%) of the amount of the Loan allocated to the Substitute Property. The amount of the Loan allocated to the Substitute Property (such amount being hereinafter referred to as the "Substitute Property Loan Amount") shall equal the Allocated Loan Amount of the related Substituted Property.

(l) Lender shall have received (i) a "tie-in" or similar endorsement to each Title Insurance Policy insuring the lien of an existing Mortgage as of the date of the substitution available with respect to the Title Insurance Policy insuring the lien of the Mortgage with respect to the Substitute Property and (ii) a Title Insurance Policy (or a marked, signed and redated commitment to issue such Title Insurance Policy) insuring the lien of the Mortgage encumbering the Substitute Property, issued by the title company that issued the Title Insurance Policies insuring the lien of the existing Mortgages and dated as of the date of the substitution, with reinsurance and direct access agreements that replace such agreements issued in connection with the Title Insurance Policy insuring the lien of the Mortgage encumbering the Substituted Property, to the extent such agreements are available in the jurisdiction in which the Substitute Property is located. 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 twenty-five percent (125%) of the Allocated Loan Amount, (2) insure Lender that the relevant Mortgage creates a valid first lien on the Substitute Property encumbered thereby, free and clear of all exceptions from coverage other than Permitted Encumbrances and standard exceptions and exclusions from coverage (as modified by the terms of any endorsements), (3) contain such endorsements and affirmative coverages as are contained in the Title Insurance Policies insuring the liens of the existing Mortgage, to the extent available in the jurisdiction in which the Substitute Property is located and (4) name Lender as the insured. Lender also shall have received copies of paid receipts or a closing statement showing that all premiums in respect of such endorsements and Title Insurance Policies have been paid or will be paid at closing of the purchase of the Substitute Property.

(m) Lender shall have received a current title survey for each Substitute Property, certified to the title company and Lender and their successors and assigns, in the same form and having the same content as the certification of the Survey of the Substituted Property prepared by a professional land surveyor licensed in the state in which the Substitute Property is located and acceptable to the Rating Agencies in accordance with the 1997 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys, including items 1, (if readily available) 2, 3, 4, 6, 7 (a) (b) (c), 8, 9, 10, 11 and 13 from Table A, or in accordance with similar successor standards typically accepted by prudent lenders in similar transactions. 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. The surveyor's seal shall be affixed to each survey and each survey shall certify that the Improvements located on the surveyed property is not located in an area identified by the Federal Emergency Management Agency as a "special flood hazard area".

(n) 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.

(o) Lender shall have received a Phase I environmental report and, if recommended under the Phase I environmental report, a Phase II environmental report from a nationally recognized environmental consultant approved by the Rating Agencies (if applicable), not less than thirty (30) days prior to such release and substitution, which conclude that the Substitute Property does not contain any Hazardous Materials (except for cleaning and other products used in connection with the routine maintenance or repair of the Substitute Property or the operation thereof as an office building and in full compliance with Hazardous Materials Laws) and is not subject to any risk of contamination from any off-site Hazardous Materials. If any such report discloses the presence of any Hazardous Materials (except for cleaning and other products used in connection with the routine maintenance or repair of the Substitute Property or the operation thereof as an office building, in full compliance with Hazardous Materials Laws) or the risk of contamination from any off-site Hazardous Materials, such report shall include an estimate of the cost of any related remediation and Borrower shall deposit with Lender an amount equal to one hundred twenty-five percent (125%) of such estimated cost, which deposit shall constitute additional security for the Loan and shall be released to Borrower upon the delivery to Lender of (i) an update to such report indicating that there is no longer any Hazardous Materials (except for cleaning and other products used in connection with the routine maintenance or repair of the Substitute Property or the operation thereof as an office building, in full compliance with Hazardous Materials Laws) on the Substitute Property or any danger of contamination from any off-site Hazardous Materials that has not been fully remediated in accordance with all applicable laws and (ii) paid receipts indicating that the costs of all such remediation work have been paid. Such report shall also state the amount of time that will be necessary to complete such remediation, as may be required by applicable law. Borrower covenants to undertake any repairs, cleanup or remediation indicated.

(p) Borrower shall deliver or cause to be delivered to Lender (i) an Officer's Certificate and updates of all organizational documentation related to the Borrower substituting an Individual Property and/or the formation, structure, existence, good standing and/or qualification to do business delivered to Lender on the Closing Date; (ii) 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 (iii) resolutions of the managing member of the Borrower substituting an Individual Property authorizing the substitution and any actions taken in connection with such substitution.

(q) Lender shall have received the following opinions of Borrower's counsel (which opinions, with respect to the opinions set forth in clauses (i), (ii) and (iii) below, shall be in form similar to the corresponding opinions delivered to Lender on the Closing Date: (i) 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 (j) 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 the Borrower is not required by applicable law to qualify to do business in such jurisdiction; (ii) an opinion of counsel stating that the Loan Documents delivered with respect to the Substitute Property pursuant to clause (j) above were duly authorized, executed and delivered by the Borrower and that, to the best of Borrower's counsel's knowledge, the execution and delivery of such Loan Documents and the performance by the 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; (iii) title endorsements or, if such title endorsements are not available, an opinion of counsel insuring or opining, as applicable, that subjecting the Substitute Property to the lien of the related Mortgage and the execution and delivery of the related Loan Documents does not and will not affect or impair the ability of Lender to enforce its remedies under all of the Loan Documents or the Guaranty Security Documents or to realize the benefits of the cross-collateralization provided for thereunder; (iv) an update of the Non-Consolidation Opinion indicating that the substitution does not affect the opinions set forth therein; (v) an Officer's Certificate and other reasonable evidence acceptable to the applicable Rating Agencies confirming that the substitution and the related transactions do not constitute a fraudulent conveyance under applicable bankruptcy and insolvency laws and (vi) an opinion of counsel acceptable to the applicable Rating Agencies that the substitution does not constitute a "significant modification" of the Loan under Section 1001 of the Code or otherwise cause a tax to be imposed on a "prohibited transaction" by any REMIC.

(r) Borrower shall have paid or caused to be paid all Basic Carrying Costs relating to the Individual Property and the Substitute Property, including, without limitation, (i) accrued but unpaid insurance premiums relating to the Individual Property and the Substitute Property, (ii) currently due taxes (including any in arrears) relating to the Individual Property and the Substitute Property and (iii) any other charges relating to the Individual Property and Substitute Property which are currently due.

(s) Borrower shall have paid or reimbursed Lender for all third party out-of-pocket costs and expenses incurred by Lender (including, without limitation, reasonable attorneys 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.

(t) Lender shall have received annual operating statements and occupancy statements for the Substitute Property for the three (3) most recently completed fiscal years and a current operating statement for the Substituted Property or, if information is not available for a three (3) year period or if the Substituted Property has been substantially renovated within such three (3) year period, such lesser period as is available, but in no event less than twelve (12) months. Each of the statements required under this clause (t) shall be certified to Lender as being true and correct and an Officer's Certificate certifying that there has been no material adverse change in the financial condition of the Substitute Property since the date of such operating statements.

(u) The Borrower that owns the Substitute Property shall have used commercially reasonable efforts to obtain and deliver to Lender estoppel certificates from all of the Tenants of the Substitute Property, provided, that, Borrower shall be required to deliver estoppel certificates acceptable to Lender from a minimum of seventy-five percent (75%) of the Tenants of the rentable square footage of such Substitute Property prior to effectuating the substitution contemplated by this Section 2.6. All such estoppel certificates shall be in the form attached hereto as Schedule XII (with such commercially reasonable changes as may be requested by Tenants, from time to time, and which are reasonably acceptable to Lender) and shall indicate, among other things, that (i) the subject Lease is a valid and binding obligation of the tenant thereunder, (ii) there are no defaults under such Lease on the part of the landlord or Tenant thereunder, (iii) the Tenant thereunder has no defense or offset to the payment of rent under such leases, (iv) no rent under such lease has been paid more than one (1) month in advance, (v) the Tenant thereunder has no option or right of first refusal under such Lease to purchase all or any portion of the Substitute Property and (vi) all Tenant improvement work required under such Lease has been completed and the Tenant under such Lease is in actual occupancy of its leased premises. 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.

(v) Lender shall have received copies of all Leases affecting the Substitute Property which shall be accompanied by an Officer's Certificate certifying that such Leases being delivered are true and correct copies thereof. Lender shall have received a current Rent Roll of the Substitute Property certified pursuant to an Officer's Certificate as being true and correct.

(w) Lender shall have received (A) an endorsement to the Title Insurance Policy insuring the lien of the Mortgage encumbering the Substitute Property insuring that the Substitute Property constitutes a separate tax lot or, if such an endorsement is not available in the state in which the Substitute Property is located, a letter from the title insurance company issuing such Title Insurance Policy stating that the Substitute Property constitutes a separate tax lot or (B) a letter from the appropriate taxing authority stating that the Substitute Property constitutes a separate tax lot.

(x) Lender shall have received a physical conditions report with respect to the Substitute Property from a nationally recognized structural consultant approved by the Rating Agencies (if applicable) in a form recognized and approved by such Rating Agencies not less than thirty (30) days prior to such release and substitution stating that the Substitute Property and its use comply in all material respects with all applicable Legal Requirements (including, without limitation, zoning, subdivision and building laws) and that the Substitute Property is in good condition and repair and free of material damage or waste. If compliance with any Legal Requirements are not addressed by the physical conditions report, such compliance shall be confirmed by delivery to Lender of a zoning report issued to Lender by a nationally recognized zoning review consultant, a certificate of an architect licensed in the state in which the Substitute Property is located, a letter from the municipality in which such Substitute 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 (k) above (with respect to zoning laws) or a subdivision endorsement to the Title Insurance Policy delivered pursuant to clause (k) above (with respect to subdivision laws) to the extent such endorsements are available in the jurisdiction in which the Substitute Property is located. If the physical conditions report recommends that any repairs be made with respect to the Substitute Property, such physical conditions report shall either (i) include an estimate of the cost of such recommended repairs (in which case Borrower shall deposit into the Repair Escrow Account an amount equal to one hundred twenty-five percent (125%) of such estimated cost), or (ii) state the specific amounts that need to be reserved over time in order to meet the requirements of such replacements (in which case Borrower shall deposit such reserves into the Replacement Reserve Account on a monthly basis). Any such deposits shall constitute additional security for the Loan pursuant to Section 6.9 and shall be released to Borrower pursuant to Section 6.4.2. Borrower covenants to undertake any repairs, cleanup or remediation indicated in the physical conditions report before the earlier of (A) the time required by Legal Requirements or (B) the time recommended in the physical conditions report.

(y) Lender shall have received the Management Agreement, if any, relating to the Substitute Property, and the Borrower shall have demonstrated that such agreement is on substantially similar terms as the agreement then in place at the Substituted Property.

(z) If the Substitute Property is located in California or a seismic area designated as Zone 3 or 4 by the Rating Agencies (Source: ICBC, 1994 Uniform Building Code), Lender shall have received a PML study and a seismic report indicating the seismic zone in which the Substitute Property is located and otherwise acceptable to a prudent institutional mortgage lender and, if the reports would have been acceptable to a prudent institutional lender, Borrower shall obtain earthquake insurance in accordance with Section 5.1.1(a)(i).

(aa) Lender shall have received such other and further approvals, opinions, documents and information in connection with the substitution as the Rating Agencies may request.

(bb) If the Borrower owns a ground leasehold estate in the Substitute Property, Lender shall have received (i) a certified copy of the ground lease for the Substitute Property, together with all amendments and modifications thereto and a recorded memorandum thereof, which ground lease would be reasonably satisfactory to a prudent institutional mortgage lender and which contains customary leasehold mortgagee provisions and protections, and which shall provide, among other things, (A) for a remaining term of not less than thirty (30) years from the Maturity Date (including any extensions that are exercisable by Lender in the event Borrower fails to do so when permitted or obligated thereunder), (B) that the ground lease shall not be terminated until Lender has received of an event of default thereunder and has been afforded a reasonable opportunity to cure the default or complete foreclosure, and fails to do so in a diligent manner, (C) for a new lease on the same terms to Lender as the tenant if the ground lease is terminated for any reason, (D) the non-merger of fee and leasehold estates, and (E) that insurance proceeds and condemnation awards (from the fee interest as well as the leasehold interest) will be applied pursuant to the terms of this Agreement or to the restoration of the improvements, (ii) and a ground lessor estoppel in the form attached hereto as Exhibit XIII, with such modifications and additions as reasonably required after a review of the ground lease by Lender.

(cc) Lender shall have received copies of all contracts and agreements relating to the leasing and operation of the Substitute Property together with an Officer's Certificate 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 thirty (30) 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 2.6 have been satisfied.

(ee) The total Allocated Loan Amount, in the aggregate, for all prior Substituted Properties (including the current Substituted Property) under this Agreement and the Other Loan Agreements is less than thirty percent (30%) of the aggregate Original Principal Amount of the Loan and all of the Other Loans.

(ff) The Substitute Property shall be subject to the lien of the Mortgage and subject to any cross-collateralization and cross-default provisions of this Loan Agreement and the Mortgage.

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 the Individual Property for purposes of this Agreement and the Substitute Property Loan Amount with respect to such Substitute Property shall be deemed to be the Allocated Loan Amount with respect to the Substituted Property for all purposes hereunder.

III. REPRESENTATIONS AND WARRANTIES

Section 3.1 Borrower Representations.

Borrower represents and warrants that:

3.1.1 Organization. (a) Borrower and each SPC Party is duly organized, validly existing and in good standing with full power and authority to own its assets and conduct its business, and is duly qualified in all jurisdictions in which the ownership of its property or the conduct of its business requires such qualification, except where the failure to be so qualified would not have a material adverse effect on its ability to perform its obligations hereunder, and Borrower has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents by it, and has the power and authority to execute, deliver and perform under this Agreement, the other Loan Documents and all the transactions contemplated hereby.

(b) Borrower's exact legal name is correctly set forth in the first paragraph of this Agreement. Borrower is an organization of the type specified in the first paragraph of this

Agreement. Borrower is incorporated or organized under the laws of the state specified in the first paragraph of this Agreement. Borrower's principal place of business and chief executive office, and the place where Borrower keeps its books and records, including recorded data of any kind or nature, regardless of the medium of recording, including software, writings, plans, specifications and schematics, has been for the preceding four (4) months (or, if less than four (4) months, the entire period of the existence of Borrower) and will continue to be the address of Borrower set forth in the first paragraph of this Agreement (unless Borrower notifies Lender in writing at least thirty (30) days prior to the date of such change). The organizational identification number of Wells REIT – Orange County, L.P. assigned by the state of its incorporation or organization is 3797225 and its federal tax identification number is 20-1068331. Borrower is not subject to back-up withholding taxes.

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

3.1.3 No Conflicts. The execution and delivery of this Agreement and the other Loan Documents by Borrower and the performance of its obligations hereunder and thereunder will not conflict with any provision of any law or regulation to which Borrower is subject, or conflict with, result in a breach of, or constitute a default under, any of the terms, conditions or provisions of any of Borrower's organizational documents or any agreement or instrument to which Borrower is a party or by which it is bound, or any order or decree applicable to Borrower, or result in the creation or imposition of any lien on any of Borrower's assets or property (other than the Individual Property and pursuant to the Loan Documents and the Guaranty Security Documents).

3.1.4 Litigation. There is no action, suit, proceeding or investigation pending or, to Borrower's knowledge, threatened against Borrower in any court or by or before any other Governmental Authority which would materially and adversely affect the ability of Borrower to carry out the transactions contemplated by this Agreement.

3.1.5 Agreements. Borrower is not in default with respect to any order or decree of any court or any order, regulation or demand of any Governmental Authority, which default might have consequences that would materially and adversely affect the condition (financial or other) or operations of Borrower or its properties or might have consequences that would adversely affect its performance hereunder.

3.1.6 Consents. No consent, approval, authorization or order of any court or Governmental Authority is required for the execution, delivery and performance by Borrower of, or compliance by Borrower with, this Agreement or the consummation of the transactions contemplated hereby, other than those which have been obtained by Borrower.

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

3.1.8 No Plan Assets. As of the date hereof and throughout the term of the Loan (a) Borrower is not, and Borrower will not be, an "employee benefit plan," as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), whether or not subject to Title I of ERISA, or a "plan" as defined in Section 4975 of the Code, (b) none of the assets of Borrower constitutes or will constitute "plan assets" of one or more such plans within the meaning of U.S. Department of Labor Regulation 29 C.F.R. Section 2510.3-101 (the "Plan Assets Regulation"), and (c) transactions by or with Borrower are not and will not be subject to any state statute regulating investments of, or fiduciary obligations with respect to, governmental plans, as defined in Section 3(32) of ERISA.

3.1.9 Compliance. Except as set forth on Schedule XI attached hereto, Borrower and the Individual Property and the use thereof comply in all material respects with all applicable Legal Requirements, including, without limitation, building and zoning ordinances and codes and Prescribed Laws. Borrower is not in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority, the violation of which might materially adversely affect the condition (financial or otherwise) or business of Borrower. Borrower has not committed any act which may give any Governmental Authority the right to cause Borrower to forfeit the Individual Property or any part thereof or any monies paid in performance of the Borrower's obligations under any of the Loan Documents or the Guaranty Security Documents.

3.1.10 Financial Information. All financial data, including, without limitation, the statements of cash flow and income and operating expense, that have been delivered to Lender in respect of the Individual Property (i) are true, complete and correct in all material respects, (ii) accurately represent the financial condition of the Individual Property as of the date of such reports, and (iii) have been prepared in accordance with GAAP throughout the periods covered, except as disclosed therein. Borrower has no 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 materially adverse effect on the Individual Property or the operation thereof, except as referred to or reflected in said financial statements. Since the date of the financial statements, there has been no material adverse change in the financial condition, operations or business of Borrower or the Individual Property from that set forth in said financial statements.

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

3.1.12 Utilities and Public Access. The Individual Property has rights of access to public ways and is served by water, sewer, sanitary sewer and storm drain facilities adequate to service the Individual Property for its respective intended uses.

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

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

3.1.15 Enforceability. The Loan Documents are not subject to any right of rescission, set off, counterclaim or defense by Borrower, 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, and Borrower has not asserted any right of rescission, set off, counterclaim or defense with respect thereto. The Guaranty Security 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 Guaranty Security Documents, or the exercise of any right thereunder, render the Guaranty Security Documents unenforceable, and Borrower has not asserted any right of rescission, set off, counterclaim or defense with respect thereto.

3.1.16 Assignment of Leases. Each Assignment of Leases creates a valid assignment of, or a valid security interest in, certain rights under the Leases at the Individual Property, subject only to a license granted to the Borrower to exercise certain rights and to perform certain obligations of the lessor under such Leases, including the right to operate the Individual Property. No Person other than Lender has any interest in or assignment of the Leases or any portion of the Rents due and payable or to become due and payable thereunder.

3.1.17 Insurance. Borrower has obtained and has delivered to Lender certificates evidencing the insurance coverage provided under the Policies, with all premiums prepaid thereunder, reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. Except as set forth on Schedule XI attached hereto, no claims have been made under any of the Policies, and no Person, including Borrower, has done, by act or omission, anything which would impair the coverage of any of the Policies.

3.1.18 Licenses. All permits and approvals, including without limitation, certificates of occupancy required by any Governmental Authority for the use, occupancy and operation of the Individual Property in the manner in which the Individual Property is currently being used, occupied and operated have been obtained and are in full force and effect.

3.1.19 Flood Zone. Except as may be shown on the Survey, none of the Improvements on the Individual Property are located in an area identified by the Federal Emergency Management Agency as a special flood hazard area.

3.1.20 Physical Condition. Except as may be disclosed in the engineering reports described on Schedule XI attached hereto, the Individual Property, including, without limitation, all buildings, improvements, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and all structural components, is in good condition, order and repair in all material respects; there exists no structural or other material defects or damages in the Individual Property, whether latent or otherwise, and Borrower has not received any notice from any insurance company or bonding company of any defects or inadequacies in the Individual Property, or any part thereof, which would adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or of any termination or threatened termination of any policy of insurance or bond.

3.1.21 Boundaries. Except as may be shown on the Survey, all of the improvements which were included in determining the appraised value of the Individual Property lie wholly within the boundaries and building restriction lines of the Individual Property, and no improvements on adjoining properties encroach upon the Individual Property, and no easements or other encumbrances affecting the Individual Property encroach upon any of the improvements, so as to affect the value or marketability of the Individual Property except those which are insured against by title insurance.

3.1.22 Leases. Except as set forth on Schedule XI attached hereto, Borrower represents and warrants to Lender with respect to the Leases at the Individual Property: (a) the rent roll attached hereto as Schedules I is true, complete and correct and the Individual Property is not subject to any Leases other than the Leases for the Individual Property that are described in the applicable Schedule I, (b) the Leases identified on Schedules I are in full force and effect and there are no defaults thereunder by either party (other than non-material defaults by Tenants that it is commercially reasonable for the Borrower to excuse), (c) the copies of the Leases delivered

to Lender are true and complete, and there are no oral agreements with respect thereto, (d) no Rent (including security deposits) has been paid more than one (1) month in advance of its due date, (e) all work to be performed by Borrower under each Lease has been performed as required and has been accepted by the applicable Tenant, (f) any payments, free rent, partial rent, rebate of rent or other payments, credits, allowances or abatements required to be given by Borrower to any Tenant has already been received by such Tenant and (g) all security deposits are being held in accordance with Legal Requirements.

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

3.1.24 Single Purpose. Borrower hereby represents and warrants to, and covenants with, Lender that as of the date hereof and until such time as the Debt shall be paid in full:

(a) Borrower does not own and will not own any asset or property other than (i) the Individual Property, and (ii) incidental personal property or other assets necessary for the ownership or operation of the Individual Property.

(b) Borrower will not engage in any business other than the ownership, management and operation of the Individual Property, entering into the Loan as a co-borrower and Borrower will conduct and operate its business as presently conducted and operated.

(c) Borrower will not enter into any contract or agreement with any Affiliate of Borrower, any constituent party of Borrower or any Affiliate of any constituent party, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arm's-length basis with third parties other than any such party.

(d) Borrower has not incurred and will not incur any Indebtedness other than (i) the Debt, (ii) unsecured trade payables and operational debt not evidenced by a note and (iii) Indebtedness incurred in the financing of equipment and other personal property used at the Individual Property; provided that any Indebtedness incurred pursuant to subclauses (ii) and (iii) shall be (x) not in excess of three percent (3%) of the Allocated Loan Amount, (y) paid not more than sixty (60) days from the date incurred as to the matters in subclause (ii) above and not more than sixty (60) days from the date due as to the matters in subclause (iii) above, subject only to Borrower's right to diligently prosecute a good faith dispute as to amounts due and payable in accordance with the provisions of this Agreement and (z) incurred in the ordinary course of

business. No Indebtedness other than the Debt may be secured (subordinate or pari passu) by the Individual Property except with respect to the Guaranty of Other Loans and the Guaranty Security Documents delivered by Borrower in connection therewith.

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

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

(g) Borrower has done or caused to be done and will do all things necessary to observe organizational formalities and preserve its existence, and Borrower will not, nor will Borrower permit any constituent party to amend, modify or otherwise change the partnership certificate, partnership agreement, articles of incorporation and bylaws, operating agreement, trust or other organizational documents of Borrower or such constituent party without the prior consent of Lender in any manner that (i) violates the single purpose covenants set forth in this Section 3.1.24, or (ii) amends, modifies or otherwise changes any provision thereof that by its terms cannot be modified at any time when the Loan is outstanding or by its terms cannot be modified without Lender's consent.

(h) Borrower will maintain all of its books, records, financial statements and bank accounts separate from those of its Affiliates and any constituent party. Borrower's assets will not be listed as assets on the financial statement of any other Person; provided, however, that Borrower's assets may be included in a consolidated financial statement of its Affiliates provided that (i) appropriate notation shall be made on such consolidated financial statements (or the notes thereto) 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 will file its own tax returns (to the extent Borrower is required to file any such tax returns) and will not file a consolidated federal income tax return with any other Person except to the extent Borrower is a disregarded entity for federal income tax purposes. Borrower shall maintain its books, records, resolutions and agreements as official records.

(i) Borrower will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any Affiliate of Borrower or any constituent party of Borrower), shall correct any known misunderstanding regarding its status as a separate entity, shall conduct business in its own name, shall not identify itself or any of its Affiliates as a division or part of the other.

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

(k) Neither Borrower nor any constituent party will seek or effect the liquidation, dissolution, winding up, liquidation, consolidation or merger, in whole or in part, of Borrower.

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

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

(n) Borrower will not guarantee, other than as set forth in the Guaranty of Other Loans, or become obligated for the debts of any other Person and does not and will not hold itself out to be responsible for or have its credit available to satisfy the debts or obligations of any other Person.

(o) (i) If Borrower is a limited partnership or a limited liability company (other than a single member limited liability company), each general partner or managing member (each, an “SPC Party”), as applicable, shall be a corporation or a Delaware single member limited liability company acceptable to Lender whose sole asset is its interest in Borrower and each such SPC Party will at all times comply, and will cause Borrower to comply, with each of the representations, warranties, and covenants contained in this Section 3.1.24 as if such representation, warranty or covenant was made directly by such SPC Party. Upon the withdrawal or the disassociation of an SPC Party from Borrower, Borrower shall immediately appoint a new SPC Party whose articles of incorporation are substantially similar to those of such SPC Party and deliver a new non-consolidation opinion to the Rating Agency or Rating Agencies, as applicable, with respect to the new SPC Party and its equity owners.

(ii) If Borrower or any SPC Party of Borrower is a single member limited liability company, Borrower or such SPC Party shall have at least two (2) springing members, one of which, upon the dissolution of such sole member or the withdrawal or the disassociation of the sole member from Borrower or such SPC Party, shall immediately become the sole member of Borrower or such SPC Party, and the other of which shall become the sole member of Borrower or such SPC Party if the first such springing member no longer is available to serve as such sole member.

(p) Borrower shall at all times cause there to be at least two (2) duly appointed members of the board of directors of each SPC Party and the Borrower who are provided by a nationally recognized company that provides professional independent directors (each, an “Independent Director”) and which are reasonably satisfactory to Lender who shall not have been at the time of such individual’s appointment or at any time while serving as a director of such SPC Party and Borrower, and may not have been at any time during the preceding five years (i) a stockholder, director (other than as an Independent Director), officer, employee, partner, attorney or counsel of such SPC Party, Borrower or any Affiliate of either of them, (ii) a customer, supplier or other Person who derives any of its purchases or revenues from its activities with such SPC Party, Borrower or any Affiliate of either of them (other than as an

Independent Director), (iii) a Person or other entity controlling or under common control with any such stockholder, partner, customer, supplier or other Person, or (iv) a member of the immediate family of any such stockholder, director, officer, employee, partner, customer, supplier or other Person. A natural person who otherwise satisfies the foregoing definition of Independent Director except for being the independent director, manager or special member of a "special purpose entity" affiliated with the Borrower that does not own a direct or indirect equity interest in the Borrower shall not be disqualified from serving as an Independent Director if such individual is at the time of initial appointment, or at any time while serving as an Independent Director, is an independent manager, director or special member provided by a nationally-recognized company that provides professional independent managers, directors or special members. As used in this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise.

(q) Borrower shall not cause or permit the board of directors of any SPC Party and Borrower to take any action which, under the terms of any certificate of incorporation, by-laws or any voting trust agreement with respect to any common stock or under any organizational document of Borrower or SPC Party, requires a unanimous vote of the board of directors of each SPC Party and Borrower unless at the time of such action there shall be at least two members who are each an Independent Director.

(r) Borrower shall conduct its business so that the assumptions made with respect to Borrower in the Non-Consolidation Opinion shall be true and correct in all respects. In connection with the foregoing, Borrower hereby covenants and agrees that it will comply with or cause the compliance with, (i) all of the facts and assumptions (whether regarding the Borrower or any other Person) set forth in the Non-Consolidation Opinion, (ii) all the representations, warranties and covenants in this Section 3.1.24, and (iii) all the organizational documents of the Borrower and any SPC Party.

(s) Borrower will not permit any Affiliate or constituent party independent access to its bank accounts other than a Manager approved by Lender, and then in such circumstances, only in accordance with the terms of its respective Management Agreement.

(t) Borrower shall pay the salaries of its own employees (if any) from its own funds and maintain a sufficient number of employees (if any) in light of its contemplated business operations.

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

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

3.1.26 Solvency. Borrower (a) has not entered into the transaction or any Loan Document or Guaranty Security 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 and the Guaranty Security Documents. Giving effect to the Loan, the fair saleable value of Borrower's assets exceeds and will, immediately following the making of the Loan, exceed Borrower's total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities, excluding the Guaranty of Other Loans. The fair saleable value of Borrower's assets is and will, immediately following the making of the Loan, be greater than Borrower's probable liabilities, including the maximum amount of its contingent liabilities on its debts as such debts become absolute and matured, excluding the Guaranty of Other Loans. Borrower's assets do not and, immediately following the making of the Loan and the Guaranty of Other Loans 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 Indebtedness and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such Indebtedness and liabilities as they mature (taking into account the timing and amounts of cash to be received by Borrower and the amounts to be payable on or in respect of obligations of Borrower).

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

3.1.28 Organizational Chart. The organizational chart attached as Schedule III hereto, relating to Borrower and certain Affiliates and other parties, is true, complete and correct on and as of the date hereof.

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

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

3.1.31 Investment Company Act. Borrower is not (1) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; (2) 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 (3) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

3.1.32 Access/Utilities. All public utilities necessary to the continued use and enjoyment of the Individual Property as presently used and enjoyed are located in the public

right-of-way abutting the Individual Property. All roads necessary for the full utilization of the Individual Property for its current purpose have been completed and dedicated to public use and accepted by all governmental authorities or are the subject of access easements for the benefit of the Individual Property.

3.1.33 No Bankruptcy Filing. Borrower is not contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidation of its assets or property, and Borrower has no knowledge of any Person contemplating the filing of any such petition against it.

3.1.34 Full and Accurate Disclosure. To the best of Borrower's knowledge, no information contained in this Agreement, the other Loan Documents, the Guaranty Security Documents or any written statement furnished by or on behalf of Borrower pursuant to the terms of this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not materially misleading in light of the circumstances under which they were made. There is no material fact or circumstance presently known to Borrower which have not been disclosed to Lender and which materially adversely affects, or is reasonably likely to materially adversely affect, the Individual Property, Borrower, the Guaranty of Other Loans or its business, operations or condition (financial or otherwise).

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

3.1.36 No Change in Facts or Circumstances; Disclosure. To the best of Borrower's knowledge, there has been no material adverse change in any condition, fact, circumstance or event that would make the financial statements, rent rolls, reports, certificates or other documents submitted in connection with the Loan inaccurate, incomplete or otherwise misleading in any material respect or that otherwise materially and adversely affects the business operations or the financial condition of Borrower or the Individual Property.

3.1.37 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 (as defined in the Cash Management Agreement) 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 the Guaranty Security Documents and except for Permitted Encumbrances, Borrower has not sold or otherwise conveyed the Accounts;

(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;

(c) Pursuant and subject to the terms of the Cash Management Agreement, Agent has agreed to comply with all instructions originated by Lender, without further consent

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

(d) The Accounts are not in the name of any Person other than Borrower, as pledgor, or Lender, as pledgee. Borrower has not consented to Agent's complying with instructions with respect to the Accounts from any Person other than Lender.

3.1.38 REA. Except as disclosed on Schedule XI attached hereto, each REA is in full force and effect and neither Borrower nor, to Borrower's knowledge, any other party to any REA, is in default thereunder, and to the best of Borrower's knowledge, there are no conditions which, with the passage of time or the giving of notice, or both, would constitute a default thereunder. Except as set forth on Schedule VII, the REA has not been modified, amended or supplemented.

Section 3.2 Survival of Representations.

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

IV. BORROWER COVENANTS

Section 4.1 Borrower Affirmative Covenants.

Borrower hereby covenants and agrees with Lender that:

4.1.1 Existence; Compliance with Legal Requirements. Borrower shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, licenses, permits and franchises and comply with all Legal Requirements applicable to it and the Individual Property, including, without limitation, Prescribed Laws.

4.1.2 Taxes and Other Charges. Borrower shall pay all Taxes and Other Charges now or hereafter levied or assessed or imposed against the Individual Property or any part thereof as the same become due and payable; provided, however, Borrower's obligation to directly pay Taxes shall be suspended for so long as Borrower is required to make deposits of Tax Funds and in such case complies with the terms and provisions of Section 6.2 hereof. Borrower shall furnish to Lender receipts for the payment of the Taxes and the Other Charges prior to the date the same shall become delinquent; provided, however, that Borrower is not required to furnish such receipts for payment of Taxes in the event that such Taxes have been paid by Lender with Tax Funds on deposit with Lender pursuant to Section 6.2 hereof. Borrower shall not permit or suffer and shall promptly discharge any lien or charge against the Individual Property. After prior notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, conducted in good faith and with due diligence, the amount or validity 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 all applicable statutes, laws and ordinances; (iii) no Individual 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 Taxes or Other Charges from the Individual Property; and (vi) to the extent required by law, Borrower shall have paid under protest or deposited with the appropriate taxing authority any such security as may be required by applicable law (which must be in an amount equal to at least 100% of Taxes plus interest thereon for an additional period of three (3) years) to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon, provided, that, if the applicable taxing authority does not require Borrower to deliver cash as security while Taxes or Other Charges are being contested by Borrower, Borrower shall deposit cash with Lender or, in lieu of a cash deposit, a Letter of Credit, in the amount required above as security for the payment of such Taxes or Other Charges, as the case may be. Lender may pay over any such cash, Letter of Credit or other security held by Lender to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established.

4.1.3 Litigation. Borrower shall give prompt notice to Lender of any litigation or governmental proceedings pending or threatened against Borrower which might materially adversely affect the Individual Property or Borrower's ability to perform its obligations hereunder or under the other Loan Documents or the Guaranty Security Documents.

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

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

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

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

4.1.6 Financial Reporting. (a) Borrower shall keep and maintain or will cause to be kept and maintained proper and accurate books and records, in accordance with GAAP, reflecting the financial affairs of Borrower. Lender shall have the right from time to time during normal business hours upon reasonable notice to the Borrower to examine such books and records at the office of Borrower or other Person maintaining such books and records and to make such copies or extracts thereof as Lender shall desire.

(b) Borrower shall furnish Lender annually, within one hundred twenty (120) days following the end of each Fiscal Year, a complete copy of Borrower's annual financial statements audited by a "Big Four" accounting firm or other independent certified public accountant acceptable to Lender prepared in accordance with GAAP covering the Individual Property, such financial statements to include statements of income and expense and cash flow for Borrower and the Individual Property and a balance sheet for Borrower. Such statements shall set forth gross revenue and operating expenses for the Individual Property. Borrower's annual financial statements shall be accompanied by a certificate executed by the chief financial officer of Borrower stating that such annual financial statement presents fairly the financial condition and the results of operations of Borrower and the Individual Property. Borrower shall furnish a balance sheet and income statement for the preceding Fiscal Year for the Individual Property, certified by the chief financial officer of Borrower that each statement fairly presents the financial condition and results of operations of the Individual Property. Together with Borrower's annual financial statements, Borrower shall furnish to Lender an Officer's Certificate certifying as of the date thereof whether to the best of Borrower's knowledge there exists an event or circumstance which constitutes a Default or Event of Default by Borrower under the Loan Documents and if such Default or Event of Default exists, the nature thereof, the period of time it has existed and the action then being taken to remedy the same.

(c) Borrower will furnish Lender on or before the sixtieth (60th) day after the end of each fiscal quarter (based on Borrower's Fiscal Year), the following items, accompanied by a certificate from the chief financial officer of Borrower, certifying that such items are true, correct, accurate and complete and fairly present the financial condition and results of the operations of Borrower and the Individual Property in accordance with GAAP as applicable:

- (i) quarterly and year-to-date statements of income and expense prepared for such quarter with respect to the Individual Property, with a balance sheet for such quarter for Borrower;

- (ii) a calculation reflecting the Debt Service Coverage Ratio as of the last day of such quarter, for such quarter and the last four quarters;

- (iii) a current rent roll for the Individual Property;

- (iv) a comparison of the budgeted income and expenses and the actual income and expenses for such quarter and year to date for the Individual Property, together with a detailed explanation of any variances of more than five percent (5%) between budgeted and actual amounts for such period and year to date; and

- (v) with respect to any Major Leases, any notice received from a Tenant threatening non-payment of Rent or other default, alleging or acknowledging a default by landlord, requesting a termination of a Lease or a material modification of any Lease or notifying Borrower of the exercise or non-exercise of any option provided for in such Tenant's Lease, or any other similar material correspondence received by Borrower from Tenants during the subject fiscal quarter.

(d) Prior to the last Securitization of any portion of the Loan and upon request by Lender, Borrower will furnish Lender on or before the thirty-fifth (35th) day after the end of each calendar month, the following items, accompanied by a certificate from the chief financial officer of Borrower, certifying that such items are true, correct, accurate, and complete and fairly present the financial condition and results of the operations of Borrower and the Individual Property in a manner consistent with GAAP, as applicable:

(i) monthly and year-to-date statements of income and expense and cash flow prepared for such month with respect to the Individual Property; and

(ii) a current rent roll for the Individual Property.

(e) Borrower shall submit a proposed draft of the Annual Budget to Lender not later than thirty (30) days prior to the commencement of each Fiscal Year and a final Annual Budget to Lender not later than ten (10) days prior to the commencement of each Fiscal Year. Lender shall have the right to approve each Annual Budget covering any period of time after the occurrence of a Trigger Event. In the event that Lender objects to a proposed Annual Budget (draft or final) submitted by Borrower at any time after a Trigger Event, Lender shall advise Borrower of such objections within fifteen (15) days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and Borrower shall promptly revise such Annual Budget and resubmit the same to Lender. Lender shall advise Borrower of any objections to its revised Annual Budget within ten (10) days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and Borrower shall promptly revise the same in accordance with the process described in this subsection until Lender approves the Annual Budget. Until such time that Lender approves a proposed Annual Budget, which approval shall not be unreasonably withheld, conditioned or delayed unless an Event of Default exists, in which case Lender's approval shall be in its sole and absolute discretion, the most recent Annual Budget (or the most recent Approved Annual Budget, if such previous Annual Budget was subject to Lender's approval) shall apply; provided that, such Annual Budget (or Approved Annual Budget, as applicable) shall be adjusted to reflect actual increases in Taxes, Insurance Premiums, utility expenses and management fees under the Management Agreement. Each Annual Budget approved by Lender shall hereinafter be referred to as an "Approved Annual Budget." In the event that, after the occurrence of a Trigger Event, Borrower incurs an extraordinary operating expense or extraordinary capital expenditure not set forth in the applicable Annual Budget (each, an "Extraordinary Expense"), then Borrower shall promptly deliver to Lender a reasonably detailed explanation of such proposed Extraordinary Expense for Lender's approval.

(f) Borrower shall furnish to Lender, within ten (10) Business Days after request (or as soon thereafter as may be reasonably possible), such further detailed information with respect to the operation of the Individual Property and the financial affairs of Borrower as may be reasonably requested by Lender, including, without limitation, a comparison of the budgeted income and expenses and the actual income and expenses for a quarter and year to date for the Individual Property, together with a detailed explanation of any variances of more than the greater of five percent (5%) or \$10,000 between budgeted and actual amounts for such period and year to date.

4.1.7 Title to the Individual Property. Borrower will warrant and defend the validity and priority of the Liens of the Mortgage and the Assignment of Leases on the Individual Property against the claims of all Persons whomsoever, subject only to Permitted Encumbrances and, in the case of the Second Mortgage and the Second Assignment of Leases, the First Mortgage and the First Assignment of Leases.

4.1.8 Estoppel Statement. (a) After request by Lender, Borrower shall within ten (10) Business Days furnish Lender with a statement, duly acknowledged and certified, stating (i) the unpaid principal amount of the Note, (ii) the Interest Rate of the Note, (iii) the date installments of interest and/or principal were last paid, (iv) any offsets or defenses to the payment of the Debt, if any, and (v) that this Agreement, the other Loan Documents and the Guaranty Security Documents have not been modified or if modified, giving particulars of such modification.

(b) After request by Borrower, Lender shall within ten (10) Business Days furnish Borrower with a statement, duly acknowledged and certified, stating (i) the unpaid principal amount of the Note, (ii) the Interest Rate of the Note, (iii) the date installments of interest and/or principal were last paid and (iv) whether or not Lender has sent any notice of default under the Loan Documents which remains uncured in the opinion of Lender.

(c) Borrower shall deliver to Lender, upon request, an estoppel certificate from each Tenant under any Lease (provided that Borrower shall only be required to use commercially reasonable efforts to obtain an estoppel certificate from any Tenant not required to provide an estoppel certificate under its Lease); provided that such certificate may be in the form required under such Lease; provided, further, that Borrower shall not be required to deliver such certificates more frequently than once in any calendar year (or twice during any calendar year in which a Securitization occurs).

(d) Borrower shall deliver to Lender, upon request, estoppel certificates from each party under the REA; provided that such certificates may be in the form required under the REA; provided, further, that Borrower shall not be required to deliver such certificates more than three (3) times 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).

4.1.9 Leases. (a) All Leases and all renewals of Leases executed after the date hereof shall (i) provide for rental rates comparable to existing local market rates for similar properties, (ii) be on commercially reasonable terms, (iii) provide that such Lease is subordinate to the Mortgage encumbering the Individual Property and that the lessee will attorn to Lender and any purchaser at a foreclosure sale and (iv) not contain any terms which would materially adversely affect Lender's rights under the Loan Documents. All Major Leases and all renewals, amendments and modifications thereof executed after the date hereof shall be subject to Lender's prior approval, which approval shall not be unreasonably withheld or delayed. Lender shall execute and deliver a Subordination Non-Disturbance and Attornment Agreement in the form annexed as Schedule IV to Tenants under future Major Lease approved by Lender promptly upon request with such commercially reasonable changes as may be requested by Tenants, from time to time, and which are reasonably acceptable to Lender.

(b) Borrower (i) shall observe and perform the obligations imposed upon the lessor under the Leases in a commercially reasonable manner; (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 without Lender's prior approval, not to be unreasonably withheld or delayed in the event of a material default under a Major Lease; (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 and the Guaranty Security Documents); (v) shall not alter, modify or change any Major 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 without Lender's prior written approval, such approval not to be unreasonably withheld or delayed if no Trigger Event has occurred and is continuing; and (vi) shall hold all security deposits under all Leases in accordance with Legal Requirements. Upon request, Borrower shall furnish Lender with executed copies of all Leases.

(c) Notwithstanding anything to the contrary contained in this Section 4.1.9:

(i) whenever Lender's approval or consent is required pursuant to the provisions of this Section 4.1.9, Borrower shall have the right to submit a term sheet of such transaction to Lender for Lender's approval, such approval not to be unreasonably withheld or delayed. Any such term sheet submitted to Lender shall set forth all material terms of the proposed transaction including, without limitation, identity of tenant, square footage, term, rent, rent credits, abatements, work allowances and tenant improvements to be constructed by Borrower. Lender shall use good faith efforts to respond within ten (10) Business Days after Lender's receipt of the Borrower's written request for approval or consent of such term sheet. If Lender fails to respond to such request within ten (10) Business Days, and the Borrower sends a second request containing a legend in bold letters stating that Lender's failure to respond within five (5) Business Days shall be deemed consent or approval, Lender shall be deemed to have approved or consented to such term sheet if Lender fails to respond to such second written request before the expiration of such five (5) Business Day period;

(ii) whenever Lender's approval or consent is required pursuant to the provisions of this Section 4.1.9 for any matter that Lender has not previously approved a term sheet pursuant to Section 4.1.9(c)(i) above, Lender shall use good faith efforts to respond within ten (10) Business Days after Lender's receipt of Borrower's written request for such approval or consent. If Lender fails to respond to such request within ten (10) Business Days, and Borrower sends a second request containing a legend in bold letters stating that Lender's failure to respond within ten (10) Business Days shall be deemed consent or approval, Lender shall be deemed to have approved or consented to the matter for which Lender's consent or approval was sought if Lender fails to respond to such second written request before the expiration of such ten (10) Business Day period;

(iii) whenever Lender's approval or consent is required pursuant to the provisions of this Section 4.1.9 for any matter that Lender has previously approved a term sheet pursuant to Section 4.1.9(c)(i) above, Lender shall use good faith efforts to respond within five (5) Business Days after Lender's receipt of Borrower's written request for such approval or consent. If Lender fails to respond to such request within five (5) Business Days, and Borrower sends a second request containing a legend in bold letters stating that Lender's failure to respond within five (5) Business Days shall be deemed consent or approval, Lender shall be deemed to have approved or consented to the matter for which Lender's consent or approval was sought if Lender fails to respond to such second written request before the expiration of such five (5) Business Day period, provided that there have been no material deviations from the term sheet and that the aggregate economics of the transaction are no less favorable to Borrower than as set forth in the term sheet;

(iv) in the event that Lender shall have approved (or be deemed to have approved) a term sheet submitted by Borrower with respect to a certain Lease, Lender shall not withhold its approval or consent with respect to such Lease on the basis of any provisions of such Lease dealing with the items contained in the approved term sheet; and

(v) Borrower shall have the right, without the consent or approval of Lender in any instance, to terminate or accept a surrender of any Lease that is not a Major Lease.

4.1.10 Alterations. Lender's prior approval shall be required in connection with any alterations to any Improvements (except tenant improvements under any Lease approved by Lender or under any Lease for which approval was not required by Lender under this Agreement) at the Individual Property (a) that may have a material adverse effect on Borrower's financial condition, the value of the Individual Property or the ongoing revenues and expenses of the Individual Property, or (b) the cost of which (including any related alteration, improvement or replacement), is reasonably anticipated to exceed the Alteration Threshold, which approval may be granted or withheld in Lender's sole discretion. If the total unpaid amounts incurred and to be incurred with respect to such alterations to the Improvements shall at any time exceed the Alteration Threshold, Borrower shall promptly deliver to Lender as security for the payment of such amounts and as additional security for Borrower's obligations under the Loan Documents and the Guaranty Security Documents any of the following: (i) cash, (ii) Letters of Credit, (iii) U.S. Obligations, (iv) other securities acceptable to Lender, provided that Lender shall have received a Rating Agency Confirmation as to the form and issuer of same, or (v) 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 on the Individual Property (other than such amounts to be paid or reimbursed by Tenants under the Leases) over the Alteration Threshold.

4.1.11 Intentionally Deleted.

4.1.12 Material Agreements. Borrower shall (a) promptly perform and/or observe all of the material covenants and agreements required to be performed and observed by

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

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

4.1.14 Costs of Enforcement/Remedying Defaults. In the event (a) that the Mortgage is foreclosed in whole or in part or the Note or any other Loan Document or Security Document is put into the hands of an attorney for collection, suit, action or foreclosure, (b) of the foreclosure of any Lien or Mortgage prior to or subsequent to the Mortgage in which proceeding Lender is made a party, (c) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Borrower or Guarantor or an assignment by Borrower or Guarantor for the benefit of its creditors, or (d) Lender shall remedy or attempt to remedy any Event of Default hereunder, Borrower shall be chargeable with and agree to pay all costs incurred by Lender as a result thereof, including costs of collection and defense (including reasonable attorneys', experts', consultants' and witnesses' fees and disbursements) in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, which shall be due and payable on demand, together with interest thereon from the date incurred by Lender at the Default Rate, and together with all required service or use taxes.

4.1.15 Business and Operations. Borrower will continue to engage in the businesses currently conducted by them as and to the extent the same are necessary for the ownership and leasing of the Individual Property. Borrower will qualify to do business and will remain in good standing under the laws of each jurisdiction as and to the extent the same are required for the ownership and leasing of the Individual Property. Borrower shall at all times cause the Individual Property to be maintained as an office building.

4.1.16 Loan Fees. Borrower shall pay all fees and costs (including, without limitation, all origination and commitment fees) required of Borrower pursuant to the terms of that certain summary of terms letter between Wells Real Estate Funds and Morgan Stanley Mortgage Capital, Inc. dated March 2, 2004.

Section 4.2 Borrower Negative Covenants.

Borrower covenants and agrees with Lender that:

4.2.1 Due on Sale and Encumbrance; Transfers of Interests. Without the prior written consent of Lender, neither Borrower nor any other Person having a direct or indirect ownership or beneficial interest in Borrower shall sell, convey, mortgage, grant, bargain,

encumber, pledge, assign or transfer any interest, direct or indirect, in Borrower, the Individual Property or any part thereof, whether voluntarily or involuntarily, in violation of the covenants and conditions set forth in the Mortgages and this Agreement.

4.2.2 Liens. Borrower shall not create, incur, assume or suffer to exist any Lien on any portion of the Individual Property except for Permitted Encumbrances.

4.2.3 Dissolution. Borrower shall not (i) engage in any dissolution, liquidation or consolidation or merger with or into any other business entity, (ii) engage in any business activity not related to the ownership and operation of the Individual Property, (iii) transfer, lease or sell, in one transaction or any combination of transactions, all or substantially all of the properties or assets of Borrower except to the extent expressly permitted by the Loan Documents, or (iv) cause, permit or suffer any SPC Party to (A) dissolve, wind up or liquidate or take any action, or omit to take an action, as a result of which such SPC Party would be dissolved, wound up or liquidated in whole or in part, or (B) amend, modify, waive or terminate the certificate of incorporation, limited partnership or formation, as applicable, or bylaws, partnership agreement or operating agreement, as applicable, of such SPC Party, in each case without obtaining the prior consent of Lender, but only to the extent such action requires consent of the Lender pursuant to the terms of the partnership agreement or operating agreement delivered to Lender in connection with the closing of the Loan.

4.2.4 Change in Business. Borrower shall not enter into any line of business other than the ownership and operation of the Individual Property.

4.2.5 Debt Cancellation. Borrower shall not cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to Borrower by any Person, except for adequate consideration and in the ordinary course of Borrower's business, provided, that, nothing contained in this Section shall in and of itself require Borrower to pursue collection of debts in a manner that is not commercially reasonable.

4.2.6 Affiliate Transactions. Borrower shall not enter into, or be a party to, any transaction with an Affiliate of Borrower or any of the partners or members of Borrower except in the ordinary course of business and on terms which are fully disclosed to Lender in advance and are no less favorable to Borrower or such Affiliate than would be obtained in a comparable arm's length transaction with an unrelated third party.

4.2.7 Zoning. Borrower shall not initiate or consent to any zoning reclassification of any portion of the Individual Property or seek any variance under any existing zoning ordinance or use or permit the use of any portion of the Individual Property in any manner that could result in such use becoming a non conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, without the prior consent of Lender which shall not be unreasonably withheld or delayed if such action is required to be undertaken by Borrower pursuant to a Lease that Lender has approved.

4.2.8 Assets. Borrower shall not purchase or own any properties other than the Individual Property and any property necessary or incidental for the operation of the Individual Property.

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

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

4.2.11 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 or the Guaranty Security Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under the ERISA or Section 4975 of the Code.

(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 “plan” within the meaning of Section 4975 of the Code; (B) Borrower is not subject to any state statute regulating investments of, or fiduciary obligations with respect to, governmental plans as defined in Section 3(32) of ERISA; and (C) one or more of the following circumstances is true:

(i) Equity interests in Borrower are publicly offered securities, within the meaning of the Plan Assets Regulation;

(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 the Plan Assets Regulation; or

(iii) Borrower qualifies as an “operating company” or a “real estate operating company” within the meaning of the Plan Assets Regulation.

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

4.2.13 REA. Borrower agrees that without the prior consent of Lender, Borrower will not execute modifications to any REA it is a party to if such modifications will

have a material adverse effect on the use, operation or value (including the Underwritable Cash Flow) of the Individual Property, taken as a whole, or the ability of Borrower to pay its obligations in respect of the Loan.

V. INSURANCE, CASUALTY AND CONDEMNATION

Section 5.1 Insurance.

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

(i) comprehensive all risk insurance on the Improvements and the personal property, if any, owned by the respective Borrower at the Individual Property, including contingent liability from Operation of Building Laws, Demolition Costs and Increased Cost of Construction Endorsements, in each case (A) in an amount equal to one hundred percent (100%) of the "Full Replacement Cost," which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation, but the amount shall in no event be less than the Allocated Loan Amount for the Individual Property; (B) containing an agreed amount endorsement with respect to the Improvements and personal property at the Individual Property waiving all co-insurance provisions; (C) providing for deductibles no greater than \$250,000 for all such insurance coverage (provided, that, upon request of Borrower a higher deductible may be approved by Lender in its reasonable discretion, such approval or rejection to be based on then-current insurance market conditions and the then-current amount of equity that the Borrower has in the Individual Property); and (D) containing an "Ordinance or Law Coverage" or "Enforcement" endorsement if any of the Improvements or the use of the Individual Property shall at any time constitute legal non-conforming structures or uses. In addition, Borrower shall obtain: (y) if any portion of the Improvements is currently or at any time in the future located in an area identified by the Federal Emergency Management Agency as a "special flood hazard area," flood hazard insurance in an amount equal to the lesser of (1) the Allocated Loan Amount or (2) the maximum amount of such insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended or such greater amount as Lender shall require or (3) \$50,000,000 for flood zones A& C and \$250,000,000 for other flood coverage; and (z) earthquake insurance in amounts and in form and substance satisfactory to Lender in the event the Individual Property is located in a seismic area designated as a Zone 3 or 4 by the Rating Agencies (Source: ICBC 1994 Uniform Building Code, or similar designation under successor standards), provided that the insurance pursuant to clauses (y) and (z) hereof shall be on terms consistent with the comprehensive all risk insurance policy required under this subsection (i).

(ii) commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about each of the Individual Property, such insurance (A) to be on the so-called "occurrence" form with a

combined limit, excluding umbrella coverage, of not less than One Million and No/100 Dollars (\$1,000,000) per occurrence and \$2,000,000 in the aggregate; (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) blanket contractual liability for all legal contracts; and (5) contractual liability covering the indemnities contained in Article 9 of the Mortgage to the extent the same is available;

(iii) business income insurance (A) with loss payable to Lender; (B) covering all risks required to be covered by the insurance provided for in subsection (i) above for a period commencing at the time of loss for such length of time as it takes to repair or replace with the exercise of due diligence and dispatch; (C) containing an extended period of indemnity endorsement which provides that after the physical loss to the Improvements and Personal Property has been repaired, the continued loss of income at the Individual Property will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of twelve (12) months from the date that the Individual 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; and (D) in an amount equal to one hundred percent (100%) of the projected gross income (less non-continuing expenses) from the Individual Property for a period from the date of loss to a date (assuming total destruction) which is twelve (12) months from the date that the Individual Property is repaired or replaced and operations are resumed. The amount of such business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on the Borrower's reasonable estimate of the gross income (less non-continuing expenses) from the Individual Property for the succeeding twenty-four (24) month period. All proceeds payable to Lender pursuant to this subsection shall be held by Lender and shall be applied to the obligations secured by the Loan Documents from time to time due and payable hereunder and under the Note; provided, however, that nothing herein contained shall be deemed to relieve Borrower of its obligations to pay the obligations secured by the Loan Documents on the respective dates of payment provided for in the Note and the other Loan Documents except to the extent such amounts are actually paid out of the proceeds of such business income insurance;

(iv) at all times during which structural construction, repairs or alterations are being made with respect to the Improvements, and only if the Property coverage form does not otherwise apply, (A) owner's contingent or protective liability insurance covering claims not covered by or under the terms or provisions of the above mentioned commercial general liability insurance policy; and (B) the insurance provided for in subsection (i) above written in a so-called builder's risk completed value form (1) on a non-reporting basis, (2) against all risks insured against pursuant to subsection (i) above, (3) including permission to occupy the Individual Property, and (4) with an agreed amount endorsement waiving co-insurance provisions;

(v) workers' compensation, subject to the statutory limits of the state in which the Individual Property is located, and employer's liability insurance, in an

amount satisfying statutory requirements, in respect of any work or operations on or about the Individual Property, or in connection with the Individual Property or its operation (if applicable), provided, that, Borrower shall not be required to maintain insurance pursuant to this clause (v) for such time that it does not have any employees;

(vi) comprehensive boiler and machinery insurance, if applicable, in amounts as shall be reasonably required by Lender on terms consistent with the commercial property insurance policy required under subsection (i) above;

(vii) umbrella liability insurance in addition to primary coverage in an amount not less than Fifty Million and No/100 Dollars (\$50,000,000) per occurrence on terms consistent with the commercial general liability insurance policy required under subsection (ii) above and (viii) below;

(viii) motor vehicle liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence, including umbrella coverage, of One Million and No/100 Dollars (\$1,000,000), provided, that, Borrower shall not be required to maintain insurance pursuant to this clause (viii) for such time that it does not own any automobiles or require any employees to use automobiles in their business duties;

(ix) so-called "dramshop" insurance or other liability insurance required in connection with the sale of alcoholic beverages, provided, that, Borrower shall not be required to maintain insurance pursuant to this clause (ix) for such time that Borrower does not operate a business at the Individual Property that would cause a prudent lender to require such coverage;

(x) insurance against employee dishonesty in an amount not less than one (1) month of gross revenue from the Individual Property and with a deductible reasonably approved by Lender, provided, that, Borrower shall not be required to maintain insurance pursuant to this clause (x) for such time that it does not have any employees;

(xi) (A) during any period of the term of the Loan that TRIA is in effect, if "acts of terrorism" or other similar acts or events are hereafter excluded from Borrower's comprehensive all risk insurance policy (including business income), Borrower shall obtain an endorsement to such policy, or a separate policy from an insurance provider which maintains at least an investment grade rating from Moody's (that is, "Baa3") and/or S&P (that is, "BBB-") (provided that neither Moody's nor S&P rates such provider less than investment grade), insuring against all "certified acts of terrorism" as defined by TRIA and "fire following", each in an amount equal to one hundred percent (100%) of the "Full Replacement Cost," which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation, but the amount shall in no event be less than the total outstanding principal balance of the Loan; provided, however, the total annual premium payable by Borrower for the Individual Property shall not exceed the Terrorism Insurance Premium Limit for such coverage for

the Individual Property. The endorsement or policy shall be in form and substance reasonably satisfactory to Lender and shall meet Rating Agency criteria for securitized loans; or

(B) during any period of the term of the Loan that TRIA is not in effect, if “acts of terrorism” or other similar acts or events or “fire following” are hereafter excluded from Borrower’s comprehensive all risk insurance policy or business income insurance coverage, Borrower shall obtain an endorsement to such policy, or a separate policy from an insurance provider which maintains at least an investment grade rating from Moody’s (that is, “Baa3”) and/or S&P (that is, “BBB-”) (provided that neither Moody’s nor S&P rates such provider less than investment grade), insuring against all such excluded acts or events, to the extent such policy or endorsement is available, in an amount determined by Lender in its sole discretion (but in no event greater than the total insurable value plus business income insurance coverage satisfying the provisions of clause (iii) above; provided, however, Borrower shall not be required to pay annual premiums in excess of the Terrorism Insurance Premium Limit for such coverage. The endorsement or policy shall be in form and substance reasonably satisfactory to Lender and shall meet Rating Agency criteria for securitized loans; and

(xii) upon sixty (60) days’ notice, such other reasonable insurance and in such reasonable 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 Individual Property located in or around the region in which the Individual Property is located.

(b) All insurance provided for in Section 5.1.1(a) shall be obtained under valid and enforceable policies (collectively, the “Policies” or, in the singular, the “Policy”) and, to the extent not specified above, shall be subject to the reasonable approval of Lender as to deductibles, loss payees and insureds. Borrower shall deliver to Lender certified copies of the Policies promptly upon Lender’s request therefor. Not less than ten (10) days prior to the expiration dates of the Policies theretofore furnished to Lender, certificates of insurance evidencing the Policies accompanied by evidence satisfactory to Lender of payment of the premiums then due thereunder (the “Insurance Premiums”), shall be delivered by Borrower to Lender.

(c) Any blanket insurance Policy shall specifically allocate to the Individual Property the amount of coverage from time to time required hereunder and shall otherwise provide the same protection as would a separate Policy insuring only the Individual Property in compliance with the provisions of Section 5.1.1(a).

(d) All Policies of insurance provided for or contemplated by Section 5.1.1(a) shall be primary coverage and, except for the Policy referenced in Section 5.1.1(a)(v), shall name Borrower as the insured and Lender and its successors and/or assigns as the additional insured, as its interests may appear, and in the case of property damage, boiler and machinery, flood, earthquake and terrorism insurance, shall contain a so-called New York standard non-contributing mortgagee clause or similar endorsement in favor of Lender providing that the loss thereunder shall be payable to Lender. Borrower shall not procure or permit any of its constituent entities to procure any other insurance coverage which would be on the same level of payment as the Policies or would adversely impact in any way the ability of Lender or Borrower to collect any proceeds under any of the Policies.

(e) All Policies of insurance provided for in Section 5.1.1(a), except for the Policies referenced in Section 5.1.1(a)(v) and (a)(viii) shall contain clauses or endorsements to the effect that:

(i) with respect to the insurance coverage obtained pursuant to Section 5.1.1(a)(i), (iii), (iv) and (vi) above, no act or negligence of Borrower, or anyone acting for Borrower, or of any Tenant or other occupant, or failure to comply with the provisions of any Policy, which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Lender is concerned;

(ii) the Policy shall not be canceled without at least thirty (30) days' written notice to Lender and any other party named therein as an additional insured and, if obtainable by Borrower using commercially reasonable efforts, shall not be materially changed (other than to increase the coverage provided thereby) without such a thirty (30) day notice; and

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

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

(g) In the event of foreclosure of any Mortgage with respect to the Individual Property or other transfer of title to the Individual Property in extinguishment in whole or in part of the Debt, all right, title and interest of the Borrower in and to the Policies that are not blanket Policies then in force concerning the Individual Property and all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure or Lender or other transferee in the event of such other transfer of title.

5.1.2 Insurance Company. The Policies shall be issued by financially sound and responsible insurance companies authorized to do business in the state in which the Individual Property is located and having a claims paying ability rating of "A" or better by S&P and Fitch and an insurance financial strength rating of "Aa2" by Moody's. If a Securitization occurs, (i) the foregoing required insurance company rating by a Rating Agency not rating any Securities shall be disregarded and (ii) if the insurance company complies with the aforesaid S&P required rating (and S&P is rating the Securities) and the other Rating Agencies rating the Securities do not rate the insurance company, such insurance company shall be deemed

acceptable with respect to such Rating Agency not rating such insurance company. If a Securitization occurs and S&P is not a Rating Agency, each of the insurance companies shall have a claims paying ability rating of at least A- by Fitch and an insurance financial strength rating of A3 by Moody's and at least sixty-seven percent (67%) of the coverage shall be provided by insurance companies having claims paying ability ratings of AA by Fitch and an insurance financial strength rating of Aa2 by Moody's; provided, however, if Fitch or Moody's shall not provide a rating for an insurance company, then an A.M. Best rating of A(X) shall be substituted for each of the foregoing rating requirements of Fitch or Moody's, as applicable. Notwithstanding the foregoing, Borrower shall be permitted to maintain the Policies with insurance companies which do not meet the foregoing requirements (an "Otherwise Rated Insurer"), provided Borrower obtains a "cut-through" endorsement (that is, an endorsement which permits recovery against the provider of such endorsement) with respect to any Otherwise Rated Insurer from an insurance company which meets the claims paying ability ratings required above. Moreover, if Borrower desires to maintain insurance required hereunder from an insurance company which does not meet the claims paying ability ratings set forth herein but the parent of such insurance company, which owns at least fifty-one percent (51%) of such insurance company, maintains such ratings, Borrower may use such insurance companies if approved by the Rating Agencies (such approval may be conditioned on items required by the Rating Agencies including a requirement that the parent guarantee the obligations of such insurance company).

Section 5.2 Casualty and Condemnation.

5.2.1 Casualty. If the Individual Property shall sustain a Casualty, Borrower shall give prompt notice of such Casualty to Lender and shall promptly commence and diligently prosecute to completion the repair and restoration of the Individual Property as nearly as possible to the condition the Individual Property was in immediately prior to such Casualty (a "Restoration") and otherwise in accordance with Section 5.3, it being understood, however, that Borrower shall not be obligated to restore the Individual Property to the precise condition of the Individual Property prior to such Casualty provided the Individual Property is restored, to the extent practicable, to be of at least equal value and of substantially the same character as prior to the Casualty. The 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 the applicable Borrower. In the event of a Casualty where the loss does not exceed Restoration Threshold, Borrower may settle and adjust such claim; provided that (a) no Event of Default has occurred and is continuing and (b) such adjustment is carried out in a commercially reasonable and timely manner. In the event of a Casualty where the loss exceeds the Restoration Threshold or if an Event of Default then exists, Borrower may settle and adjust such claim only with the consent of Lender (which consent shall not be unreasonably withheld or delayed) and Lender shall have the opportunity to participate, at Borrower's cost, in any such adjustments. Notwithstanding any Casualty, 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.

5.2.2 Condemnation. Borrower shall give Lender prompt notice of any actual or threatened Condemnation by any Governmental Authority of all or any part of the Individual Property and shall deliver to Lender a copy of any and all papers served in connection with such proceedings. Provided no Event of Default has occurred and is continuing, in the event of a

Condemnation where the amount of the taking does not exceed the Restoration Threshold, Borrower may settle and compromise such Condemnation; provided that the same is effected in a commercially reasonable and timely manner. In the event a Condemnation where the amount of the taking exceeds the Restoration Threshold or if an Event of Default then exists, Borrower may settle and compromise the Condemnation only with the consent of Lender (which consent shall not be unreasonably withheld or delayed) and Lender shall have the opportunity to participate, at Borrower's cost, in any litigation and settlement discussions in respect thereof and Borrower shall from time to time deliver to Lender all instruments requested by Lender to permit such participation. Borrower shall, at its 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 Condemnation, 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. Lender shall not be limited to the interest paid on the Award by any Governmental 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 Individual Property or any portion thereof is taken by any Governmental Authority, Borrower shall promptly commence and diligently prosecute the Restoration of the Individual Property and otherwise comply with the provisions of Section 5.3. If the Individual 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.

5.2.3 Business Interruption Insurance Proceeds. Notwithstanding the second-to-last sentence of Section 5.1.1(a)(iii) and provided no Event of Default exists hereunder, proceeds received by Lender on account of the business interruption insurance specified in Subsection 5.1.1(a)(iii) above with respect to any Casualty shall be deposited by Lender directly into the Clearing Account; however, during the continuance of a Trigger Period such proceeds shall be deposited directly into the Deposit Account (as defined in the Cash Management Agreement) but (a) only to the extent it reflects a replacement for (i) lost Rents that would have been due under Leases existing on the date of such Casualty, and/or (ii) lost Rents under Leases that had not yet been executed and delivered at the time of such Casualty which Borrower has proven to the insurance company would have been due under such Leases (and then only to the extent such proceeds disbursed by the insurance company reflect a replacement for such past due Rents) and (b) only to the extent necessary to fully make the disbursements required by Section 3.3(a)(i) through 3.3(a)(vii) of the Cash Management Agreement. All other such proceeds shall be held by Lender and disbursed in accordance with Section 5.3 hereof.

Section 5.3 Delivery of Net Proceeds.

5.3.1 Minor Casualty or Condemnation. If a Casualty or Condemnation has occurred to the Individual Property and the Net Proceeds shall be less than the Restoration Threshold and the costs of completing the Restoration shall be less than the Restoration Threshold, and provided no Event of Default shall have occurred and remain uncured, the Net Proceeds will be disbursed by Lender to Borrower. Promptly after receipt of the Net Proceeds, Borrower shall commence and satisfactorily complete with due diligence the Restoration in accordance with the terms of this Agreement. If any Net Proceeds are received by Borrower and may be retained by Borrower pursuant to the terms hereof, such Net Proceeds shall, until

completion of the Restoration, be held in trust for Lender and shall be segregated from other funds of Borrower to be used to pay for the cost of Restoration in accordance with the terms hereof.

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

(i) no Event of Default shall have occurred and be continuing;

(ii) (A) in the event the Net Proceeds are insurance proceeds, less than thirty-three percent (33%) of the total floor area of the Improvements at the Individual Property that has been damaged, destroyed or rendered unusable as a result of such Casualty or (B) in the event the Net Proceeds are an Award, less than ten percent (10%) of the land constituting the Individual Property is taken, and such land is located along the perimeter or periphery of the Individual Property, and no portion of the Improvements is the subject of the Condemnation;

(iii) Leases requiring payment of annual rent equal to eighty percent (80%) of the Gross Revenue at the Individual Property received by Borrower during the twelve (12) month period immediately preceding the Casualty or Condemnation and all Major Leases shall remain in full force and effect during and after the completion of the Restoration without abatement of rent beyond the time required for Restoration, notwithstanding the occurrence of such Casualty or Condemnation.

(iv) Borrower shall commence the Restoration as soon as reasonably practicable (but in no event later than ninety (90) days after such Casualty or Condemnation, whichever the case may be, occurs) and shall diligently pursue the same to satisfactory completion;

(v) Lender shall be satisfied that any operating deficits and all payments of principal and interest under the Note will be paid during the period required for Restoration from (A) the Net Proceeds, or (B) other funds of Borrower;

(vi) Lender shall be satisfied that the Restoration will be completed on or before the earliest to occur of (A) the date six (6) months prior to the Maturity Date, (B) the earliest date required for such completion under the terms of any Lease at the Individual Property or other Leases necessary to meet the condition set forth in clause (iii) above, (C) such time as may be required under applicable Legal Requirements in order to repair and restore the Individual Property to the condition it was in immediately prior to such Casualty or to as nearly as possible the condition it was in immediately prior to such Condemnation, as applicable or (D) the expiration of the insurance coverage referred to in Section 5.1.1(a)(iii) unless Borrower deposits with Lender additional amounts necessary to pay Debt Service and Operating Expenses for the period not covered by the insurance referred to in Section 5.1.1(a)(iii) through completion of the

Restoration (provided, that, in no event shall Borrower's deposit of additional funds extend the deadline for completion of the Restoration otherwise set forth in (A)-(C) of this clause (vi));

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

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

(ix) such Casualty or Condemnation, as applicable, does not result in the loss of access to the Individual Property or the related Improvements.

(b) The Net Proceeds shall be paid directly to Lender and held by Lender in an interest-bearing account and, until disbursed in accordance with the provisions of this Section 5.3.2, shall constitute additional security for the Debt. The Net Proceeds shall be disbursed by Lender to, or as directed by, Borrower from time to time during the course of the Restoration, upon receipt of evidence satisfactory to Lender that (A) all requirements set forth in Section 5.3.2(a) have been satisfied, (B) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with the Restoration have been paid for in full, and (C) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Individual Property arising out of the Restoration 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.

(c) All plans and specifications required in connection with the Restoration shall be subject to prior approval of Lender (such approval not to be unreasonably withheld or delayed) and an independent architect selected by Lender (the "Casualty Consultant"). The plans and specifications shall require that the Restoration be completed in a first-class workmanlike manner at least equivalent to the quality and character of the original work in the Improvements (provided, however, that in the case of a partial Condemnation, the Restoration shall be done to the extent reasonable practicable after taking into account the consequences of such partial Condemnation), so that upon completion thereof, the Individual Property shall be at least equal in value and general utility to the Individual Property prior to the damage or destruction; it being understood, however, that Borrower shall not be obligated to restore the Individual Property to the precise condition of the Individual Property prior to such Casualty provided the Individual Property is restored, to the extent practicable, to be of at least equal value and of substantially the same character as prior to the Casualty. Borrower shall restore all Improvements such that when they are fully restored and/or repaired, such Improvements and their contemplated use fully comply with all applicable material Legal Requirements. The identity of the general contractor and material subcontractors and materialmen engaged in the Restoration, as well as the contracts under which they have been engaged, shall be subject to approval of Lender and the Casualty Consultant, such approval not to be unreasonably withheld or delayed. All costs and expenses incurred by Lender in connection with recovering, holding and advancing the Net Proceeds for the Restoration including, without limitation, reasonable attorneys' fees and disbursements and the Casualty Consultant's fees and disbursements, shall be paid by Borrower.

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

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

(f) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the opinion of Lender in consultation with the Casualty Consultant, be sufficient to pay in full the balance of the costs 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 5.3.2 shall constitute additional security for the Debt.

(g) 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 5.3.2, 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 any of the Loan Documents or the Guaranty Security Documents; provided, however, the amount of such excess returned to Borrower in the case of a Condemnation shall not exceed the amount of Net Proceeds Deficiency deposited by Borrower with the balance being applied to the Debt in the manner provided for in Subsection 5.3.2(h).

(h) All Net Proceeds not required (i) to be made available for the Restoration or (ii) to be returned to Borrower as excess Net Proceeds pursuant to Section 5.3.2(g) may be retained and applied by Lender toward the payment of the Components, whether or not due and payable, in the manner and priority specified in Section 2.4.2 or, at the discretion of Lender, the same may be paid, either in whole or in part, to Borrower for such purposes as Lender shall designate.

VI. RESERVE FUNDS

Section 6.1 Required Repair Fund.

6.1.1 Deposit of Required Repair Funds. Borrower shall perform the repairs at the Individual Property as more particularly set forth on Schedule II hereto (such repairs hereinafter referred to as “Required Repairs”) and shall complete each of the Required Repairs on or before the respective deadline for each repair as set forth on Schedule II. On the Closing Date, Borrower shall deposit with Agent the amount for the Individual Property set forth on such Schedule II hereto to perform the Required Repairs for the Individual Property. Amounts deposited pursuant to this Section 6.1.1 are referred to herein as the “Required Repair Funds.”

6.1.2 Release of Required Repair Funds. Lender shall direct Agent to disburse to the applicable Borrower the Required Repair Funds upon satisfaction by Borrower of each of the following conditions: (a) Borrower shall submit a written request for payment to Lender at least ten (10) days prior to the date on which Borrower requests such payment be made and specifies the Required Repairs to be paid, (b) on the date such request is received by Lender and on the date such payment is to be made, no Event of Default shall exist and remain uncured, (c) Lender shall have received an Officer’s Certificate (i) stating that all Required Repairs to be funded by the requested disbursement have been completed in a good and workmanlike manner and in accordance with all applicable Legal Requirements, such certificate to be accompanied by a copy of any license, permit or other approval by any Governmental Authority required in connection with the Required Repairs, (ii) identifying the general contractor and material subcontractors and suppliers that supplied materials or labor in connection with the Required Repairs performed at the Individual Property to be funded by the requested disbursement, and (iii) stating that each such Person has been paid in full or will be paid in full upon such disbursement, such certificate to be accompanied by lien waivers or other evidence of payment satisfactory to Lender, (d) at Lender’s option, a title search for the Individual Property for which Required Repair Funds are being disbursed indicating that the Individual Property is free from all liens, claims and other encumbrances not previously approved by Lender, (e) at Lender’s option, if the cost of the Required Repairs exceeds \$500,000, 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 required repairs, and (f) Lender shall have received such other evidence as Lender shall reasonably request that the Required Repairs to be funded by the requested disbursement have been completed and are paid for or will be paid upon such disbursement to Borrower. Lender shall not be required to disburse Required Repair Funds more frequently than once each calendar month, or with respect to the Individual Property unless such requested disbursement is in an amount greater than the Minimum Disbursement Amount (or a lesser amount if the total Required Repair Funds is less than the Minimum Disbursement Amount, in which case only one disbursement of the amount remaining in the account shall be made).

Section 6.2 Tax Funds.

6.2.1 Deposits of Tax Funds. During the continuance of a Trigger Period only, pursuant to the Cash Management Agreement there shall be deposited on each Monthly Payment Date an amount equal to one-twelfth 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. Amounts deposited pursuant to this Section 6.2.1 are referred to herein as the "Tax Funds." If at any time Lender reasonably determines that the Tax 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 three (3) Business Days after its receipt of such notice.

6.2.2 Release of Tax Funds. Provided no Event of Default has occurred and is continuing, Lender shall apply the Tax Funds, if any, 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 Funds shall exceed the amounts due for Taxes, Lender shall, in its sole discretion, return any excess to Borrower or credit such excess against future payments to be made to the Tax Funds. Any Tax Funds remaining after the Debt has been paid in full shall be returned to Borrower.

Section 6.3 Insurance Funds.

6.3.1 Deposits of Insurance Funds. During the continuance of a Trigger Period only, pursuant to the Cash Management Agreement there shall be deposited on each Monthly Payment Date an amount equal to one-twelfth 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. Any amounts deposited pursuant to this Section 6.3.1 are referred to herein as the "Insurance Funds." If at any time Lender reasonably determines that the Insurance 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.

6.3.2 Release of Insurance Funds. Provided no Event of Default has occurred and is continuing, Lender shall apply the Insurance Funds, if any, 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 Funds shall exceed the amounts due for Insurance Premiums, Lender shall, in its sole discretion, return any excess to Borrower or credit such excess against future payments to be made to the Insurance Funds. Any Insurance Funds remaining after the Debt has been paid in full shall be returned to Borrower.

Section 6.4 Capital Expenditure Funds.

6.4.1 Deposits of Capital Expenditure Funds. During the continuance of a Trigger Period only, Borrowers shall deposit with Lender on each Monthly Payment Date an aggregate amount equal to one-twelfth of the Cap Ex Amount for annual Capital Expenditures approved by Lender under Section 4.1.10 hereof or otherwise approved by Lender, which approval shall not be unreasonably withheld or delayed. Any amounts deposited pursuant to this Section 6.4.1 are referred to herein as the “Capital Expenditure Funds.” Lender may reassess its estimate of the amount necessary for capital expenditures from time to time and, and may require Borrower to increase the monthly deposits required pursuant to this Section 6.4.1 upon thirty (30) days notice to Borrower if Lender determines in its reasonable discretion that an increase is necessary to maintain proper operation of the Individual Property.

6.4.2 Release of Capital Expenditure Funds. (a) Lender shall direct Agent to disburse Capital Expenditure Funds only for Capital Expenditures.

(b) Lender shall direct Agent to disburse to Borrower the Capital Expenditure Funds upon satisfaction by the requesting Borrower of each of the following conditions: (i) Borrower shall submit a written request for payment to Lender at least ten (10) days prior to the date on which Borrower requests such payment be made and specifies the Capital Expenditures to be paid, (ii) on the date such request is received by Lender and on the date such payment is to be made, no Event of Default shall exist and remain uncured, (iii) Lender shall have received an Officer's Certificate (A) stating that the items to be funded by the requested disbursement are Capital Expenditures, (B) stating that all Capital Expenditures at the Individual Property to be funded by the requested disbursement have been completed in a good and workmanlike manner and in accordance with all applicable Legal Requirements, such certificate to be accompanied by a copy of any license, permit or other approval required by any Governmental Authority in connection with the Capital Expenditures, (C) identifying the general contractor and material subcontractors and suppliers that supplied materials or labor in connection with the Capital Expenditures performed at the Individual Property to be funded by the requested disbursement, and (D) stating that each such Person has been paid in full or will be paid in full upon such disbursement, such certificate to be accompanied by lien waivers or other evidence of payment satisfactory to Lender, (iv) at Lender's option, a title search for the Individual Property for which Capital Expenditure Funds are being disbursed indicating that the Individual Property is free from all Liens, claims and other encumbrances not previously

approved by Lender, and (v) at Lender's option, if the cost of the individual Capital Expenditure exceeds \$500,000, 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 required repairs, and (vi) Lender shall have received such other evidence as Lender shall reasonably request that the Capital Expenditures at the Individual Property to be funded by the requested disbursement have been completed and are paid for or will be paid upon such disbursement to Borrower. Lender shall not be required to disburse Capital Expenditure Funds more frequently than once each calendar month, or with respect to the Individual Property unless such requested disbursement is in an amount greater than the Minimum Disbursement Amount (or a lesser amount if the total amount of Capital Expenditure Funds is less than the Minimum Disbursement Amount, in which case only one disbursement of the amount remaining in the account shall be made).

(c) Nothing in this Section 6.4.2 shall (i) make Lender responsible for making or completing the Capital Expenditures Work; (ii) require Lender to expend funds in addition to the Capital Expenditure Funds to complete any Capital Expenditures Work; (iii) obligate Lender to proceed with the Capital Expenditures Work; or (iv) obligate Lender to demand from Borrower additional sums to complete any Capital Expenditures Work.

(d) Borrower shall permit Lender and Lender's agents and representatives (including, without limitation, Lender's engineer, architect, or inspector) or third parties to enter onto the Individual Property during normal business hours (subject to the rights of Tenants under their Leases) to inspect the progress of any Capital Expenditures Work and all materials being used in connection therewith and to examine all plans and shop drawings relating to such Capital Expenditures Work. 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 6.4.2(d).

(e) If a disbursement will exceed \$[250,000], Lender may require an inspection of the Individual Property at Borrower's expense prior to making a disbursement of Capital Expenditure Funds in order to verify completion of the Capital Expenditures Work for which reimbursement is sought. Lender may require that such inspection be conducted by an appropriate independent qualified professional selected by Lender and may require a certificate of completion by an independent qualified professional architect acceptable to Lender prior to the disbursement of Capital Expenditure Funds. Borrower shall pay the expense of the inspection as required hereunder, whether such inspection is conducted by Lender or by an independent qualified professional architect.

(f) In addition to any insurance required under the Loan Documents and/or the Guaranty Security 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 Capital Expenditures Work. All such policies shall be in form and amount reasonably satisfactory to Lender.

Section 6.5 Rollover Funds.

6.5.1 Deposits of Rollover Funds. During the continuance of a Trigger Period only, Borrowers shall deposit with Lender on each Monthly Payment Date an aggregate amount equal to one-twelfth of the Rollover Amount for tenant improvements and leasing commissions that may be incurred at each Individual Property following the date hereof. Any amounts deposited pursuant to this Section 6.5.1 are referred to herein as the “Rollover Funds.”

6.5.2 Release of Rollover Funds. Lender shall direct Agent to disburse to Borrower the Rollover Funds upon satisfaction by Borrower of each of the following conditions: (i) the requesting Borrower shall submit a written request for payment to Lender at least ten (10) days prior to the date on which Borrower requests such payment be made and specifies the tenant improvement costs and leasing commissions to be paid, (ii) on the date such request is received by Lender and on the date such payment is to be made, no Event of Default shall exist and remain uncured, (iii) the Lease in respect of which Borrower is obligated to pay or reimburse certain tenant improvement costs and leasing commissions shall (A) have been approved or deemed approved by Lender pursuant to the terms of this Agreement or (B) not be subject to Lender approval pursuant to the terms of this Agreement, (iv) to the extent not set forth in the Approved Annual Budget, Lender shall have received and approved a budget for tenant improvement costs and a schedule of leasing commissions payments and the requested disbursement will be used to pay all or a portion of such costs and payments, (v) Lender shall have received an Officer's Certificate (A) stating that all tenant improvements at the Individual Property to be funded by the requested disbursement have been completed in good and workmanlike manner and in accordance with all applicable federal, state and local laws, rules and regulations, such certificate to be accompanied by a copy of any license, permit or other approval by any Governmental Authority required in connection with such tenant improvements, (B) identifying the general contractor and material subcontractors and suppliers that supplied materials or labor in connection with the tenant improvements performed at the Individual Property to be funded by the requested disbursement, and (C) stating that each such Person has been paid in full or will be paid in full upon such disbursement, such certificate to be accompanied by lien waivers or other evidence of payment satisfactory to Lender, (vi) at Lender's option, a title search for the Individual Property for which Rollover Funds are being disbursed indicating that the Individual Property is free from all Liens, claims and other encumbrances not previously approved by Lender, and (vii) Lender shall have received such other evidence as Lender shall reasonably request that the tenant improvements at the Individual Property to be funded by the requested disbursement have been completed and are paid for or will be paid upon such disbursement to the requesting Borrower. Lender shall not be required to disburse Rollover Funds more frequently than once each calendar month, or with respect to the Individual Property unless such requested disbursement is in an amount greater than the Minimum Disbursement Amount (or a lesser amount if the total amount of Rollover Funds is less than the Minimum Disbursement Amount, in which case only one disbursement of the amount remaining in the account shall be made).

Section 6.6 Lease Termination Rollover Funds.

6.6.1 Deposits of Rollover Funds. In the event that Borrower receives a fee, payment or other compensation from any Tenant relating to or in exchange for the termination of

such Tenant's Lease (a "Lease Termination Fee"), Borrower shall, during the continuance of a Trigger Period only, immediately deposit such Lease Termination Fee with Lender, to be utilized for tenant improvements and leasing commissions that may be incurred with respect to the space relating to such Lease Termination Fee (a "Termination Space") and, in the event that there is a Rent Deficiency (as hereinafter defined) for the Termination Space from and after the date that the Lease for the Termination Space was terminated, in replacement of Rent. Amounts deposited pursuant to this Section 6.6.1 are referred to herein as the "Lease Termination Rollover Funds."

6.6.2 Release of Lease Termination Rollover Funds. (a) Lender shall direct Agent to disburse to the applicable Borrower the Lease Termination Rollover Funds upon satisfaction by the requesting Borrower of each of the following conditions: (i) the requesting Borrower shall submit a written request for payment to Lender at least ten (10) days prior to the date on which Borrower requests such payment be made and (A) specifies the tenant improvement costs and leasing commissions to be paid for the Termination Space or (B) specifies the amount by which the rent expected to be obtained by Borrower for the Termination Space during the next succeeding calendar month pursuant to the Lease or Leases for such Termination Space (a "Replacement Lease") is less than the amount of monthly rent received from the previous Tenant in the Termination Space pursuant to its Lease prior to such termination (the "Rent Deficiency"), (ii) on the date such request is received by Lender and on the date such payment is to be made, no Event of Default shall exist and remain uncured, (iii) the Replacement Lease in respect of which Borrower is obligated to pay or reimburse certain tenant improvement costs and leasing commissions shall (A) have been approved or deemed approved by Lender pursuant to the terms of this Agreement or (B) not be subject to Lender approval pursuant to the terms of this Agreement, (iv) with respect to any Lease Termination Rollover Funds to be released by Lender for tenant improvements or leasing commissions pursuant to a Replacement Lease, Lender shall have received a budget for tenant improvement costs and a schedule of leasing commissions payments and the requested disbursement will be used to pay all or a portion of such costs and payments, (v) with respect to any Lease Termination Rollover Funds to be released by Lender for tenant improvements or leasing commissions pursuant to a Replacement Lease, Lender shall have received an Officer's Certificate from Borrower (A) stating that all tenant improvements at the Individual Property to be funded by the requested disbursement have been completed in good and workmanlike manner and in accordance with all applicable federal, state and local laws, rules and regulations, such certificate to be accompanied by a copy of any license, permit or other approval by any Governmental Authority required in connection with the Capital Expenditures, (B) identifying the general contractor and material subcontractors and suppliers that supplied materials or labor in connection with the tenant improvements performed at the Individual Property to be funded by the requested disbursement, and (C) stating that each such Person has been paid in full or will be paid in full upon such disbursement, such certificate to be accompanied by lien waivers or other evidence of payment satisfactory to Lender, (vi) with respect to any Lease Termination Rollover Funds to be released by Lender for tenant improvements or leasing commissions pursuant to a Replacement Lease, at Lender's option, a title search for the Individual Property for which Lease Termination Rollover Funds are being disbursed indicating that the Individual Property is free from all Liens, claims and other encumbrances not previously approved by Lender and (vii) with respect to any Lease Termination Rollover Funds to be released by Lender for tenant improvements or leasing commissions pursuant to a Replacement Lease, Lender shall have received such other evidence as Lender shall reasonably request that the tenant improvements at

the Individual Property to be funded by the requested disbursement have been completed and are paid for or will be paid upon such disbursement to the Borrower. Lender shall not be required to disburse Lease Termination Rollover Funds more frequently than once each calendar month, or with respect to the Individual Property, unless such requested disbursement is in an amount greater than the Minimum Disbursement Amount (or a lesser amount if the total amount of Lease Termination Rollover Funds is less than the Minimum Disbursement Amount, in which case only one disbursement of the amount remaining in the account shall be made). All Rent Deficiency disbursements made by Lender shall be deposited into the Deposit Account as if such sums were received by Borrower as Rent during the calendar month after such request is made by Borrower.

(b) Notwithstanding the foregoing, upon receipt by Lender of evidence that, with respect to any new Replacement Lease with a term of at least five (5) years, all tenant improvements required to be completed by the applicable Borrower pursuant to the Replacement Lease, if any, have been completed and all leasing commissions required to be paid by Borrower with respect to the Replacement Lease, if any, have been paid, and provided no Event of Default then exists, Lender shall direct Agent to disburse to Borrower the Lease Termination Rollover Funds on deposit with respect to such Termination Space provided that the rent to be obtained by Borrower for such Termination Space during the next succeeding sixty (60) calendar months pursuant to the respective Replacement Lease is equal to or greater than the sum of the monthly rent last received from the previous Tenant in such Termination Space pursuant to its Lease multiplied by sixty (60).

Section 6.7 Ground Rent Funds.

6.7.1 Deposits of Ground Rent Funds. If any Substitute Property shall consist of a Ground Lease, Borrower shall deposit with Lender, at least ten (10) Business Days prior to each Monthly Payment Date, an amount (the "Monthly Ground Rent Deposit") equal to the Ground Rent that will be payable under such Ground Lease(s) for the month in which such Monthly Payment Date occurs (such amounts so deposited shall hereinafter be referred to as the "Ground Rent Funds"). Such deposit may be increased by Lender in the amount Lender deems is necessary in its reasonable discretion based on any increases in the Ground Rent.

6.7.2 Release of Ground Rent Funds. Provided no Event of Default has occurred and is continuing, Lender shall apply the Ground Rent Funds to payments of Ground Rent. In making any payment relating to Ground Rent, Lender may do so according to any bill or statement given by the ground lessor under any Ground Lease without inquiry into the accuracy of such bill or statement or into the validity of any rent, additional rent or other charge thereof. If the amount of the Ground Rent Funds shall exceed the amounts due for Ground Rent, Lender shall, in its sole discretion, either (a) return any excess to Borrower or (b) credit such excess against future payments to be made to the Ground Rent Funds. Any Ground Rent Funds remaining after the Debt has been paid in full shall be returned to Borrower.

Section 6.8 Application of Reserve Funds. Upon the occurrence of an Event of Default, Lender, at its option, may withdraw the Reserve Funds and apply the Reserve Funds to the items for which the Reserve Funds were established or to payment of the Debt in such order, proportion and priority as Lender may determine in its sole discretion. Lender's right to withdraw and apply the Reserve Funds shall be in addition to all other rights and remedies provided to Lender under the Loan Documents and the Guaranty Security Documents.

Section 6.9 Security Interest in Reserve Funds.

6.9.1 Grant of Security Interest. Borrower shall be the owner of the Reserve Funds. Borrower hereby pledges, assigns and grants a security interest to Lender, as security for payment of the Debt and the performance of all other terms, conditions and covenants of the Loan Documents and the Guaranty Security Documents on Borrower's part to be paid and performed, in all of Borrower's right, title and interest in and to the Reserve Funds. The Reserve Funds shall be under the sole dominion and control of Lender.

6.9.2 Income Taxes. Borrower shall report on its federal, state and local income tax returns all interest or income accrued on the Reserve Funds to the extent that it constitutes reportable income.

6.9.3 Prohibition Against Further Encumbrance. Borrower shall not, without the prior consent of Lender, further pledge, assign or grant any security interest in the Reserve Funds or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto.

Section 6.10 Letters of Credit.

6.10.1 Delivery of Letters of Credit. (a) In lieu of making the payments to any of the Reserve Funds as required pursuant to the terms hereof, Borrower may deliver to Lender a Letter of Credit in accordance with the provisions of this Section 6.10. Additionally, Borrower may deliver to Lender a Letter of Credit in accordance with the provisions of this Section 6.10 in lieu of deposits previously made to the Reserve Funds. The aggregate amount of any Letter of Credit and cash on deposit with respect to the Capital Expenditure Funds, the Required Repair Funds and Rollover Funds shall at all times be at least equal to the aggregate amount which Borrower is required to have on deposit in such Reserve Fund pursuant to this Agreement. The aggregate amount of any Letter of Credit and cash on deposit with respect to the Tax Funds shall at all times be at least equal to the aggregate which Borrower would be required to deposit in such Reserve Fund over the next twelve (12) month period. The aggregate amount of any Letter of Credit and cash on deposit with respect to the Insurance Funds and the Ground Rent Funds, if applicable, shall at all times be at least equal to the aggregate which Borrower would be required to deposit in such Reserve Fund over the next twelve (12) month period. In the event that a Letter of Credit is delivered in lieu of any portion of the Tax Funds, the Insurance Funds or the Ground Rent Funds, if applicable, Borrower shall be responsible for the payment of Taxes, Insurance Premiums or Ground Rent, as applicable, and Lender shall not be responsible therefor. In the event that a Letter of Credit is delivered in lieu of any portion of the Tax Funds, the Insurance Funds or the Ground Rent Funds, if applicable, Lender shall return to Borrower any cash deposits that are no longer required to be on deposit (based on the provisions of this clause(a)).

(b) Borrower shall give Lender no less than thirty (30) days notice of Borrower's election to deliver a Letter of Credit and Borrower shall pay to Lender all of Lender's reasonable out-of-pocket costs and expenses in connection therewith. Borrower shall not be entitled to draw from any such Letter of Credit. Upon thirty (30) days notice to Lender, Borrower may replace a Letter of Credit with a cash deposit to the applicable Reserve Fund if a Letter of Credit has been outstanding for more than six (6) months. Prior to the return of a Letter of Credit, Borrower shall deposit an amount equal to the amount that would have accumulated in the applicable Reserve Fund and not been disbursed in accordance with this Agreement if such Letter of Credit had not been delivered.

(c) Borrower shall provide Lender with notice of any increases in the annual payments for Taxes, Insurance Premiums and Ground rent, if applicable, thirty (30) days prior to the effective date of any such increase and any applicable Letter of Credit shall be increased by such increased amount at least ten (10) days prior to the effective date of such increase.

Section 6.11 Provisions Regarding Letters of Credit.

6.11.1 Security for Debt. Each Letter of Credit delivered under this Agreement shall be additional security for the payment of the Debt. Upon the occurrence of an Event of Default, Lender shall have the right, at its option, to draw on any Letter of Credit and to apply all or any part thereof to the payment of the items for which such Letter of Credit was established or to apply each such Letter of Credit to payment of the Debt in such order, proportion or priority as Lender may determine. Any such application to the Debt shall be subject to the Yield Maintenance Premium. On the Maturity Date, any such Letter of Credit may be applied to reduce the Debt.

6.11.2 Additional Rights of Lender. In addition to any other right Lender may have to draw upon a Letter of Credit pursuant to the terms and conditions of this Agreement, Lender shall have the additional rights to draw in full any Letter of Credit: (a) with respect to any evergreen Letter of Credit, if Lender has received a notice from the issuing bank that the Letter of Credit will not be renewed and a substitute Letter of Credit is not provided at least thirty (30) days prior to the date on which the outstanding Letter of Credit is scheduled to expire; (b) with respect to any Letter of Credit with a stated expiration date, if Lender has not received a notice from the issuing bank that it has renewed the Letter of Credit at least thirty (30) days prior to the date on which such Letter of Credit is scheduled to expire and a substitute Letter of Credit is not provided at least thirty (30) days prior to the date on which the outstanding Letter of Credit is scheduled to expire; (c) upon receipt of notice from the issuing bank that the Letter of Credit will be terminated (except if the termination of such Letter of Credit is permitted pursuant to the terms and conditions of this Agreement or a substitute Letter of Credit is provided); or (d) if Lender has received notice that the bank issuing the Letter of Credit shall cease to be an Eligible Institution. Notwithstanding anything to the contrary contained in the above, Lender is not obligated to draw any Letter of Credit upon the happening of an event specified in (a), (b), (c) or (d) above and shall not be liable for any losses sustained by Borrower due to the insolvency of the bank issuing the Letter of Credit if Lender has not drawn the Letter of Credit. Provided no Event of Default is continuing, draws of a Letter of Credit under this Section 6.11.2 shall thereafter be held as Reserve Funds in accordance with this Agreement.

VII. PROPERTY MANAGEMENT

Section 7.1 The Management Agreement. Borrower shall cause the Manager of the Individual Property to manage the Individual Property substantially in accordance with its Management Agreement. Borrower shall (i) diligently perform and observe all of the material terms, covenants and conditions of its Management Agreement on the part of Borrower to be performed and observed, (ii) promptly notify Lender of any notice to Borrower of any default by Borrower in the performance or observance of any of the terms, covenants or conditions of its Management Agreement on the part of Borrower to be performed and observed, and (iii) upon request of Lender, promptly deliver to Lender a copy of each financial statement, business plan, capital expenditures plan, report and estimate received by it under each Management Agreement. 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, then, without limiting Lender's other rights or remedies under this Agreement or the other Loan Documents, and without waiving or releasing Borrower from any of its obligations hereunder or under such Management Agreement, upon five (5) Business Days' prior notice to Borrower, Lender shall have the right, but shall be under no obligation, to pay any sums and to perform any act as may be appropriate to cause all the material terms, covenants and conditions of such Management Agreement on the part of the Borrower to be performed or observed.

Section 7.2 Prohibition Against Termination or Modification. Borrower shall not surrender, terminate, cancel, modify, renew or extend any Management Agreement, or enter into any other agreement relating to the management or operation of the Individual Property with Manager or any other Person, or consent to the assignment by the Manager of its interest under the related Management Agreement, in each case without the express consent of Lender, which consent shall not be unreasonably withheld; provided, however, with respect to a new manager such consent may be conditioned upon Borrower delivering a Rating Agency Confirmation as to such new manager and management agreement and, if such new manager is an Affiliate of Borrower, upon delivery of a non-consolidation opinion acceptable to the Rating Agencies. If at any time Lender consents to the appointment of a new manager, such new manager and the applicable Borrower shall, as a condition of Lender's consent, execute a subordination of management agreement in the form then used by Lender. Notwithstanding anything contained in this Section 7.2 to the contrary, Wells Management Company, Inc. is hereby approved by Lender as a substitute property manager for any Manager currently managing an Individual Property, provided, that, prior to Wells Management Company, Inc. becoming the manager of the Individual Property, Borrower shall be required to satisfy each of the conditions set forth in this Section other than obtaining Lender's approval or a Rating Agency Confirmation.

Section 7.3 Replacement of Manager. Lender shall have the right to require Borrower to replace any Manager at the Individual Property with a Person which is not an Affiliate of, but is chosen by, Borrower and approved by Lender upon the occurrence of any one or more of the following events: (i) from and after the Maturity Date, (ii) at any time following the occurrence of an Event of Default, (iii) if at any time the Debt Service Coverage Ratio falls below 1.20 to 1.0 (the "Manager Termination Ratio"), as determined by Lender in its sole discretion on a quarterly basis and/or (iv) if such Manager shall be in monetary default or any other material default under its Management Agreement beyond any applicable notice and cure

period or if at any time such Manager has engaged in gross negligence, fraud or willful misconduct. Notwithstanding the provisions of clause (iii) above, the applicable Borrower shall nevertheless have the right to retain such Manager if, prior to the replacement of such Manager, Borrower shall provide additional collateral in the form of Letters of Credit for a portion of the Loan, satisfactory to Lender, such that the Manager Termination Ratio can be maintained on the Loan Amount net of such additional collateral. Lender may require the Borrower to increase the additional collateral to the extent such Debt Service Coverage Ratio continues to decline in subsequent quarters. Such additional collateral shall be released to Borrower when the Debt Service Coverage Ratio equals or exceeds the Manager Termination Ratio for six (6) consecutive months and provided no Event of Default has occurred. Letters of Credit provided under this section shall be additional security for the repayment of the Indebtedness and may be drawn upon by Lender upon the occurrence of an Event of Default and applied by Lender in such order and priority as Lender may determine in its sole discretion.

VIII. PERMITTED TRANSFERS

Section 8.1 Permitted Transfer of the Individual Property. Lender shall not withhold its consent to the one-time conveyance of the Individual Property to a Permitted Transferee provided that (a) Lender has received a Rating Agency Confirmation as to the conveyance of the Individual Property to the Permitted Transferee, (b) Lender has received an agreement, acceptable to it in its sole discretion, pursuant to which Permitted Transferee assumes all of Borrower's obligations under the Loan Documents, (c) Lender receives a transfer fee equal to one percent (1.0%) of the original Loan Amount, (d) Lender shall have received such documents, certificates and legal opinions as it may reasonably request and (e) the Other Borrowers simultaneously transfer the Other Properties to such Transferee and satisfy the conditions set forth in Section 8.1 of each of the Other Loan Agreements.

Section 8.2 Permitted Transfers of Interest in Borrower. The restrictions on Transfers of ownership interests in the Borrower set forth in Article 6 of the Mortgage shall not apply to the issuance, sale, transfer or pledge of publicly traded shares of the REIT or the issuance, transfer or pledge of limited partnership interests (including the conversion of general partnership interests to limited partnership interests) in Wells Operating Partnership, L.P. ("the OP"), provided that (x) no one Person or its Affiliates owns more than forty-nine percent (49%) of the REIT or the OP (other than the REIT pursuant to clause (ii) below) and the REIT shall at all times (i) be and remain the sole general partner of the OP and have the right and power to direct the management, policies and day-to-day business and affairs of the OP and (ii) directly own a minimum of ninety percent (90%) of the interests in the OP, (y) the OP directly or indirectly at all times owns at least one hundred percent (100%) of the ownership interests in Borrower and retains control of the Borrower and the day-to-day management of the Individual Property and (z) if after giving effect to such transfer and all prior transfers, more than forty-nine percent (49%) in the aggregate of direct or indirect interests in the Borrower are owned by any Person and its Affiliates that owned less than a forty-nine percent (49%) direct or indirect interest in Borrower as of the Closing Date, Lender receives a non-consolidation opinion acceptable to Lender and the Rating Agencies.

Section 8.3 Permitted Easements. Lender shall not unreasonably withhold or delay its consent to grants of easements, restrictions, covenants, reservations and rights of way in

the ordinary course of business for water and sewer lines, telephone and telegraph lines, electric lines and other utilities or for other similar purposes, provided that no such grant shall materially impair the utility and operation of the Individual Property or materially adversely affect the value of the Individual Property or materially adversely affect Borrower's ability to pay the Loan.

IX. SALE AND SECURITIZATION OF MORTGAGE

Section 9.1 Sale of Mortgage and Securitization.

(a) Lender shall have the right (i) to sell or otherwise transfer the Loan 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) 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, including, without limitation, to:

(i) (A) provide updated financial and other information with respect to the Individual Property, the business operated at the Individual Property, Borrower and, to the extent reasonably available to Borrower, each Manager, (B) provide updated budgets relating to the Individual Property and (C) at Lender's expense provide updated appraisals, market studies, environmental reviews (Phase I's and, if appropriate, Phase II's), property condition reports and other due diligence investigations of the Individual 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, fraudulent conveyance, and true sale or any other opinion customary in Secondary Market Transactions or required by the Rating Agencies with respect to the Individual Property and Borrower and Affiliates, which counsel and opinions shall be satisfactory 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 substantially similar to the representations and warranties contained in the Loan Documents as the Rating Agencies may require; and

(iv) execute amendments to the Loan Documents and the Guaranty Security Documents and Borrower's organizational documents reasonably requested by Lender; provided, however, that Borrower shall not be required to modify or amend any

Loan Document if such modification or amendment would (A) change the interest rate, the stated maturity or the amortization of principal as set forth herein or in the Note, (B) modify or amend any other material economic term of the Loan, or (C) materially decrease the rights or materially increase the obligations of the Borrower.

Any reports, statements or other information required to be delivered under this Section 9.1 shall be delivered in paper form or transmitted electronically in PDF or other similar format or Borrower may deliver such reports, statements and other information (A) on a diskette, or (B) in electronic form and prepared using Microsoft Word for Windows or WordPerfect for Windows files (which files may be prepared using a spreadsheet program and saved as word processing files), provided, that, delivery of such reports, statements and other information in such formats shall be subject to Borrower's satisfaction of the reporting and delivery obligations and requirements of the Servicer. Notwithstanding the foregoing, Borrower shall be required to deliver original opinions, agreements, amendments, certificates of the Borrower or its Affiliates, and title insurance policies or endorsements, and Borrower shall be required to deliver originals of any other agreements, documents, certificates and reports if such originals are reasonably requested by Lender, the Servicer or the Rating Agencies or otherwise required pursuant to the Loan Documents.

Section 9.2 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, to the best of Borrower's knowledge, each such Disclosure Document, as it relates to Borrower, Borrower's Affiliates, the Individual Property, Manager 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 9.2, Lender hereunder shall include its officers and directors), the Affiliate of Morgan Stanley Dean Witter & Co. ("Morgan Stanley") 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 "Morgan Stanley Group"), and Morgan Stanley, and any other placement agent or

underwriter with respect to the Securitization, each of their respective directors and each Person who controls Morgan Stanley 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 Morgan Stanley 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 Morgan Stanley Group and/or the Underwriter Group for any legal or other expenses reasonably incurred by Lender, the Morgan Stanley 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 Individual Property. This indemnity agreement 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 Morgan Stanley Group and the Underwriter Group for Liabilities to which Lender, the Morgan Stanley 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 Morgan Stanley Group or the Underwriter Group for any legal or other expenses reasonably incurred by Lender, the Morgan Stanley Group or the Underwriter Group in connection with defending or investigating the Liabilities; provided, however, that Borrower will be liable in any such case under clauses (i) or (ii) 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 Individual Property. This indemnity agreement will be in addition to any liability which Borrower may otherwise have.

(d) Promptly after receipt by an indemnified party under this Section 9.2 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 9.2, 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 reasonably satisfactory to such indemnified party. After notice from the indemnifying party to such indemnified party under this Section 9.2, 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 9.2(b) or (c) 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 9.2(b) or (c), 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) Morgan Stanley'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) The liabilities and obligations of both of Borrower and Lender under this Section 9.2 shall survive the termination of this Agreement and the satisfaction and discharge of the Debt.

X. DEFAULTS

Section 10.1 Event of Default.

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

(i) if (A) any monthly installment of principal and/or interest due under the Note or the payment due on the Maturity Date is not paid when due or (B) any

other portion of the Debt is not paid when due and such non-payment continues for five (5) days following notice to Borrower that the same is due and payable;

(ii) if any of the Taxes or Other Charges are not paid when due;

(iii) if the Policies are not kept in full force and effect;

(iv) if Borrower breaches or permits or suffers a breach of Article 6 of the Mortgage;

(v) if any representation or warranty made by Borrower herein or in any other Loan Document or any Guaranty Security Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished to Lender shall have been false or misleading in any material respect as of the date the representation or warranty was made;

(vi) if Borrower, any SPC Party, any of the Other Borrowers or Guarantor shall make an assignment for the benefit of creditors;

(vii) if a receiver, liquidator or trustee shall be appointed for Borrower, any SPC Party, any of the Other Borrowers or Guarantor or if Borrower, any SPC Party, any of the Other Borrowers or Guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower, any SPC Party, any of the Other Borrowers or Guarantor, or if any proceeding for the dissolution or liquidation of Borrower, any SPC Party, any of the Other Borrowers or Guarantor shall be instituted; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, and SPC Party, any of the Other Borrowers or Guarantor, upon the same not being discharged, stayed or dismissed within sixty (60) days;

(viii) if Borrower attempts to assign its rights under this Agreement or any of the other Loan Documents or the Guaranty Security Documents or any interest herein or therein in contravention of the Loan Documents or the Guaranty Security Documents;

(ix) if any of the assumptions contained in the Non-Consolidation Opinion, or in any other non-consolidation opinion delivered to Lender in connection with the Loan, or in any other non-consolidation delivered subsequent to the closing of the Loan, is or shall become untrue in any material respect;

(x) if Borrower breaches any representation, warranty or covenant contained in Section 3.1.24 hereof;

(xi) if Borrower fails to comply with the covenants as to Prescribed Laws set forth in Section 4.1.1, provided, that, it shall not be an Event of Default under this clause (xi) if Borrower's failure to comply with Prescribed Laws (A) is unintentional, (B) occurs after the date of this Agreement, (C) is susceptible of cure in the reasonable

discretion of the Lender and is actually cured within thirty (30) days of the date upon which Borrower receives notice of, or becomes aware of, any breach of the covenant with respect to Prescribed Laws as set forth in Section 4.1.1 hereof, (D) can be cured within such thirty (30) day period in such a way so that Lender will not incur any damages or liability and (E) is due to the direct or indirect action(s) of an unaffiliated third party with which Borrower or its Affiliates is then doing business;

(xii) if Borrower breaches any of the negative covenants contained in Sections 4.2.12 or 4.2.13 hereof or acts or neglects to act in such a manner as to be considered a default under the Operating Agreements and such failure is not cured within ten (10) days of written notice from Lender;

(xiii) if any Ground Lease is part of the collateral for the Loan, (A) Borrower shall fail in the payment of any rent, additional rent or other charge mentioned in or made payable by the Ground Lease as and when such rent or other charge is payable (unless waived by the landlord under the Ground Lease), (B) there shall occur any default by Borrower, as tenant under the Ground Lease, in the observance or performance of any term, covenant or condition of the Ground Lease on the part of Borrower, to be observed or performed (unless cured within applicable grace, notice or cure periods set forth in such Ground Lease or otherwise waived by the landlord under the Ground Lease), (C) if any one or more of the events referred to in the Ground Lease shall occur which would cause the Ground Lease to terminate without notice or action by the landlord under the Ground Lease or which would entitle the landlord to terminate the Ground Lease and the term thereof by giving notice to Borrower, as tenant thereunder (unless waived by the landlord under the Ground Lease), (D) if the leasehold estate created by the Ground Lease shall be surrendered or the Ground Lease shall be terminated or canceled for any reason or under any circumstances whatsoever or (E) if any of the terms, covenants or conditions of the Ground Lease shall in any manner be modified, changed, supplemented, altered, or amended without the consent of Lender except as otherwise permitted by this Agreement;

(xiv) if Guarantor breaches in any material respect any covenant, warranty or representation contained in the Guaranty or if Borrower breaches in any material respect any covenant, warranty or representation contained in the Guaranty of Other Loans which is not cured within any applicable notice and cure period provided therein;

(xv) if Borrower shall continue to be in Default under any of the other terms, covenants or conditions of this Agreement not specified in Subsections (i) to (xiv) above, for ten (10) days after notice to Borrower from Lender, in the case of any Default which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other Default; provided, however, that if such non monetary Default is susceptible of cure but cannot reasonably be cured within such 30 day period and provided further that Borrower shall have commenced to cure such Default within such 30 day period and thereafter diligently and expeditiously proceeds to cure the same, such 30 day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed sixty (60) days plus time permitted for Excusable Delays;

(xvi) an “Event of Default” shall occur under, and as defined in, any of the Other Loan Documents or the Guaranty Security Documents; or

(xvii) if there shall be default under any of the other Loan Documents or the Guaranty Security Documents beyond any applicable cure periods contained in such Loan Documents or such Guaranty Security Documents, whether as to Borrower or the Individual Property, or if any other such event shall occur or condition shall exist, if the effect of such event or condition is to accelerate the maturity of any portion of the Debt or to permit Lender to accelerate the maturity of all or any portion of the Debt.

(b) Upon the occurrence of an Event of Default (other than an Event of Default described in clause (vi), (vii) or (viii) above) and at any time thereafter Lender may, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or the Guaranty Security Documents or at law or in equity, take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and in and to the Individual Property, including, without limitation, declaring the Debt to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents against Borrower and any or all of the Individual Property, including, without limitation, all rights or remedies available at law or in equity; and upon any Event of Default described in clauses (vi), (vii) or (viii) above, the Debt and all other obligations of Borrower hereunder and under the other Loan Documents and the Guaranty Security Documents shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document or in any of the Guaranty Security Documents to the contrary notwithstanding.

Section 10.2 Remedies.

(a) Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement or any of the other Loan Documents or any of the Guaranty Security Documents executed and delivered by, or applicable to, Borrower or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Debt shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents or the Guaranty Security Documents with respect to the Individual Property. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents or in the Guaranty Security Documents. Without limiting the generality of the foregoing, if an Event of Default is continuing (i) Lender is not subject to any “one action” or “election of remedies” law or rule, and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against the Individual Property and the Mortgage has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Debt or the Debt has been paid in full.

(b) With respect to the Borrower and the Individual Property, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to the Individual Property for the satisfaction of any of the Debt in preference or priority to any other Individual Property, and Lender may seek satisfaction out of the Individual Property or any part thereof, in its absolute discretion in respect of the Debt. In addition, Lender shall have the right from time to time to partially foreclose the Mortgages in any manner and for any amounts secured by the Mortgages then due and payable as determined by Lender in its sole discretion including, without limitation, the following circumstances: (i) in the event Borrower default beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose one or more Mortgages 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 one or more Mortgage to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by one or more Mortgages as Lender may elect. Notwithstanding one or more partial foreclosures, the Individual Property shall remain subject to the Mortgages to secure payment of sums secured by the Mortgages and not previously recovered.

(c) Lender shall have the right from time to time to sever the Note and the other Loan Documents into one or more separate notes, mortgages and other Guaranty 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 their 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. Except as may be required in connection with a Securitization pursuant to Section 9.1 hereof, (i) 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 (ii) the Severed Loan Documents shall not contain any representations, warranties or covenants not contained in the Loan Documents or the Guaranty Security Documents and any such representations and warranties contained in the Severed Loan Documents will be given by Borrower only as of the Closing Date.

(d) Any amounts recovered from the Individual 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 Components and/or any other amounts due under the Loan Documents or the Guaranty Security Documents in such order, priority and proportions as Lender in its sole discretion shall determine.

Section 10.3 Right to Cure Defaults. Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder or 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 Individual Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Individual Property for such purposes, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 10.3, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any action or proceeding shall bear interest at the Default Rate, for the period after such cost or expense was incurred until the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by the liens, claims and security interests provided to Lender under the Loan Documents and shall be immediately due and payable upon demand by Lender therefore.

Section 10.4 Remedies Cumulative. The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole 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.

XI. MISCELLANEOUS

Section 11.1 Successors and Assigns. 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 11.2 Lender's Discretion. Whenever pursuant to this Agreement Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Lender and shall be final and conclusive. Prior to a Securitization, whenever pursuant to this Agreement the Rating Agencies are given any right to approve or disapprove, or any arrangement or term is to be satisfactory to the Rating Agencies, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory, based upon Lender's determination of Rating Agency criteria, shall be substituted therefore.

Section 11.3 Governing Law.

(A) THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, AND THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW (THE "GOL")) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES (I) THE PROVISIONS OF THIS AGREEMENT GOVERNING THE CREATION, PERFECTION, PRIORITY AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT HERETO WITH RESPECT TO THE PROPERTY (OTHER THAN AS DESCRIBED IN SUBSECTION II BELOW) SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE INDIVIDUAL PROPERTY AND FIXTURES ARE LOCATED AND (II) WITH RESPECT TO THE LIENS AND SECURITY INTERESTS CREATED BY THIS AGREEMENT IN PROPERTY COVERED BY ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE (OTHER THAN THE ACCOUNTS), THE LAW OF THE JURISDICTION APPLICABLE IN ACCORDANCE WITH SECTIONS 9-301 THROUGH 9-307 OF THE UNIFORM COMMERCIAL CODE IN EFFECT IN THE STATE WHERE THE INDIVIDUAL PROPERTY IS LOCATED SHALL GOVERN THE PERFECTION, THE EFFECT OF PERFECTION OR NON-PERFECTION, AND THE PRIORITY THEREOF. 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 AND THE NOTE, AND THIS AGREEMENT AND THE NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE GOL 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 HEREBY DESIGNATES AND APPOINTS:

CT CORPORATION SYSTEM
111 EIGHTH AVENUE
NEW YORK, NEW YORK 10011
ATTN: SERVICE OF PROCESS DEPT.

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON THEIR 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 THEIR 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 THEIR AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

Section 11.4 Modification, Waiver in Writing. No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement or of any other Loan Document or any other Guaranty Security 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 11.5 Delay Not a Waiver. Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under any other Loan Document or Security Document, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement or any other Loan Document or Security

Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement or the other Loan Documents or Security Document, or to declare a default for failure to effect prompt payment of any such other amount. Lender shall have the right to waive or reduce any time periods that Lender is entitled to under the Loan Documents or the Guaranty Security Documents in its sole and absolute discretion.

Section 11.6 Notices. All notices, demands, requests, consents, approvals or other communications (any of the foregoing, a “Notice”) required, permitted, or desired to be given hereunder shall be in writing sent by registered or certified mail, postage prepaid, return receipt requested, or delivered by hand or reputable overnight courier addressed to the party to be so notified at its address hereinafter set forth, or to such other address as such party may hereafter specify in accordance with the provisions of this Section 11.6. Any Notice shall be deemed to have been received: (a) three (3) days after the date such Notice is mailed, (b) on the date of delivery by hand if delivered during business hours on a Business Day (otherwise on the next Business Day), and (c) on the next Business Day if sent by an overnight commercial courier, in each case addressed to the parties as follows:

If to Lender: Morgan Stanley Mortgage Capital Inc.
1221 Avenue of the Americas, 27th Floor
New York, New York 10020
Attention: James Flaum and Kevin Swartz

with a copy to: Cadwalader, Wickersham & Taft LLP
100 Maiden Lane
New York, New York 10038
Attention: John M. Zizzo, Esq.

If to Borrower: c/o Wells Real Estate Funds
6200 The Corners Parkway, Suite 250
Norcross, Georgia 30092-6040
Attention: Finance Department

with a copy to: Alston & Bird LLP
1201 West Peachtree Street
Atlanta, Georgia 30309-3424
Attention: Steven D. Collier, Esq.

Section 11.7 Trial by Jury. BORROWER AND LENDER EACH HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY THE BORROWER AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY

JURY WOULD OTHERWISE ACCRUE. EACH PARTY IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.

Section 11.8 Headings. The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 11.9 Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Section 11.10 Preferences. Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrower to any portion of the obligations 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 bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

Section 11.11 Waiver of Notice. s shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or the other Loan Documents or the Guaranty Security Documents specifically and expressly provide for the giving of notice by Lender to Borrower and except with respect to matters for which Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice. Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Agreement or the other Loan Documents or the Guaranty Security Documents do not specifically and expressly provide for the giving of notice by Lender to Borrower.

Section 11.12 Remedies of Borrower. In the event that a claim or adjudication is made that Lender or its agents have acted unreasonably or unreasonably delayed acting in any case where, by law or under this Agreement or the other Loan Documents or the other Guaranty Security Documents, Lender or such agent, as the case may be, has an obligation to act reasonably or promptly, neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedy shall be limited to commencing an action seeking injunctive relief or declaratory judgment. Any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment.

Section 11.13 Expenses; Indemnity.

(a) Borrower shall pay or, if Borrower fails to pay, reimburse Lender upon receipt of notice from Lender, for all reasonable costs and expenses (including reasonable

attorneys' fees and disbursements) incurred by Lender in connection with (i) Borrower's ongoing performance of and compliance with Borrower's agreements and covenants contained in this Agreement and the other Loan Documents and the Guaranty Security Documents on its part to be performed or complied with after the Closing Date, including, without limitation, confirming compliance with environmental and insurance requirements; (ii) Lender's ongoing performance of and compliance with all agreements and covenants contained in this Agreement and the other Loan Documents and the Guaranty Security Documents on its part to be performed or complied with after the Closing Date; (iii) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and the Guaranty Security Documents and any other documents or matters requested by Borrower; (iv) the filing and recording fees and expenses, title insurance and reasonable fees and expenses of counsel for providing to Lender all required legal opinions, and other similar expenses incurred, in creating and perfecting the Liens in favor of Lender pursuant to this Agreement and the other Loan Documents and the Guaranty Security Documents; (v) enforcing or preserving any rights, in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation or otherwise, in each case against, under or affecting Borrower, this Agreement, the other Loan Documents, the Guaranty Security Documents, the Individual Property, or any other security given for the Loan; and (vi) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents, the Guaranty Security Documents or with respect to the Individual Property or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work out" or of any insolvency or bankruptcy proceedings; provided, however, that Borrower shall not be liable for the payment of any such costs and expenses to the extent the same arise by reason of the gross negligence, illegal acts, fraud or willful misconduct of Lender. Any costs due and payable to Lender may be paid to Lender pursuant to the Cash Management Agreement.

(b) Borrower shall indemnify, defend and hold harmless Lender and its officers, directors, agents, employees (and the successors and assigns of the foregoing) (the "Lender Indemnitees") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for the Lender Indemnitees in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not the Lender Indemnitees shall be designated a party thereto), that may be imposed on, incurred by, or asserted against the Lender Indemnitees in any manner relating to or arising out of (i) any breach by Borrower of its obligations under, or any material misrepresentation by Borrower contained in, this Agreement or the other Loan Documents or the Guaranty Security Documents, or (ii) the use or intended use of the proceeds of the Loan (collectively, the "Indemnified Liabilities"); provided, however, that Borrower shall not have any obligation to the Lender Indemnitees hereunder to the extent that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of the Lender Indemnitees. To the extent that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall pay the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by the Lender Indemnitees.

Section 11.14 Schedules Incorporated. The Schedules annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

Section 11.15 Offsets, Counterclaims and Defenses. Any assignee of Lender's interest in and to this Agreement and the other Loan Documents and the Guaranty Security 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 11.16 No Joint Venture or Partnership; No Third Party Beneficiaries.

(a) Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents and the Guaranty Security Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy in common, or joint tenancy relationship between Borrower and Lender nor to grant Lender any interest in the Individual Property other than that of mortgagee, beneficiary or lender.

(b) This Agreement and the other Loan Documents and the Guaranty Security Documents are solely for the benefit of Lender and nothing contained in this Agreement or the other Loan Documents and the Guaranty Security Documents shall be deemed to confer upon anyone other than Lender 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.

Section 11.17 Publicity. All news releases, publicity or advertising by either party to this Agreement through any media intended to reach the general public which refers to the Loan Documents, to the parties, or any of their Affiliates shall be subject to the prior approval of the other party, not to be unreasonably withheld or delayed.

Section 11.18 Cross Default; Cross-Collateralization; Waiver of Marshalling of Assets.

(a) To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's partners and others with interests in Borrower, and of the Individual Property, or to a sale in inverse order of alienation in the event of foreclosure of all or any of the Mortgage, and agrees

not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents or the Guaranty Security Documents to a sale of the Individual Property for the collection of the Debt without any prior or different resort for collection or of the right of Lender to the payment of the Debt out of the net proceeds of the Individual Property in preference to every other claimant whatsoever. In addition, Borrower, for itself and its successors and assigns, waives in the event of foreclosure of any or all of the Mortgage, any equitable right otherwise available to Borrower which would require the separate sale of the Individual Property or require Lender to exhaust its remedies against the Individual Property.

Section 11.19 Waiver of Offsets/Defenses/Counterclaims. Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents or otherwise to offset any obligations to make the payments required by the Loan Documents or the Guaranty Security Documents. No failure by Lender to perform any of its obligations hereunder shall be a valid defense to, or result in any offset against, any payments which Borrower is obligated to make under any of the Loan Documents.

Section 11.20 Conflict; Construction of Documents; Reliance. In the event of any conflict between the provisions of this Agreement and any of the other Loan Documents or the Guaranty Security Documents, the provisions of this Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents and Guaranty Security 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 their own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower or its Affiliates.

Section 11.21 Brokers and Financial Advisors. Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement. Borrower shall indemnify, defend and hold Lender harmless from and against any and all claims, liabilities, costs and expenses of any kind (including Lender's attorneys' fees and expenses) in any way relating to or arising from a claim by any Person that such Person acted on behalf of Borrower or Lender in connection with the transactions contemplated herein. The provisions of this Section 11.21 shall survive the expiration and termination of this Agreement and the payment of the Debt.

Section 11.22 Exculpation. Subject to the qualifications below, Lender shall not enforce the liability and obligation of Borrower to perform and observe the obligations contained in the Note, this Agreement, the Mortgage, the other Loan Documents or the Guaranty Security Documents by any action or proceeding wherein a money judgment shall be sought against Borrower, except that Lender may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Lender to enforce and realize upon its interest under the Note, this Agreement, the Mortgages, the other Loan Documents and the Guaranty Security Documents, or in the Individual Property, the Rents, or any other collateral given to Lender pursuant to the Loan Documents and the Guaranty Security 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 Individual Property, in the Rents and in any other collateral given to Lender, and Lender, by accepting the Note, this Agreement, the Mortgages, the other Loan Documents and the Guaranty Security Documents, shall not sue for, seek or demand any deficiency judgment against Borrower in any such action or proceeding under or by reason of or under or in connection with the Note, this Agreement, the Mortgages, the other Loan Documents or the Guaranty Security Documents. The provisions of this Section shall not, however, (a) constitute a waiver, release or impairment of any obligation evidenced or secured by any of the Loan Documents or the Guaranty Security Documents; (b) impair the right of Lender to name Borrower as a party defendant in any action or suit for foreclosure and sale under any of the Mortgages; (c) affect the validity or enforceability of any guaranty made in connection with the Loan or any of the rights and remedies of Lender thereunder; (d) impair the right of Lender to obtain the appointment of a receiver; (e) impair the enforcement of any of the Assignments of Leases; (f) constitute a prohibition against Lender to seek a deficiency judgment against Borrower in order to fully realize on any security given by Borrower in connection with the Loan or to commence any other appropriate action or proceeding in order for Lender to exercise its remedies against such security; or (g) constitute a waiver of the right of Lender to enforce the liability and obligation of Borrower, by money judgment or otherwise, to the extent of any loss, damage, cost, expense, liability, claim or other obligation incurred by Lender (including attorneys' fees and costs reasonably incurred) arising out of or in connection with the following:

- (i) fraud or intentional misrepresentation by Borrower or any guarantor in connection with the Loan;
- (ii) the gross negligence or intentionally tortious conduct of Borrower;
- (iii) the breach of any representation, warranty, covenant or indemnification provision in the Environmental Indemnity or in the Mortgage concerning environmental laws, hazardous substances and asbestos and any indemnification of Lender with respect thereto in either document;
- (iv) the removal or disposal of any portion of the Individual Property after an Event of Default;
- (v) the misapplication or conversion by Borrower of (A) any insurance proceeds paid by reason of any loss, damage or destruction to the Individual Property, (B) any Awards or other amounts received in connection with the Condemnation of all or a portion of the Individual Property, or (C) any Rents following an Event of Default;

(vi) failure to pay charges for labor or materials or other charges that can create Liens on any portion of the Individual Property unless Borrower promptly bonds off the resulting Lien from the Individual Property to the reasonable satisfaction of the Lender and in compliance with applicable law;

(vii) any security deposits, advance deposits or any other deposits collected with respect to the Individual Property which are not delivered to Lender upon a foreclosure of the Individual Property or action in lieu thereof, except to the extent any such security deposits were applied in accordance with the terms and conditions of any of the Leases prior to the occurrence of the Event of Default that gave rise to such foreclosure or action in lieu thereof; and

(viii) Borrower's indemnification of Lender set forth in Section 9.2 hereof.

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) Borrower fails to obtain Lender's prior written consent to any subordinate financing or other voluntary Lien encumbering the Individual Property; (ii) Borrower fails to obtain Lender's prior written consent to any assignment, transfer, or conveyance of the Individual Property or any interest therein as required by the Mortgages or this Agreement; (iii) Borrower files a voluntary petition under the Bankruptcy code or any other Federal or state bankruptcy or insolvency law; (iv) an Affiliate, officer, director, or representative which controls, directly or indirectly, Borrower files, or joins in the filing of, an involuntary petition against Borrower under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or solicits or causes to be solicited petitioning creditors for any involuntary petition against Borrower from any Person; (v) Borrower files an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or solicits or causes to be solicited petitioning creditors for any involuntary petition from any Person; (vi) any Affiliate, officer, director, or representative which controls Borrower consents to or acquiesces in or joins in an application for the appointment of a custodian, receiver, trustee, or examiner for Borrower or any portion of the Property; or (vii) Borrower makes an assignment for the benefit of creditors, or admits, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due.

Section 11.23 Prior Agreements. This Agreement and the other Loan Documents and the Guaranty Security Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, are superseded by the terms of this Agreement, the other Loan Documents and the Guaranty Security Documents.

Section 11.24 Servicer.

(a) At the option of Lender, the Loan may be serviced by a servicer (the "Servicer") selected by Lender and Lender may delegate all or any portion of its responsibilities under this Agreement, the other Loan Documents and the Guaranty Security Documents to the Servicer pursuant to a servicing agreement (the "Servicing Agreement") between Lender and Servicer. Borrower shall be responsible for any reasonable set-up fees or any other costs relating to or arising under the Servicing Agreement, including the payment, on a monthly basis, of the monthly servicing fee due to the Servicer under the Servicing Agreement in an amount not to exceed one basis point on the amount of the Loan per annum. Servicer shall also be entitled to reimbursement of costs and expenses as and to the same extent (but without duplication) as Lender is entitled thereto under the applicable provisions of this Agreement and the other Loan Documents.

(b) Upon notice thereof from Lender, Servicer shall have the right to exercise all rights of Lender and enforce all obligations of Borrower pursuant to the provisions of this Agreement, the Note and the other Loan Documents.

(c) Provided Borrower shall have been given notice of Servicer's address by Lender, Borrower shall deliver to Servicer duplicate originals of all notices and other instruments which Borrower may or shall be required to deliver to Lender pursuant to this Agreement, the Note, the other Loan Documents and the Guaranty Security Documents (and no delivery of such notices or other instruments by Borrower shall be of any force or effect unless delivered to Lender and Servicer as provided above).

Section 11.25 Joint and Several Liability. If Borrower is comprised of more than one Person, all representations, warranties, covenants (both affirmative and negative) and all other Obligations hereunder shall be the joint and several obligation of each entity making up Borrower and a Default or Event of Default by any such Person shall be deemed a Default or Event of Default by all such entities and Borrower. The representations, covenants and warranties contained herein or in any other Loan Document shall be read to apply to the individual entities comprising Borrower when the context so requires but a breach of any such representation, covenant or warranty or a breach of any obligation under the Loan Documents shall be deemed a breach by all such entities and Borrower, entitling the Lender to exercise all of its rights and remedies under all the Loan Documents and under applicable law.

Section 11.26 Creation of Security Interest. Notwithstanding any other provision set forth in this Agreement, the Note, the Mortgage, the other Loan Documents or the Guaranty Security Documents, Lender may at any time create a security interest in all or any portion of its rights under this Agreement, the Note, the Mortgage, the Loan Documents and any other Security Document (including, without limitation, the advances owing to it) in favor of any Federal Reserve Bank in accordance with Regulation A of the Board of Governors of the Federal Reserve System.

Section 11.27 Assignments and Participations.

(a) The Lender may assign to one or more Persons all or a portion of its rights and obligations under this Agreement, the Note, the Mortgage, any Loan Document and any Security Document.

(b) Upon such execution and delivery, from and after the effective date of any such Assignment, the assignee thereunder shall be a party hereto and have the rights and obligations of Lender hereunder.

(c) Lender may sell participations to one or more Persons in or to all or a portion of its rights and obligations under this Agreement; provided, however, that (i) Lender's obligations under this Agreement shall remain unchanged, (ii) Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) Lender shall remain the holder of any Note for all purposes of this Agreement and (iv) Borrower shall continue to deal solely and directly with Lender in connection with Lender's rights and obligations under and in respect of this Agreement and the other Loan Documents and the Guaranty Security Documents.

(d) Lender may, in connection with any assignment or participation or proposed assignment or participation pursuant to this Section 11.27, disclose to the assignee or participant or proposed assignee or participant, as the case may be, any information relating to Borrower or any of its Affiliates or to any aspect of the Loan that has been furnished to the Lender by or on behalf of Borrower or any of its Affiliates.

Section 11.28 Set-Off. In addition to any rights and remedies of Lender provided by this Loan Agreement and by law, the Lender shall have the right, without prior notice to Borrower, any such notice being expressly waived by Borrower to the extent permitted by applicable law, upon any amount becoming due and payable by Borrower hereunder (whether at the stated maturity, by acceleration or otherwise) and the expiration of any applicable grace, notice and cure periods, to set-off and appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by Lender or any Affiliate thereof to or for the credit or the account of Borrower. Lender agrees promptly to notify Borrower after any such set-off and application made by Lender; provided that the failure to give such notice shall not affect the validity of such set-off and application.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

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.

LENDER:

MORGAN STANLEY MORTGAGE CAPITAL
INC., a New York corporation

By: _____

Name:

Title:

BORROWER:

WELLS REIT – ORANGE COUNTY, CA, L.P., a
Delaware limited partnership

By: Wells REIT – Orange County, CA, LLC, a Delaware
limited liability company, its general partner

By: _____

Name:

Title:

**PRINCIPAL EXECUTIVE OFFICER CERTIFICATION
PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Leo F. Wells, III, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Wells Real Estate Investment Trust, Inc.;
2. Based on my knowledge, this quarterly 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 quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly 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 quarterly report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13(a)-15(e) and 15(d)-15(e) 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 quarterly report is being prepared,
 - b) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by this quarterly report based on such evaluation; and
 - c) disclosed in this quarterly report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter 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 officers 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:
 - 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.

Dated: August 2, 2004

By: /s/ Leo F. Wells, III

Leo F. Wells, III
Principal Executive Officer

**PRINCIPAL FINANCIAL OFFICER CERTIFICATION
PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Douglas P. Williams, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Wells Real Estate Investment Trust, Inc;
2. Based on my knowledge, this quarterly 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 quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly 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 quarterly report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13(a)-15(e) and 15(d)-15(e) 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 quarterly report is being prepared,
 - b) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by this quarterly report based on such evaluation; and
 - c) disclosed in this quarterly report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter 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 officers 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:
 - 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.

Dated: August 2, 2004

By: /s/ Douglas P. Williams

Douglas P. Williams
Principal Financial Officer

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002 (18 U.S.C. 1350)**

In connection with the Quarterly Report on Form 10-Q of Wells Real Estate Investment Trust, Inc. (the "Registrant") for the quarter ended June 30, 2004, as filed with the Securities and Exchange Commission (the "Report"), the undersigned, Leo F. Wells, III, Chief Executive Officer of the Registrant, and Douglas P. Williams, Chief Financial Officer of the Registrant, hereby certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. 1350) that, to the best of our knowledge and belief:

- (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 Registrant.

By: /s/ Leo F. Wells, III

Leo F. Wells, III
Chief Executive Officer
August 2, 2004

By: /s/ Douglas P. Williams

Douglas P. Williams
Chief Financial Officer
August 2, 2004