

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549**

FORM 10-K

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

For the fiscal year ended December 31, 2019

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: 001-38322

FTE NETWORKS, INC.

(Exact name of registrant as specified in its charter)

Nevada

(State or other jurisdiction of
incorporation or organization)

81-0438093

(I.R.S. Employer
Identification No.)

237 W. 35th St., Ste. 806, New York, NY 10001

(Address of principal executive offices)

Registrant's telephone number, including area code: 1-800-320-1911

Securities registered pursuant to Section 12(b) of the Act: None

Securities registered pursuant of section 12(g) of the Act: None

Indicate by check mark if the registrant is well-known seasoned issuer, as defined in Rule-405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

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

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulations S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

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

Large accelerated filer

Non-accelerated filer

(Do not check if a smaller reporting company)

Accelerated filer

Smaller Reporting Company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13 (a) of the Exchange Act.

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.

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

The aggregate market value of the registrant's outstanding common stock held by non-affiliates as of June 30, 2019, was approximately \$10.1 million.

On October 31, 2020, there were 25,572,148 shares of common stock outstanding.

FTE NETWORKS, INC.
FORM 10-K
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PART I

DEFINITIONS

In this Annual Report on Form 10-K, the words “FTE”, the “Company”, the “Registrant”, “we”, “our”, “ours” and “us” refer to FTE Networks, Inc. and, except as otherwise specified herein, to our subsidiaries.

DISCLOSURE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K includes certain statements that may be deemed “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, all of which are based upon various estimates and assumptions that the Company believes to be reasonable as of the date hereof. In some cases, you can identify forward-looking statements by terminology such as “may,” “will,” “could,” “should,” “expect,” “plan,” “project,” “intend,” “anticipate,” “believe,” “seek,” “estimate,” “predict,” “potential,” “pursue,” “target,” “continue,” the negative of such terms or other comparable terminology. These statements involve risks and uncertainties that could cause the Company’s actual future outcomes to differ materially from those set forth in such statements. Such risks and uncertainties include, but are not limited to:

- Our ability to maintain sufficient liquidity to continue operations;
- Our ability to make payments on our indebtedness;
- Our ability to raise capital on acceptable terms and conditions;
- Difficulties in implementing uniform controls, procedures and policies in our single-family rental properties and real estate, or in remediating control deficiencies;
- Our current insurance coverage may not be adequate, and we may be unable to obtain additional layers of coverage at acceptable rates;
- Uncertainties relating to the long-term impact of COVID-19 on our business, operations and employees;
- A significant slowdown or the continuing decline in economic conditions could adversely impact our results of operations;
- Interruptions to our information systems and cyber security or data breaches;
- Liabilities under laws and regulations protecting the environment;
- Loss of key personnel and effective transition of new management;
- Our ability to successfully implement our strategic initiatives and achieve their anticipated impact;
- The impact of changes to the supply of value of and returns on single-family rental assets;
- Our ability to successfully integrate our single-family rental property business into our corporate organization;
- Our ability to successfully integrate newly acquired properties into our portfolio of single-family rental properties;
- Changes in the market value of our single-family rental properties and real estate;
- The impact of adverse real estate, mortgage or housing markets; and
- The impact of adverse legislative, regulatory or tax changes.

You should understand that the foregoing, as well as other risk factors discussed in this document, including those listed in Part I, Item 1A of this report under the heading “*Risk Factors*”, could cause future outcomes to differ materially from those experienced previously or those expressed in such forward-looking statements. The Company undertakes no obligation to publicly update or revise any information, including information concerning its net operating losses, borrowing availability or cash position, or any forward-looking statements to reflect events or circumstances that may arise after the date of this report. Forward-looking statements are provided in this Annual Report on Form 10-K pursuant to the safe harbor established under the Private Securities Litigation Reform Act of 1995 and should be evaluated in the context of the estimates, assumptions, uncertainties and risks described herein.

Item 1. Business.

The following historical business description should be read in conjunction with the Consolidated Financial Statements and related notes appearing elsewhere in this Annual Report on Form 10-K.

Our Corporate History and Current Business

The Company was incorporated in the state of Nevada in May 2000. On March 13, 2014, following a series of mergers, acquisitions and business combinations, the Company changed its name from Beacon Enterprise Solutions Group, Inc. to FTE Networks, Inc.

Prior to October 2019, the Company was a provider of end-to-end design, construction management, build and support solutions for networks, data centers, residential, and commercial properties and services at Fortune 100/500 companies (our “Historical Business”). The Company’s primary activities included engineering, building, installation, maintenance and support solutions for state-of-the-art networks and commercial properties, including the following services: data-center infrastructure, fiber optics, wireless integration, network engineering, internet service provider, construction management and general contracting.

The Company had three operating subsidiaries (one of which is still an operating subsidiary):

- (i) Benchmark Builders, Inc. (“Benchmark”) was a leading full-service general construction management subsidiary that provided general contracting and construction management services on interior commercial spaces in the New York City market. As the primary operating subsidiary, Benchmark was divested in October 2019 as a result of a strict foreclosure by the Company’s senior creditors in exchange for the cancellation of the senior secured debt and other debt (the “Benchmark Foreclosure”), as discussed in detail in “Recent Developments – *Foreclosure by Senior Secured Lenders*”.
- (ii) CrossLayer, Inc. (“CrossLayer”), the managed network provider subsidiary, was designed to equip commercial real estate property owners and businesses with custom platforms that enabled them to introduce and deliver managed network service to their tenants. In an effort to reduce operating losses, and in connection with a reoriented corporate strategy stemming from the Company’s acquisition of a large rental home portfolio (discussed in “Recent Developments – *Acquisition of Vision Property Assets*”), FTE divested itself of CrossLayer’s assets on January 16, 2020.
- (iii) Jus-Com, Inc. (dba “FTE Network Services” or “Jus-Com”) is part of the Company’s core legacy business which focuses on telecommunications solutions in the wireline and wireless telecommunications industry. Jus-Com provided outside plant solutions (“OSP”), that included all forms and methods of connecting the nation’s telecommunications infrastructure, and inside plant operations (“ISP”) which consisted of cable rack, wiring build-outs, infrastructure build-outs and cable installation, among other things. Jus-Com’s OSP component was wound down in the first half of 2019; however, its ISP component remains an operating subsidiary.

On December 30, 2019, the Company, through its subsidiary US Home Rentals LLC, (“US Home Rental”) acquired a portfolio of approximately 3,200 rental home properties across the United States, and became a major owner, operator and investor of affordable rental housing in tier 3 and 4 markets.

The Company seeks to become a leading provider of affordable rental housing nationwide and with a focus on renovating its existing rental home portfolio and operating high quality single-family homes, which we expect will attract a strong resident base and yield long-term demand. The Company is continuing to evaluate real estate acquisitions with a view towards maximum portfolio optimization. The Company is headquartered in New York, New York.

RECENT DEVELOPMENTS

2019 Internal Investigation

During 2019, the Company launched an internal investigation into (among other things) the acts of certain members of former management who caused the issuance of approximately \$22,700,000 in convertible notes and 5,186,306 shares of common stock to investors without the approval of the Company's Board of Directors (the "Board"), as well as whether the Company properly accounted for and disclosed: (i) certain related party transactions, (ii) expenses by and compensation to members of prior management, and (iii) interactions with the Company's former audit firm. Information about the scope of this investigation, including the findings of the investigation and the Company's remedial actions, are more fully described in the Company's Form 10-K for the fiscal year ended 2018 filed with the Securities and Exchange Commission (the "SEC") on May 11, 2020. As of the date of this filing, the Company is continuing to cooperate with the SEC, the New York County District Attorney's Office ("NYCDA"), and the U.S. Attorney's Office for the Southern District of New York ("SDNY") in their respective investigations into these matters.

Departure and Appointment of Executive Officers

Throughout 2019, the Company had a series of officer departures and interim appointments, including the resignation of its former Chief Financial Officer ("CFO"), David Lethem, on March 11, 2019 and the termination of its former Chief Executive Officer ("CEO"), Michael Palleschi, on May 13, 2019. There were several interim CEO appointments in 2019, culminating in the appointment of Michael P. Beys as interim CEO on December 11, 2019. Additionally, Ernest Scheidemann was appointed as the Company's interim CFO on May 5, 2020. A complete list of the departures and interim officer appointments can be found in Item 10. "Directors, Executive Officers and Corporate Governance" of this Form 10-K.

On September 25, 2020, the Company entered into an executive employment agreement with Munish Bansal to serve as the Chief Executive Officer of the Company's wholly-owned subsidiary, US Home Rentals, effective September 28, 2020 (the "Employment Agreement"). Pursuant to the Employment Agreement, Mr. Bansal will transition to the role of Chief Executive Officer of the Company following the resumption of trading of the Company's common stock on an over-the-counter market. Michael P. Beys will continue to serve as the Company's interim Chief Executive Officer until such time. There is currently no trading market for the Company's common stock and there can be no assurance that trading in the Company's common stock will resume.

Departure and Appointment of Board Members

The composition of the Company's Board of Directors (the "Board") also underwent several changes in 2019. Luisa Ingargiola, Christopher Ferguson, Patrick O'Hare, and Brad Mitchell resigned on May 29, 2019. Fred Sacramone remained on the Board at that time and was joined by James E. Shiah, Jeanne Kingsley, Stephen Berini, Irving Rothman, and Richard Omanoff between April 2019 and June 2019. All of these Board members subsequently resigned in October 2019 and were replaced with the Company's current Board, which, as of the date of this filing consists of Michael P. Beys, Joseph F. Cunningham, Jr., Richard de Silva, and Peter Ghishan.

Restatement of Previously Issued Financial Statements

The Company issued two announcements on April 2, 2019 and June 11, 2019 in which it disclosed that the Audit Committee (the "Audit Committee"), following a communication with Marcum, LLP, its former registered independent public accounting firm, concluded that the Company's previously issued audited financial statements as of and for the years ended December 31, 2017 and 2016 and completed interim reviews for the periods ended March 31, June 30, and September 30, 2018, 2017 and 2016 should no longer be relied upon.

The Company completed its restatement of the subject financial statements and filed its restatement as part of its annual report for the fiscal year ended December 31, 2018 with the SEC on May 11, 2020.

Amendment and Cancellation of Senior Credit Facility

Amendment No. 4 to Lateral Credit Agreement

On February 12, 2019, the Company entered into Amendment No. 4 (the “Fourth Amendment”) to the credit agreement dated October 28, 2015, by and among Jus-Com, Inc., certain other Company subsidiaries, Lateral Juscom Feeder LLC (“Lateral”) and several lenders party thereto (together with Lateral, the “Lenders”) (as amended, the “Credit Agreement”). The Fourth Amendment provided for, among other things, \$12,632,000 in delayed draw loans (the “Delayed Draw Term Loans”). The Delayed Draw Term Loans had a maturity date of March 31, 2019, and an interest rate of 12% payable quarterly in arrears according to the terms of the Credit Agreement and 4% of paid in kind interest. In addition, the Company and the Lenders agreed to enter into a restructuring services agreement. Lateral is controlled by Richard de Silva, who joined the Company’s Board of Directors on October 18, 2019.

The Fourth Amendment also provided for (i) amendments to the employment agreements between Benchmark, our former principal operating subsidiary, and Fred Sacramone and Brian McMahon, the principals of Benchmark who sold Benchmark to the Company in April of 2017 (the “Benchmark Sellers”); (ii) the issuance of a promissory note to Fred Sacramone for cash received in the principal amount of \$1,000,000 (the “Sacramone Bridge Note”), which note originally matured on March 31, 2019, and was subsequently amended and restated on July 2, 2019 to extend the maturity date to September 30, 2020, and for which Mr. Sacramone was issued 356,513 shares of the Company’s common stock; (iii) the appointment of a finance transformation officer (who was acting in the capacity of Chief Financial Officer from January 23, 2019 through July 15, 2019); and (iv) the issuance of an aggregate of 1,698,580 shares of the Company’s common stock to the Lenders. During 2019, Mr. Sacramone served as Interim Chief Executive Officer and as a director of the Company.

Restructuring of Lateral Credit Agreement and Designation of Series H Preferred Stock

On July 2, 2019, the Company completed the debt restructuring contemplated under the Fourth Amendment by entering into an amended and restated credit agreement (the “Amended and Restated Credit Agreement”) among the Company, Lateral and several Lenders. The Company also amended and restated the Series A convertible notes (as amended, the “Series A Notes”) and the Series B promissory notes (as amended, the “Series B Notes”) issued to the Benchmark Sellers, and the Sacramone Bridge Note (together with the Series A Notes and the Series B Notes, the “Benchmark Notes”).

Amended and Restated Credit Agreement Summary

Pursuant to the Amended and Restated Credit Agreement, the Delayed Draw Term Loans, which were continued as super senior term loans with an aggregate outstanding balance of \$12,900,000 (the “Super Senior Term Loans”) were amended to: (i) extend the maturity to September 30, 2020; (ii) amend the interest rate to 12% per annum payable in cash; (iii) add a 4% extension fee to the principal amount (subject to reduction); and (iv) provide for monthly amortization payments based on available cash flow. In addition, the existing term loans under the Credit Agreement, with an aggregate balance of approximately \$37,900,000 (“Lateral’s Existing Term Loans”) were amended to: (i) extend the maturity to April 30, 2021; (ii) amend the interest rate to 12% per annum payable in cash; (iii) add a 4% extension fee to the principal amount thereof (subject to reduction); and (iv) include monthly amortization payments based on available cash flow.

As consideration for the Amended and Restated Credit Amendment, the Company issued to the Lenders 1,500,000 shares of the Company’s common stock and warrants (the “Warrants”) exercisable to purchase 3,173,731 shares of the Company’s common stock (collectively, the “Lender Securities”) with an initial exercise price of \$3.00 per share. Pursuant to the terms of the Warrants, in the event the Super Senior Term Loans were not paid and satisfied by October 31, 2019, the exercise per share of half of the Warrants would be automatically reset to \$0.01 and in the event the Super Senior Term Loans were not paid by December 31, 2019, the exercise per share of the other half of the Warrants would be automatically reset to \$0.01. The Company also agreed that on December 31, 2019, the aggregate number of shares of the Company’s common stock issuable upon exercise of the Warrants would be automatically adjusted on December 31, 2019 such that Lateral and its affiliates would beneficially own, in the aggregate, inclusive of all shares of the Company’s common stock previously issued, 25% of the outstanding shares of the Company’s common stock on a fully-diluted basis as of December 31, 2019, subject to certain exceptions.

As additional consideration for the Amended and Restated Credit Agreement, the Company and Lateral entered into a registration rights agreement (the “Registration Rights Agreement”) whereby the Company agreed to register the Company’s common stock issued to Lateral. The Company and Lateral also entered into an investor rights agreement (the “Investor Rights Agreement”) whereby the Company agreed that within sixty days of its execution, the Company would set the number of directors on its Board of Directors at seven and Lateral would be entitled to nominate one of such seven directors.

Series A Notes and Series B Notes and Designation of Series H Preferred Stock

In July 2019, the Series A Notes and Series B Notes were also amended to extend the maturity date to July 30, 2021 and to amend the interest rate to 8% per annum to be paid in kind until the borrowings under the Amended and Restated Credit Agreement were repaid in full. At the same time the Sacramone Bridge Note was amended to extend the maturity date to September 30, 2020, to capitalize the accrued interest as of July 2, 2019 and to provide for monthly cash interest payments. Additionally, all of the foregoing notes were amended to provide for monthly amortization payments based on available cash flow.

As consideration for amending and restating the Benchmark Notes, the Company entered into subscription agreements (the “Subscription Agreements”) pursuant to which it issued to the Benchmark Sellers an aggregate of 1,951 shares of the Company’s Series A Preferred Stock and 296 shares of the Company’s Series A-1 Preferred Stock (collectively, the “Series A Preferred”), which the Benchmark Sellers immediately exchanged, pursuant to exchange agreements (the “Exchange Agreements”), for an aggregate of 100 shares of a new series of preferred stock (the “Series H Preferred,” and together with the Series A Preferred, the “Preferred Stock”). The Series H Preferred had no dividend rights, no liquidation preference, was not convertible and had perpetual voting rights equivalent to 51% of the total number of votes that could be cast by all outstanding shares of capital stock of the Company.

Foreclosure by Senior Secured Lenders

During July 2019, the Company was notified that judgments had been entered against the Company in favor of six holders of the Company’s convertible notes in the state of New York. Certain of these convertible noteholders sought to levy against the bank account of the Company’s former subsidiary, Benchmark, and filed an order directing the Company to turn over all of the Company’s assets. The Company’s failure to satisfy, vacate or stay these judgments constituted an event of default under the Credit Agreement.

As a result, on October 10, 2019, the Company consented to a Proposal for Surrender of Collateral and Strict Foreclosure (the “Foreclosure Proposal”), from Lateral, Lateral Builders LLC (“Lateral Builders”) and Benchmark Holdings, LLC (“Benchmark Holdings” and together with Lateral Recovery LLC (“Lateral Recovery”), the “Foreclosing Lenders”), pursuant to which the Foreclosing Lenders took possession and ownership of the Subject Collateral (see below) by means of a strict foreclosure by the Foreclosing Lenders (the “Benchmark Foreclosure”).

Pursuant to the Foreclosure Proposal, the Company transferred; (i) to Benchmark Holdings all of its (a) equity interests in Benchmark, the Company’s principal operating subsidiary, and (b) cash on hand in excess of levels specified in the Foreclosure Proposal; and (ii) to Lateral Recovery, all of the Credit Parties’ interests in certain commercial tort litigation claims, fraud claims, and insurance claims as specified in the Foreclosure Proposal (collectively, the “Subject Collateral”).

Also pursuant to the Foreclosure Proposal, Benchmark transferred \$3,000,000 of cash to the Company. Additionally, Benchmark agreed to make a monthly cash payment to the Company, in the amount of \$300,000 per month (the “Working Capital Cash Payments”), for purposes of funding certain of the Company’s remaining obligations related to accounts payable, indebtedness for borrowed money, convertible note obligations and other matters specified in the Foreclosure Proposal (the “Remainder Obligations”). Working Capital Cash Payments were to continue until the earlier of (i) October 10, 2021, (ii) the repayment in full of the Remainder Obligations or (iii) the occurrence of a Working Capital Termination Event (as defined in the Foreclosure Proposal). The cash infusion and Working Capital Cash Payments provided the opportunity for the Company to receive total cash payments of up to \$10,200,000 over the next 24 months. Benchmark made a total of two Working Capital Cash Payments to the Company—one in each of the months of November and December of 2019—for aggregate Working Capital Cash Payments of \$600,000.

Benchmark Holdings, as the holder of the following of the Company’s obligations, absolutely and unconditionally released and forever discharged the Company and the other Credit Parties from certain indebtedness previously held by Niagara Nominee L.P. totaling \$4,900,000, Lateral’s Existing Term Loans totaling \$42,300,000 and the Super Senior Term Loans totaling \$13,500,000 as each such term is defined in the Credit Agreement. Accordingly, Lateral’s Existing Term Loans and the Super Senior Term Loans were deemed fully paid and satisfied.

Additionally, pursuant to an Agreement Regarding Debt and Series H Preferred Stock (the "Debt and Series H Agreement"), entered into October 10, 2019, between the Company and Fred Sacramone and Brian McMahon, Messrs. Sacramone and McMahon released the Company and its affiliates from (i) all obligations represented by the Sacramone Bridge Note per the Credit Agreement, which had an outstanding amount equal to approximately \$1,030,000 and (ii) indebtedness represented by the Series B Notes in the amount of \$18,982,640. As a result, the total amount remaining outstanding under the Series A Notes and Series B Notes was \$28,895,711 (the "Remaining Indebtedness") with a due date of December 31, 2019.

The total debt relief provided pursuant to the Foreclosure Proposal and the related agreements and arrangements equaled an aggregate of \$81,065,348.

In accordance with the Debt and Series H Agreement, the Remaining Indebtedness was to be automatically released and discharged as of December 31, 2019 unless (i) on or before November 10, 2019, the Company entered into a business combination transaction that enabled the Company's common stock to remain listed on the NYSE American Exchange or any other U.S. national securities exchange and (ii) such business combination transaction was consummated on or before December 31, 2019 (such transaction, a "Qualified Business Combination"). Additionally, the Debt and Series H Agreement also required Messrs. Sacramone and McMahon to sell their shares of Series H Preferred Stock to the Company for a nominal price in the event an agreement for a Qualified Business Combination was entered into on or before November 10, 2019, and such Qualified Business Combination was consummated on or before December 31, 2019.

On November 8, 2019, the Company and Messrs. Sacramone and McMahon entered into an amendment to the Debt and Series H Agreement, extending the date by which an agreement for a Qualified Business Combination must be entered into from November 10, 2019 to December 31, 2019 and extending the date by which a Qualified Business Combination must close from December 31, 2019 to February 28, 2020.

On December 23, 2019, the Company entered into separate agreements with Messrs. Sacramone and McMahon pursuant to which the Company repurchased all outstanding shares of Series H Preferred Stock from Messrs. Sacramone and McMahon for a payment of \$1.00 per share, as a result of which no shares of Series H Preferred Stock remain outstanding.

In January 2020, in order to facilitate the continued inflow of additional cash infusions from Benchmark pertaining to the Remaining Indebtedness (as further explained below), the Board determined that, as result of the completion of the Rental Home Portfolio Asset Purchase, Benchmark would no longer be obligated to continue making Working Capital Cash Payments to the Company. On January 10, 2020, Benchmark loaned \$300,000 to the Company with a maturity date of October 1, 2020 and an annual interest rate of 10%. Shortly thereafter, on January 27, 2020, the Company issued two senior promissory notes to Benchmark, one in the principal amount of \$4,129,000 and the other in the principal amount of \$600,000 (collectively, the "Senior Notes"), each such note is secured by all of the Company's non-real estate assets. The \$4,129,000 note was issued in consideration of an additional \$6,000,000 reduction to the \$28,895,711 Remaining Indebtedness, provided for a maturity date of December 1, 2020, bore interest at an annual rate of 10% and obligated the Company to repay all monies previously paid or transferred to the Company pursuant to the Foreclosure Proposal, including (i) \$3,000,000 in cash; (ii) two Working Capital Cash Payments totaling \$600,000; and (iii) approximately \$529,000 in cash remaining in a Benchmark bank account. The \$600,000 note, which matures on December 1, 2020 and has an interest rate of 10%, was issued to evidence the loan received by Benchmark on January 10, 2020 in the principal amount of \$300,000 and an additional \$300,000 loan from Benchmark received on January 27, 2020. In summary, the Company issued promissory notes to Benchmark totaling \$4,729,000 and released Benchmark from the obligation to make an additional \$6,600,000 in Working Capital Cash Payments in exchange for a \$6,000,000 reduction in the Remaining Indebtedness.

On May 1, 2020, the parties entered into a second amendment to the Debt and Series H Agreement (the "Second Amendment") pursuant to which Messrs. Sacramone and McMahon agreed to release and forever discharge the Remaining Indebtedness on the date on which the NYSE American Exchange files a Form 25 with the Securities and Exchange Commission (the "SEC"), delisting the Company's common stock (the "Termination Date"), provided that in no event shall the Termination Date be any sooner than July 1, 2020 or any later than October 1, 2020. The NYSE American Exchange filed a Form 25 with the SEC delisting the Company's common stock on May 21, 2020. Accordingly, the Remaining Indebtedness was released and discharged effective as of July 1, 2020.

Acquisition of Rental Home Portfolio

On December 20, 2019, the Company entered into a purchase agreement (the “Rental Home Portfolio Asset Purchase Agreement”) with (i) US Home Rentals, (ii) the holders (the “Equity Sellers”) of 100% of the equity interests in entities owned by the Equity Sellers that collectively hold a real estate asset portfolio consisting of approximately 3,200 rental homes located across the United States (the “Entities”), (iii) Vision Property Management, LLC, a South Carolina limited liability company (“Vision” and together with the Equity Sellers, the “Rental Home Portfolio Sellers”), and (iv) Alexander Szkaradek, in his capacity as the representative of the Rental Home Portfolio Sellers (the “Sellers’ Representative”). On December 30, 2019, the parties amended the Rental Home Portfolio Asset Purchase Agreement (the “Amendment”) in order to address certain changes to the Rental Home Portfolio Asset Purchase Agreement, including, among other things, to allow the \$9,750,000 balance of the cash portion of the purchase price to be paid in short-term promissory notes (resulting in the issuance of a \$4,875,000 note to Alex Szkaradek and a \$4,875,000 note to Antoni Szkaradek (collectively, the “Szkaradek Notes”), and to reduce the Rental Home Portfolio Sellers’ indemnification deductible to \$100,000. On December 30, 2019, the Company completed the acquisition of the Entities pursuant to the Rental Home Portfolio Asset Purchase Agreement, as amended.

Pursuant to the Rental Home Portfolio Asset Purchase Agreement, as amended, US Homes Rentals LLC purchased (a) all of the equity interests in the Entities and (b) all of Vision’s assets that are related to its business, including certain assumed contracts and assumed intellectual property, excluding certain specified assets, for aggregate consideration of \$350,000,000, consisting of (i) \$250,000 of cash; (ii) \$9,750,000 in promissory notes, payable on or before January 31, 2020, which date was extended to March 31, 2020 pursuant to a 60-day forbearance that was included in the promissory notes; (iii) the amount of outstanding indebtedness of the Entities, which was calculated at approximately \$80,000,000; (iv) 4,222,474 shares of the Company’s common stock, par value \$0.001, which the parties valued at \$32,000,000; and (v) shares of a newly designated Series I Non-Convertible Preferred Stock having an aggregate stated value equal to 228,000,000, which is subject to adjustment. See Part II Item 8, Financial Statements and Supplementary Data, Note 3 “Asset Acquisition”

Divestiture of CrossLayer, Inc.

On January 16, 2020, the Company entered into an asset purchase agreement (the “CrossLayer Purchase Agreement”) with CBFA Corporation, pursuant to which CBFA acquired the customer agreements which were of nominal value and largely cancelable without penalty, in exchange for agreeing to perform all of CrossLayer’s obligations under those agreements plus the assumption of approximately \$73,000 in accounts payable and approximately \$100,000 in long-term supplier contracts.

Delisting of Common Stock from the NYSE American Exchange

During 2019, the Company received a series of letters from the NYSE American concerning the Company’s failure to comply with various continued listing requirements under the NYSE American Company Guide. On December 17, 2019, as a result of a calculation error resulting in the issuance of more than 20% of the Company’s outstanding common stock without the requisite shareholder approval, the staff of NYSE Regulation (the “Staff”) notified the Company of its determination to initiate proceedings to delist the Company’s common stock from the Exchange and suspended trading of the Company’s common stock on the same day, citing public interest reasons.

The Company challenged the Staff’s decision as unfairly punitive in relation to the Company’s mistake, especially given that the Company took prompt and effective remedial actions to undo the issuance, rescinded the underlying agreement, and established new controls around the issuance of stock. Despite the Company’s efforts and repeated requests for reconsideration, and after exhausting multiple levels of appeal, on May 21, 2020, the Staff filed a Form 25 with the SEC to remove the Company’s common stock from listing and registration on the Exchange. The delisting became effective 10 days following the date of the Staff’s filing.

As of the date of the filing, the Company’s common stock is not quoted or trading on any stock market. The Company solicited the assistance of a prospective market maker who has expressed interest in sponsoring the Company’s Form 211 application with FINRA (subject to completing their due diligence) which would enable the Company’s common stock to resume trading on a trading platform operated by OTC Markets Group.

Notice of Default from Inmost Partners LLC

On July 1, 2020, the Company received a written notice of default (the “Notice of Default”) from Inmost Partners LLC in its capacity as Noteholder Agent (“Inmost”) to issuer noteholders who, collectively, hold approximately \$51,564,000 in secured notes that the Company assumed from the Rental Home Portfolio Sellers in connection with the Rental Home Portfolio Asset Purchase Agreement. Inmost asserted that certain events of default had occurred with respect to certain Note Issuance and Purchase Agreements each dated as of July 10, 2017 by and among, inter alia, certain Entities acquired by the Company, Inmost, and issuer noteholders named therein (the “Note Purchase Agreements”). Specifically, Inmost claimed that the Company (i) failed to satisfy the loan-to-value test (the “LTV Test”) as defined in the Note Purchase Agreements and (ii) failed to obtain consent from the Noteholder Agent before transferring the equity interests of certain Entities to US Home Rentals LLC (the “Equity Interest Transfer”) pursuant to the Rental Home Portfolio Asset Purchase Agreement. The Notice of Default also included certain demands by Inmost for additional capital contributions by the Company and Alex and Antoni Szkaradek (the “Guarantors”).

As of the date of this filing, the Company has cured the defaults associated with the LTV Test. Additionally, on November 3, 2020, Inmost granted its consent to the Equity Interest Transfer and rescinded the Default Notice in exchange for (i) a new guaranty agreement under which FTE Networks, Inc. and US Home Rentals LLC will jointly and severally guarantee the obligations of certain Entities under the Note Purchase Agreements, (ii) amendments to the Limited Liability Company Agreements for each of the subject Entities to provide for the appointment of a second manager of Noteholder Agent’s choosing, and (iii) amendments to the Note Purchase Agreements.

DLP Financing

On August 26, 2020, certain wholly-owned subsidiaries (collectively, the “Borrowers”) of US Home Rentals entered into seven separate loan agreements as part of a tranche of financing with DLP Lending Fund, LLC (the “Lender”) (each a “Loan Agreement” and collectively, the Loan Agreements”). The Lender had previously loaned an aggregate of \$21,184,906 to the Equity Sellers. Pursuant to the Loan Agreements, the Borrowers issued promissory notes in the aggregate principal amount of approximately \$23,453,699 (the “DLP Tranche”). Proceeds from the DLP Tranche were used to refinance certain of the Borrower’s properties, pay outstanding property taxes, and other costs and expenses incurred in connection with the Loan Agreements. The Company did not receive any proceeds from the financing.

The Borrowers' obligations to pay principal, interest and other amounts under the DLP Tranche are evidenced by promissory notes executed by the Borrowers as of August 26, 2020 (each a "Note" and collectively, the "Notes"). Each Note is secured by a first priority lien mortgage on certain of the Borrowers' properties (the "Mortgaged Properties") and confessions of judgment. Each Note will mature on August 31, 2021, subject to one-year extensions at the Borrowers' option and other conditions. The Borrowers may prepay the outstanding loan amount in whole or in part by written notice of such prepayment to Lender, subject to certain conditions. The Company also executed certain Environmental Indemnity Agreements and certain Guaranty Agreements in connection with each Loan Agreement in favor of the Lenders pursuant to which the Company and Guarantors agreed to indemnify the Lenders for certain environmental risks and guaranty the Borrowers' obligations under the Loan Agreements.

Employees

As of October 31, 2020, the Company, together with its subsidiaries, has 66 full-time employees and contractor staff and no part-time employees. The number of employees and job-site contractors varies according to the level of the Company's work in progress. The Company maintains a nucleus of technical and managerial personnel to supervise all projects and adds employees and job-site contractors as needed to complete specific projects.

Intellectual Property

The Company has trademarks, trade names and licenses that it believes are necessary for the operation of its business as it is currently conducted. The Company does not consider its trademarks, trade names or licenses to be material to the operation of the business.

Available Information

The Company is subject to the informational requirements of the Securities Exchange Act of 1934 (the Exchange Act). Accordingly, the Company files periodic reports, proxy statements and other information with the SEC. These reports, proxy statements and other information may be obtained by visiting the Public Reference Room of the SEC at 100 F Street, NE., Washington, D.C. 20549 or by calling the SEC at 1-800-SEC-0330.

The Company makes available, free of charge on its website, the Company's Annual Report on Form 10-K, Quarterly Reports on Forms 10-Q, Current Reports on Forms 8-K and amendments to these reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act, as soon as practicable after we electronically file these documents with, or furnish them to, the SEC. These documents may be accessed through the Company's website at www.ftenetworks.com under "Investor Relations." The information posted or linked on the website is not part of this report. The Company also makes its Annual Report available in printed form upon request at no charge. In addition, the SEC maintains an Internet site (www.sec.gov) that contains reports, proxy and information statements and other information regarding FTE Networks and other issuers that file electronically with the SEC.

The Company also makes available on its website, as noted above, or in printed form free of charge upon request, the Company's Code of Ethics and the charters for the Audit, Compensation, and Nominating and Corporate Governance committees of the Board of Directors.

ITEM 1A. RISK FACTORS.

The following discussion identifies the most significant risks or uncertainties that could (i) materially and adversely affect our business, financial condition, results of operations, liquidity or prospects or (ii) cause our actual results to differ materially from our anticipated results or other expectations. The following information should be read in conjunction with the other portions of this report, including "Special Note Regarding Forward-Looking Statements," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and related notes. Please note that the following discussion is not intended to comprehensively list all risks or uncertainties faced by us. Our operations or actual results could also be similarly impacted by additional risks and uncertainties that are not currently known to us, that we currently deem to be immaterial, that may arise in the future or that are not specific to us, such as general economic conditions. If any of the events or circumstances described in the following risks occurs, our business, financial condition or results of operations could be materially adversely affected.

Risks Related to Our Financial Results, Financing Plans and Indebtedness

We have limited capital resources , and we will need additional funds in order to continue as a viable enterprise. There is no guarantee that we will be able to generate those funds from our business operations.

As of December 31, 2019, the Company had \$93,561,120, in negative working capital and \$789,390 in cash and cash equivalents. The Company has limited capital resources following a strict foreclosure of the Company's equity interests in Benchmark (among other assets), our former primary operating subsidiary, by the Company's senior lenders (See "Recent Developments – "Foreclosure by Senior Secured Lenders"). As a result, the Company currently conducts operations through two subsidiaries, US Home Rentals and Jus-Com, Inc. .

As of October 31, 2020, the Company had \$73,870 in cash and cash equivalents. As of the date of this filing, our cash and cash equivalents are insufficient to sustain operations in the near term. We have substantial cash requirements, which consist of payment obligations under existing indebtedness, settlement agreements for indebtedness to third parties incurred by former management, promissory notes issued as part of the purchase consideration for the Rental Home Portfolio Asset Purchase, indebtedness secured by the real estate properties we acquired in the Rental Home Portfolio Asset Purchase, payroll, and other corporate expenses.

Our ability to conduct equity financings has been hampered by, among other things, our delinquent Exchange Act reports, leaving us with very limited financing options. Currently, our primary sources of cash have been from short-term bridge loans and debt financings. The uncertainty as to the severity and duration of the COVID-19 pandemic (which has led to disruption and volatility in the financial and real estate markets) has also weakened our short-term financing prospects. We are continuing to negotiate extensions and/or forbearances with debt holders and critical vendors with significant outstanding payables; however, there is no assurance that these efforts will be met with success or that we will obtain financing to support our daily operations in the near term.

We applied for loans under the Paycheck Protection Program ("PPP") and the Economic Injury Disaster Loan program ("EIDL") pursuant to the CARES Act through the U.S. Small Business Association programs and received net proceeds of \$979,316 in May 2020 under the PPP and \$150,000 in June of 2020 under the EIDL program. We are also continuing to explore and pursue various types of financing alternatives, including financings that leverage unencumbered properties in our real estate portfolio. We believe our debt and equity financing prospects will improve once we are current in our Exchange Act filings and we are able to resume trading on a national stock exchange or on an over-the-counter market, although no assurances can be provided in that regard either. And while we believe in the viability of our strategy to increase revenues and raise additional funds, we are unable to predict the continued impact of COVID-19 on our operations and liquidity, and depending on the magnitude and duration of the COVID-19 pandemic, such impact may be material.

If we are required to repay our outstanding notes and settlement agreements, we would need to raise additional funds. Failure to repay our notes could subject us to legal action, including, but not limited to, judgments being entered against us.

We entered into settlement agreements with certain holders of convertible notes, whose notes were deemed to have been issued without the requisite corporate authorization following the findings of the independent investigation announced on June 13, 2019 (See Item 1 Business, Recent Development "Internal Investigation"). Of the noteholders with whom we were unable to reach settlement terms, six filed purported confessions of judgment. We have since entered into settlement agreements with all holders of judgments previously entered against us, which require us to make monthly payments in accordance with respective payout schedules. Throughout 2019, we were successful in negotiating several forbearances/deferrals on certain of the monthly payments owed in connection with these settlement agreements. As a result of our persistent liquidity constraints, we have not secured additional forbearances for approximately \$1,294,262 past due and owing payments under these settlement agreements. As of the date of this filing, there is an aggregate balance owing of approximately \$5,135,142 to these noteholders . The noteholders of the obligations currently past due, or those that become past due as a result of our inability to resume our payout schedules or secure the necessary forbearances, could commence legal action against us to recover the amounts due, including filing confessions of judgment and attaching them to our bank accounts. Any such action would restrict our ability to conduct business and would have an adverse effect on our financial condition and results of operations.

Additionally, we issued \$9,750,000 of promissory notes payable to the Szkaradeks' as part of the purchase consideration for the Rental Home Portfolio Asset Purchase, which were payable in full on March 31, 2020. As of the date of this filing, we have made some payments for the account of the Szkaradeks' which could result in decreasing the outstanding balance of the Szkaradek Notes; however, we have been unable to repay the Szkaradek Notes in full by their stated maturity date. We have subsequently received forbearance agreements for the Szkaradek Notes extending the maturity date through January 1, 2021. We are actively pursuing multiple potential sources of additional debt and equity capital to fund repayment of the Szkaradek Notes. There is, however, no assurance that we will be successful in securing suitable financing. The Szkaradeks' may seek to enforce their rights under the Szkaradek Notes through the judicial process, which would have a material adverse effect on our results of operations and financial condition.

Our current insurance coverage may not be adequate: insurance premiums for such coverage have increased and may continue to increase and we may not be able to obtain insurance at acceptable rates, or at all.

In light of substantial increases in premiums payable for Directors and Officers insurance coverage, we have chosen to reduce coverage limits. These insurance policies may not be adequate to protect us from liabilities that we incur in our business. In addition, in the future our insurance premiums may increase, and we may not be able to obtain similar levels of insurance on reasonable terms, or at all. Any such inadequacy of, or inability to obtain insurance coverage could have a material adverse effect on our business, financial condition and results of operations.

Our failure to successfully implement our growth plan may adversely affect our financial performance.

We are prone to all of the risks inherent in growing a business. You should consider the likelihood of our future success to be highly speculative in light of the limited resources, problems, expenses, risks and complications frequently encountered by entities at our current stage of development. As our growth plan is pursued, we may encounter difficulties expanding and improving our operating and financial systems to maintain pace with the increased complexity of the expanded operations and management responsibilities.

To address these risks, we must, among other things:

- obtain equity or debt financing on satisfactory terms and in timely fashion in amounts adequate to implement our business plan and meet our obligations.
- implement and successfully execute our business and marketing strategy;
- respond to industry and competitive developments; and
- attract, retain, and motivate qualified personnel.

We may not be successful in addressing these risks and if we do not, our business prospects, financial condition and results of operations would be materially adversely affected.

Debt financing agreements we enter may contain a number of restrictive covenants which will limit our ability to finance future operations, acquisitions or capital needs or engage in other business activities that may be in our interest.

If Company needs additional liquidity through debt financing; however, any related credit arrangements and indentures may contain a number of significant covenants that could impose operating and other restrictions on us and our subsidiaries. Such restrictions could affect, and in many respects could limit or prohibit, among other things, our ability and the ability of some of our subsidiaries to:

- incur additional indebtedness;
- create liens;
- pay dividends and make other distributions in respect of our equity securities;
- redeem or repurchase our equity securities;
- distribute excess cash flow from foreign to domestic subsidiaries;
- make investments or other restricted payments;
- sell assets; and
- effect mergers or consolidations.

These restrictions could limit our ability to plan for or react to market or economic conditions or meet capital needs or otherwise restrict our activities or business plans, and could adversely affect our ability to finance our operations, acquisitions, investments or strategic alliances or other capital needs or to engage in other business activities that would be in our interest.

Our litigation can be time-consuming, costly, and we cannot anticipate the results

We have spent a significant amount of our financial and management resources defending litigation against third parties. We believe this litigation, and other litigation matters that we may in the future determine to pursue, will continue to consume management and financial resource for long periods of time. There can be no assurance that our current or future litigation matters will ultimately result in a favorable outcome for us or that our financial resources will not be exhausted before achieving a favorable outcome. In addition, even if we obtain favorable interim rulings or verdicts in particular litigation matters, they may not be predictive of the ultimate resolution of the matter. Unfavorable outcomes could result in exhaustion of our financial resources and could have a material adverse impact on our financial condition, results of operations, cash flows, and business prospects. See Item 3 *Legal Proceedings*.

Risks Related to Ownership of Our Common Stock

Our common stock was delisted from the NYSE American and quotation of our common stock has not resumed on an over-the-counter market. As a result, there is currently no active public trading market for our common stock and there can be no assurances that any established market will develop or that our common stock will be quoted for trading.

During 2019, we received a series of letters from the NYSE American concerning our failure to comply with various continued listing requirements under the NYSE American Company Guide. On December 17, 2019, as a result of a calculation error resulting in the issuance of more than 20% of the Company's outstanding common stock, the staff of NYSE Regulation (the "Staff") notified the Company of its determination to initiate proceedings to delist the Company's common stock from the Exchange and suspended trading of the Company's common stock on the same day, citing public interest reasons.

We challenged the Staff's decision as unfairly punitive in relation to the Company's mistake, especially given we took prompt and effective remedial actions to undo the issuance, rescind the underlying agreement, and establish new controls around the issuance of stock. Despite these efforts and repeated requests for reconsideration, and after exhausting multiple levels of appeal, on May 21, 2020, the Staff filed a Form 25 with the SEC to remove the Company's common stock from listing and registration on the Exchange. The delisting became effective 10 days following the date of the Staff's filing.

As of the date of the filing, our common stock is not quoted or trading on any stock market.

Because our common stock did not automatically resume trading on the over-the-counter market, we solicited the assistance of a market maker who has agreed to sponsor our Form 211 application with the Financial Industry National Regulatory Authority (“FINRA”) in order to apply for the inclusion of our common stock in one of the over-the-counter price-quotation platforms maintained by the OTC Markets Group (subject to completing their due diligence). No estimate may be given as to the time that this application process will require. Moreover, our efforts may not be successful, and our shares may never be approved for quotation and owners of our common stock may not have a market in which to sell the shares.

Even if our common stock is quoted and granted a listing, a market for our common shares may not develop, resulting in major fluctuations and volatility in the price of our common stock.

The market for purchases and sales of our common stock may be so limited that the sale of a relatively small number of shares could cause the price of our common stock to fall sharply. Accordingly, it may be difficult to sell shares quickly without significantly depressing the value of our common stock. Unless we are successful in developing and maintaining investor interest in our common stock, sales of our common stock could result in major fluctuations in the price of our common stock. Additionally, if our revenues do not grow or grow more slowly than we anticipate, or, if operating or capital expenditures exceed our expectations and cannot be adjusted accordingly, or if some other event adversely affects us, the market price of our common stock could decline. Fluctuations in our stock price may be influenced by, among other things, general economic and market conditions, conditions or trends in our industry, changes in the market valuations of other residential real estate rental companies announcements by us or our competitors of significant acquisitions, strategic partnerships or other strategic initiatives, and trading volumes. Many of these factors are beyond our control but may cause the market price of our common stock to decline, regardless of our operating performance. Moreover, if the stock market in general experiences a loss in investor confidence or otherwise fails, the market price of our common stock could fall for reasons unrelated to our business, results of operations and financial condition. The market price of our common stock also might decline in reaction to events that affect other companies in our industry even if these events do not directly affect us.

Our insiders and affiliated parties beneficially own a significant portion of the aggregate voting power of our capital stock.

As of the date of hereof, our executive officers, directors, their affiliated parties and holders of 10% or more of our common stock beneficially own approximately 33.5% of our common stock. As a result, our officers, directors, their affiliated parties and holders of 10% or more of our common stock will have a controlling interest and the ability to:

- elect or defeat the election of our directors;
- amend or prevent amendment of our certificate of incorporation, as amended, or bylaws;
- effect or prevent a merger, sale of assets or other corporate transaction; and
- affect the outcome of any other matter submitted to the stockholders for vote.

Affiliated party stock ownership may discourage a potential acquirer from making a tender offer or otherwise attempt to obtain control of us, which in turn could reduce the price of our common stock or prevent our stockholders from realizing any gains from our common stock. In addition, any sale of a significant amount of our common stock held by our directors, executive officers, and affiliated parties, or the possibility of such sales, could adversely affect the market price of our common stock.

Investors may experience dilution of their ownership interests because of the future issuance of additional shares of our common stock.

We may need to issue additional authorized but previously unissued equity securities, resulting in the dilution of the ownership interests of our present stockholders. We may also issue additional shares of our common stock or other securities that are convertible into or exercisable for common stock in connection with hiring or retaining employees, future acquisitions, future sales of our securities for capital raising purposes, or for other business purposes. The future issuance of any such additional shares of common stock may have rights, preferences, and privileged more favorable than those of our common stock and may create downward pressure on the trading price of the common stock. There can be no assurance that we will not be required to issue additional shares, warrants or other convertible securities in the future in conjunction with any capital raising efforts. As a result, holders of our common stock will bear the risk that our future capital raising efforts will reduce the market price of our common stock and dilute the value of their stockholdings.

Stockholders who hold unregistered shares of our common stock may be subject to resale restrictions pursuant to Rule 144, due to the fact that we are deemed to be a former “shell company.”

Pursuant to Rule 144 of the Securities Act (“Rule 144”), a “shell company” is defined as a company that has no or nominal operations and either (i) no or nominal assets, (ii) assets consisting solely of cash and cash equivalents or (iii) assets consisting of any amount of cash and cash equivalents and nominal other assets. While we do not believe that we are currently a “shell company,” we were previously a “shell company” and are deemed to be a former “shell company” pursuant to Rule 144, and as such, sales of our securities pursuant to Rule 144 may not be able to be made unless we continue to be subject to Section 13 or 15(d) of the Exchange Act, and have filed all of our required periodic reports for at least the previous one year period prior to any sale pursuant to Rule 144. As a result, it may be harder for us to fund our operations and pay our consultants with our securities instead of cash. Our status as a former “shell company” could prevent us from raising additional funds, engaging consultants, and using our securities to pay for any acquisitions.

Any market that develops in shares of our common stock will be subject to the “penny stock” rules of the SEC and the trading market in our securities may become limited, which will make transactions in our stock cumbersome and may reduce the value of an investment in the stock.

If we are able to resume trading in the short-term, it will be on one of the over-the-counter price-quotation platforms maintained by the OTC Markets Group. As a result, investors may find it difficult to dispose of, or to obtain accurate quotations as to the price of our common stock. Additionally, our common stock will be subject to regulation as a “penny stock” under Rule 15c-9 under the Exchange Act. That rule establishes the definition of a “penny stock,” for the purposes relevant to us, as any equity security that is no longer trading on a national exchange and has a market price of less than \$5.00 per share or with an exercise price of less than \$5.00 per share, subject to certain exceptions. For any transaction involving a penny stock, unless exempt, the rules require: (a) that a broker or dealer approve a person’s account for transactions in penny stocks; and (b) the broker or dealer receive from the investor a written agreement to the transaction, setting forth the identity and quantity of the penny stock to be purchased.

In order to approve a person’s account for transactions in penny stocks, the broker or dealer must: (a) obtain financial information and investment experience objectives of the person and (b) make a reasonable determination that the transactions in penny stocks are suitable for that person and the person has sufficient knowledge and experience in financial matters to be capable of evaluating the risks of transactions in penny stocks.

The broker or dealer must also deliver, prior to any transaction in a penny stock, a disclosure schedule prescribed by the SEC relating to the penny stock market, which, in highlight form: (a) sets forth the basis on which the broker or dealer made the suitability determination; and (b) confirms that the broker or dealer received a signed, written agreement from the investor prior to the transaction.

Disclosure also has to be made about the risks of investing in penny stocks in both public offerings and in secondary trading and about the commissions payable to both the broker or dealer and the registered representative, current quotations for the securities and the rights and remedies available to an investor in cases of fraud in penny stock transactions. Finally, monthly statements have to be sent disclosing recent price information for the penny stock held in the account and information on the limited market in penny stocks.

Generally, brokers may be less willing to execute transactions in securities subject to the “penny stock” rules. This may make it more difficult for investors to dispose of our common stock and cause a decline in the market value of our common stock.

Any trading market that may develop may be restricted by virtue of state securities “Blue Sky” laws that prohibit trading absent compliance with individual state laws. These restrictions may make it difficult or impossible to raise capital in those states.

Each state has its own securities laws, often called “blue sky” laws, which (i) limit sales of securities to a state’s residents unless the securities are registered in that state or qualify for an exemption from registration, and (ii) govern the reporting requirements for broker-dealers doing business directly or indirectly in the state. Before a security is sold in a state, there must be a registration in place to cover the transaction, or the transaction must be exempt from registration. The applicable broker must be registered in that state. We do not know whether securities will be registered or exempt from registration under the laws of any state. A determination regarding registration will be made by those broker-dealers, if any, who agree to serve as the market-makers for our common stock. Registering or qualifying shares with states can be time consuming. Compliance and regulatory costs may vary from state to state and may adversely affect future financings and our ability to raise capital.

We have not paid dividends in the past and do not expect to pay dividends for the foreseeable future, and any return on investment may be limited to potential future appreciation on the value of our common stock.

We currently intend to retain any future earnings to support the development and expansion of our business and do not anticipate paying cash dividends on our shares of common stock in the foreseeable future. Our payment of any future dividends will be at the discretion of our board of directors after taking into account various factors, including without limitation, our financial condition, operating results, cash needs, growth plans and the terms of any credit agreements or other debt instruments that we may be a party to at the time. To the extent we do not pay dividends, our shares of common stock may be less valuable because a return on investment will only occur if and to the extent our stock price appreciates, which may never occur. In addition, investors must rely on sales of their common stock after price appreciation as the only way to realize their investment, and if the price of our common stock does not appreciate, then there will be no return on investment. Investors seeking cash dividends should not purchase our common stock.

Risks Related to Our Industry and Business

The current pandemic of the novel coronavirus, or COVID-19, and the future outbreak of other highly infectious or contagious diseases, could materially and adversely impact or disrupt our financial condition, results of operations, cash flows and performance.

Since being reported in December 2019, COVID-19 has spread globally, including to every state in the United States. On March 11, 2020, the World Health Organization declared COVID-19 a pandemic, and on March 13, 2020, the United States declared a national emergency with respect to COVID-19.

The COVID-19 pandemic has had, and another pandemic in the future could have, repercussions across regional and global economies and financial markets. The outbreak of COVID-19 in many countries has significantly adversely impacted global economic activity and has contributed to significant volatility and negative pressure in financial markets. The global impact of the outbreak has been rapidly evolving and, as cases of COVID-19 have continued to be identified in additional countries, many countries, including the United States, have reacted by instituting quarantines, mandating business and school closures and restricting travel.

Certain states and cities, including where we own rental homes, have also reacted by instituting quarantines, restrictions on travel, “shelter in place” rules, restrictions on types of business that may continue to operate. As a result, the COVID-19 pandemic is negatively impacting almost every industry directly or indirectly. We expect that a significant number of our tenants will suffer economic dislocation, such as through job furloughs or job loss, which will adversely impact their ability to pay rent to the Company. Some of our tenants have already requested rent deferral or rent abatement during this pandemic. Many experts predict that the outbreak will trigger, or even has already triggered, a period of global economic slowdown or a global recession, which would further adversely impact the ability of our tenants to pay rent to the Company. Moreover, the weekly \$600 federal unemployment benefit as part of the CARES ACT COVID-19 relief package has ended. On August 8, 2020, there was an extension of federal benefits by executive order through the Lost Wages Assistance program which provided an additional \$300 weekly supplement to unemployment benefits, this program expired. This reduction or termination of benefits may limit our tenants’ ability to pay rent to us (to the extent they were relying on this benefit as a primary source of income).The COVID-19 pandemic, or a future pandemic, could have material and adverse effects on our ability to successfully operate and on our financial condition, results of operations and cash flows due to, among other factors:

- a complete or partial closure of, or other operational issues at, our corporate offices, rental and associated property management business from government or tenant action;
- the reduced economic activity severely impacts our tenants’ livelihoods, financial condition and liquidity and may cause them to be unable to meet their obligations to us in full, or at all, or to otherwise seek modifications of such obligations;
- difficulty accessing debt and equity capital on attractive terms, or at all, and a severe disruption and instability in the global financial markets or deteriorations in credit and financing conditions may affect our access to capital necessary to fund business operations or address existing and anticipated liabilities on a timely basis;
- a general decline in business activity and demand for real estate transactions could adversely affect our ability or desire to grow our portfolio of properties;
- a deterioration in our ability to operate in affected areas or delays in the supply of products or services to us from vendors that are needed for our efficient operations could adversely affect our operations; and
- the potential negative impact on the health of our personnel, particularly if a significant number of them are impacted, could result in a deterioration in our ability to ensure business continuity during a disruption; and
- the inability of our business to secure financing or grants through the U.S. Small Business Association programs, including the Economic Injury Disaster Loan program, the Paycheck Protection Program, or other similar offerings, each as a result of program limitations, our credit profile, or other factors; and
- the inability of state or federal jurisdictions to mandate coverage under business interruption insurance policies which contain pandemic exclusions or our inability to otherwise secure recoveries from such insurance coverages should they become available.

The extent to which the COVID-19 pandemic impacts our operations and the financial health of our tenants will depend on future developments, which are highly uncertain and cannot be predicted with confidence, including the scope, severity and duration of the pandemic, the actions (both at a state and federal level) taken to contain the pandemic or mitigate its impact, and the direct and indirect economic effects of the pandemic and containment measures, among others. The inability of our tenants to pay rent to us, and early terminations by our tenants of their leases, could continue to reduce our cash flows, which could have a material adverse impact on our performance, financial condition, results of operations, cash flows and performance. The rapid development and fluidity of this situation precludes any prediction as to the full adverse impact of the COVID-19 pandemic. Nevertheless, the COVID-19 pandemic presents material uncertainty and risk with respect to our performance, financial condition, results of operations, cash flows and performance.

Our results of operations will likely be diminished as a result of the foreclosure on the equity of Benchmark Builders, Inc., down-sizing of Jus-Com and divestiture of CrossLayer as well as our reliance on other operating subsidiaries. We may not be able to effectively manage the transition of our business.

As discussed above, our lenders previously foreclosed on the equity in Benchmark, previously our primary operating subsidiary, as well as other assets. Additionally, the Company restructured and down-sized the Jus-Com businesses in 2019, completed the acquisition of entities that collectively hold a real estate asset portfolio consisting of approximately 3,200 rental homes located across the United States (the “Rental Home Portfolio Properties”), and completed the divestiture of CrossLayer in January 2020. Due to the Benchmark foreclosure, the down-sizing of the Jus-Com businesses and the divestiture of CrossLayer, the Company is now reliant on the businesses of our remaining operating subsidiaries, primarily the U.S. Home Rental properties.

Moreover, whereas our Historical Business operated in the construction management and general contracting industry and telecommunications industry, our primary current business operates in the single-family residential property industry. As we are transitioning our business to focus primarily on single-family residential properties, this business model transition may lead to fluctuations in revenue that will make it more difficult to accurately project our operating results or plan for future growth. If we are unable to effectively manage these changes, our growth and ability to achieve long-term projections may be negatively impacted, and our business and operating results will be adversely affected.

Our integration of the operations of Rental Home Portfolio Properties into our operations may be more difficult, costly or time-consuming than expected, and the anticipated benefits and cost savings of these acquisitions by the Company may not be realized.

Our acquisition of the Rental Home Portfolio Properties in December 2019 represented the Company's pivot to owning and managing a portfolio of single-family residential properties. The success of the acquisition, including anticipated benefits, will depend, in part, on the Company's ability to successfully combine and integrate the businesses within the Company's projected timeframe in a manner that permits growth opportunities. A number of factors could affect the Company's ability to successfully combine its business with acquired businesses, including the following:

- the potential for unexpected costs, delays and challenges that may arise in integrating the Rental Home Portfolio Properties into the Company's business;
- unexpected obstacles to the Company's ability to realize the expected cost savings and synergies from the acquisition;
- the Company's ability to retain key employees and maintain relationships;
- diversion of management's attention and resources during integration efforts;
- challenges related to operating a new business and in new states; and
- discovery following the acquisition of previously unknown liabilities associated with the Rental Home Portfolio Properties.

We have encountered a number of integration challenges, all of which have caused us to incur varying levels of costs, including costs associated with assimilating and integrating personnel, financial systems and procedures, and unique operation and reporting structures. We have also experienced significant delays in establishing internal controls over the financial reporting on a consolidated basis, which in turn has limited our ability to manage risks, reduce costs, and improve overall operational performance. If the Company continues to encounter these and other significant difficulties in the integration process, the anticipated benefits of the acquisition may not be realized fully, or at all, or may take longer to realize than expected. Failure to achieve the anticipated benefits of the acquisition in the timeframe projected by the Company could result in increased costs and decreased revenues. This could have a dilutive effect on the Company's earnings per share. If the Company is unable to successfully integrate the business it acquired, the Company's business, financial condition and results of operations may be materially adversely affected.

Liabilities and obligations assumed in connection with our acquisition of Rental Home Portfolio Properties may result in a material adverse effect to our business and financial condition.

Risk of Default under Entities' Indebtedness. The Entities that we acquired in the Rental Home Portfolio Asset Purchase, which own all of the properties that were subject to the acquisition, are subject to approximately \$80,284,086 of indebtedness (the "Entities' Indebtedness"), which was assumed by the Company as described in "Item 1. Business – Recent Developments – Acquisition of Rental Home Portfolio Property Assets." The Entities' Indebtedness is subject to certain conditions and covenants, including the requirement that the Entities obtain the consent of the lender before taking certain actions. Failure to comply with the conditions and covenants in the financing agreements governing the Entities' Indebtedness that is not consented to or waived by the lenders or otherwise cured could lead to a termination of such debt facilities, acceleration of all amounts due under such debt facilities, or other actions by the lenders. On July 1, 2020, we received a written notice of default (the "Notice of Default") from Inmost, in its capacity as Noteholder Agent to issuer noteholders of the Entities' Indebtedness. Inmost asserted that certain events of default had occurred with respect to certain Note Issuance and Purchase Agreements each dated as of July 10, 2017 by and among, inter alia, certain Entities acquired by the Company, Inmost, and issuer noteholders named therein (the "Note Purchase Agreements"). Specifically, Inmost claimed that the Company (i) failed to satisfy the loan-to-value test (the "LTV Test") as defined in the Note Purchase Agreements and (ii) failed to obtain consent from the Noteholder Agent before transferring the equity interests of certain Entities to US Home Rentals LLC (the "Equity Interest Transfer") pursuant to the Rental Home Portfolio Asset Purchase Agreement. The Notice of Default also included certain demands by Inmost for additional capital contributions by the Company and Guarantors.

As of the date of this filing, the Company has cured the defaults associated with the LTV Test. Additionally, on November 3, 2020, Inmost granted its consent to the Equity Interest Transfer and rescinded the Default Notice in exchange for (i) a new guaranty agreement under which FTE Networks, Inc. and US Home Rentals LLC will jointly and severally guarantee the obligations of certain Entities under the Note Purchase Agreements, (ii) amendments to the Limited Liability Company Agreements for each of the subject Entities to provide for the appointment of a second manager of Noteholder Agent's choosing, and (iii) amendments to the Note Purchase Agreements.

We could be harmed by security breaches or other significant disruptions or failures of networks, information technology infrastructure or related systems owned or installed by us.

We are materially reliant upon our networks, information technology infrastructure and related technology systems (including our billing and provisioning systems) to manage our operations and affairs. We face the risk, as does any company, of a security breach or significant disruption of our information technology infrastructure and related systems. Moreover, in connection with processing and storing sensitive and confidential data on our networks, we face a risk that a security breach or disruption could result in unauthorized access to our customers' or their customers' proprietary information.

We strive to maintain the security and integrity of information and systems under our control and maintain contingency plans in the event of security breaches or other system disruptions. Nonetheless, we cannot assure you that our security efforts and measures will prevent unauthorized access to our systems, loss or destruction of data (including confidential customer information), account takeovers, unavailability of service, computer viruses, malware, ransomware, distributed denial-of-service attacks, or other forms of cyber-attacks or similar events. These threats may derive from human error, hardware or software vulnerabilities, aging equipment or accidental technological failure. These threats may also stem from fraud, malice or sabotage on the part of employees, third parties or foreign nations, including attempts by outside parties to fraudulently induce our employees or customers to disclose or grant access to our data or our customers' data, potentially including information subject to stringent domestic and foreign data protection laws governing personally identifiable information, protected health information or other similar types of sensitive data. These threats may also arise from failure or breaches of systems owned, operated or controlled by other unaffiliated operators to the extent we rely on such other systems to deliver services to our customers. Each of these risks could further intensify to the extent we maintain information in digital form stored on servers connected to the Internet.

Additional risks to our network, infrastructure and related systems include, among others:

- capacity or system configuration limitations, including those resulting from changes in usage patterns, the introduction of new technologies or products, or incompatibilities between newer and older systems;
- theft or failure of our equipment;
- software or hardware obsolescence, defects or malfunctions;
- power losses or power surges;
- physical damage, whether caused by fire, flood, adverse weather conditions, terrorism, sabotage, vandalism or otherwise;
- deficiencies in our processes or controls;

- our inability to hire and retain personnel with the requisite skills to adequately design, install, maintain or improve our products;
- programming, processing and other human error; and
- inadequate building maintenance by third-party landlords or other service failures of our third-party vendors.

Due to these factors, from time to time in the ordinary course of our business we experience disruptions in our service and could experience more significant disruptions in the future.

Disruptions, security breaches and other significant failures of the above-described networks and systems could:

- disrupt the proper functioning of these networks and systems;
- result in the unauthorized access to, and destruction, loss, theft, misappropriation or release of proprietary, confidential, sensitive, classified or otherwise valuable information of ours;
- require us to notify customers, regulatory agencies or the public of data breaches;
- subject us to claims for damages, fines, penalties, termination or other remedies under our customer contracts or service standards set by regulators, which in certain cases could exceed our insurance coverage;
- result in a loss of business, damage our reputation among our customers and the public generally; or
- require significant management attention or financial resources to remedy the resulting damages or to change our systems, including expenses to repair systems, add new personnel or develop additional protective systems.

Any or all of the foregoing developments could have a negative impact on our business, results of operations, financial condition and cash flows.

We may experience interruptions to its business operations arising out of events beyond our control, and insurance may not cover the full extent of damages.

A catastrophic event beyond our control, such as a natural disaster, health pandemic, cyber-attack, adverse weather event or act of terrorism, that results in the destruction or disruption of any of our critical business systems or operations could harm our ability to conduct normal business operations and, in turn our operating results.

While we maintain business continuity plans that are intended to allow us to continue operations or mitigate the effects of events that could disrupt our business, we cannot provide assurances that our plans would fully protect us from all such events. In addition, insurance maintained by us to protect against property damage, loss of business and other related consequences resulting from catastrophic events is subject to coverage limitations, depending on the nature of the risk insured. This insurance may not be sufficient to cover all of our damages or damages to others in the event of a catastrophe. In addition, insurance related to these types of risks may not be available now or, if available, may not be available in the future at commercially reasonable rates.

Due to our size, we depend on key personnel and other skilled employees.

Our employees are key to the growth and success of our business and our continued success depends to a large extent on our ability to recruit, train, and retain skilled employees, particularly executive management and technical employees. If we are unable to attract and retain key personnel, our operating results could be adversely affected.

Additionally, the Company's ability to retain skilled workforce and its success in attracting and hiring new skilled employees will be a critical factor in determining whether the Company will be successful in the future. The Company faces competition for qualified individuals and may be unable to attract and retain suitably qualified individuals. The Company's failure to do so could have an adverse effect on its ability to implement the business plan.

Future litigation may impair our reputation or lead us to incur significant costs, and the costs of such litigation may exceed our insurance coverage.

We are currently party to several lawsuits and may become party to various lawsuits and claims arising in the normal course of business, which may include lawsuits or claims relating to contracts, third party contract manufacturers, intellectual property, product recalls, product liability, false or deceptive advertising, employment matters, environmental matters or other aspects of our business. Negative publicity resulting from allegations made in lawsuits or claims asserted against us, whether or not valid, may adversely affect our reputation. In addition, we may be required to pay damage awards or settlements or become subject to injunctions or other equitable remedies, which could have a material adverse effect on our financial condition, results of operations and cash flows. The outcome of litigation is often difficult to predict, and the outcome of pending or future litigation may have a material adverse effect on our business, financial condition, results of operations and cash flows.

We maintain general and excess liability, cyber security, workers' compensation and medical insurance, all in amounts consistent with industry practice and as part of our overall risk management strategy. Further, our policies are held with financially stable coverage providers, often in a layered or quota share arrangement which reduces the likelihood of an interruption or impact to operations. Although we have various insurance programs in place, the potential liabilities associated with potential litigation matters, or those that could arise in the future, could be excluded from coverage or, if covered, could exceed the coverage provided by such programs. In addition, insurance carriers may seek to rescind or deny coverage with respect to pending or future claims or lawsuits. If we do not have sufficient coverage under our policies, or if coverage is denied, we may be required to make material payments to settle litigation or satisfy any judgment. Any of these consequences could have a material adverse effect on our business, financial condition, results of operations and cash flows.

The rent-to-own business model has been the subject of increased regulatory scrutiny, and, as we begin to move away from this business model to a standard rental business model, we may encounter problems which might make it difficult to predict our future performance, may limit our ability to conduct business and adversely affect our ability to execute on our long-term strategy.

The rent-to-own industry has been the subject of increased regulatory scrutiny over the last decade. Vision Property Management, our predecessor in interest, has faced (and is continuing to face) allegations of violations of consumer protection laws and other lending regulations arising out of this business model. Most of these legacy matters involve lawsuits brought by attorneys general from states where our properties are located and have either been settled or are in advanced settlement discussions. See Part 1 - Item 3. *Legal Proceedings*. We are in the process of transitioning away from the rent-to-own model; however, there is no assurance that we will be able to fully transition to a strictly rental property business financial model and we may not be able to sustain the growth of our assets and results from operations that we seek.

Our failure to effectively perform property management functions or to effectively manage our portfolio and operations could materially and adversely affect us

We have direct responsibility for the management of the properties in our single family residential ("SFR") portfolio, including, without limitation, renovations, maintenance and certain matters related to leasing, such as marketing and selection of tenants. If our internal property manager is unable to effectively perform property management services at the level and/or the cost that we expect or if we fail to allocate sufficient resources to meet our property management needs, it may adversely affect our performance and we may need to outsource property management functions at a higher cost. In addition, we will be responsible for ensuring the compliance of our internal property manager with governmental laws, regulations and covenants that are applicable to our homes, our tenants and our prospective tenants, including, without limitation, permitting, licensing and zoning requirements and tenant relief laws, such as laws regulating evictions, rent control laws and other regulations that limit our ability to increase rental rates.

Our ability to perform the property management services will be affected by various factors, including, among other things, our ability to maintain sufficient personnel and retain key personnel and the number of our SFR properties that we manage. No assurance can be made that we will continue to be successful in attracting and retaining skilled personnel or in integrating any new personnel into our organization.

Our future success will depend, in part, upon our ability to successfully monitor our operations, costs, regulatory compliance and service quality and maintain other necessary internal controls. Our inability to effectively perform the property management services on the properties managed by us, or to effectively manage our portfolio and operations could materially adversely affect our business, financial results and share price.

We may incur significant costs in renovating our properties or turning vacant properties, and we may underestimate the costs or amount of time necessary to complete restorations or unit turns.

While a substantial portion of the SFR properties we have acquired to date meet our rental specifications at the time of acquisition, properties frequently require additional renovations prior to renting. Beyond customary repairs, we may undertake improvements designed to optimize the overall property appeal and increase the value of the property. Though we endeavor to conduct property inspections and due diligence prior to acquiring new SFR portfolios, we expect that nearly all of our rental properties will require some level of renovation immediately upon their acquisition or in the future following expiration of a lease or otherwise. We may acquire properties that we plan to extensively renovate and restore. In addition, in order to reposition properties in the rental market, we will be required to make ongoing capital improvements and may need to perform significant renovations and repairs from time to time. Consequently, we are exposed to the risks inherent in property renovation, including potential cost overruns, increases in labor and materials costs, delays by contractors in completing work, delays in the timing of receiving necessary work permits and certificates of occupancy and poor workmanship. If our assumptions regarding the cost or timing of renovations across our properties prove to be materially inaccurate, it may be more costly or take significantly more time than anticipated to develop and grow our SFR portfolio, which could materially and adversely affect us.

We may incur significant costs in preparing newly vacant homes for occupancy as we do not collect security or damage deposits on our rental homes.

While we anticipate a minimum level of effort will be required to prepare a newly vacant property to be made ready for occupancy by a new tenant, we may find that the newly vacant property may require extensive repairs and/or improvements which costs may be solely borne by us, given we do not collect security or damage deposits from tenants at the time the rental property is leased. Accordingly, the cost of maintaining and preparing rental properties may be higher than originally anticipated. Additionally, we are exposed to risks of cost overruns, increases in costs of materials or labor, delays in the completion of work and other factors. If we are unable to perform unit turns efficiently or in a timely manner, we would experience decreased revenue, increased expenses or both.

The availability of portfolios of single-family residential properties for purchase on favorable terms may decline as market conditions change, our industry matures and/or additional purchasers for such portfolios emerge, and the prices for such portfolios may increase, any of which could materially and adversely affect us.

In recent years, there has been an increase in supply of SFR property portfolios available for sale. Because we operate in an emerging industry, market conditions may be volatile, and the prices at which portfolios of SFR properties can be acquired may increase from time to time, or permanently, due to new market participants seeking such portfolios, a decrease in the supply of desirable portfolios or other adverse changes in the geographic areas that we may target from time to time. For these reasons, the supply of SFR properties that we may acquire may decline over time, which could materially and adversely affect us and our growth prospects.

Portfolios of properties that we have acquired or may acquire may include properties that do not fit our investment criteria, and divestiture of such properties may be costly or time consuming or both, which may adversely affect our operating results.

We have acquired, and expect to continue to acquire, portfolios of SFR properties, many of which are, or will be, subject to existing leases. We may be subject to a variety of risks, including risks relating to the condition of the properties, the credit quality and employment stability of the tenants and compliance with applicable laws, among others. In addition, financial and other information provided to us regarding such portfolios during our due diligence may be inaccurate, and we may not be able to obtain relief under contractual remedies, if any. Currently, approximately 1/3 of our SFR portfolio is comprised of properties that may not fit our target investment criteria and/or may require extensive renovations and repairs. If we conclude that certain properties acquired as part of a portfolio do not fit our investment criteria or that the scope of renovation and repair exceeds our cost estimates, we may decide to sell such properties and may be required to renovate the properties prior to sale, to hold the properties for an extended marketing period and/or sell the property at an unfavorable price, any of which could materially and adversely affect us.

Competition in identifying and acquiring residential rental assets could adversely affect our ability to implement our business strategy, which could materially and adversely affect us.

We face competition from various sources for investment opportunities, including REITs, hedge funds, private equity funds, partnerships, developers and others. Some third-party competitors have substantially greater financial resources and access to capital than we do and may be able to accept more risk than we can. Competition from these companies may reduce the number of attractive investment opportunities available to us or increase the bargaining power of asset owners seeking to sell, which would increase the prices of assets. If such events occur, our ability to implement our business strategy could be adversely affected, which could materially and adversely affect us. Given the existing competition, complexity of the market and requisite time needed to make such investments, no assurance can be given that we will be successful in acquiring investments that generate attractive risk-adjusted returns. Furthermore, there is no assurance that such investments, once acquired, will perform as expected.

We may be materially and adversely affected by risks affecting the single-family rental properties in which our investments may be concentrated at any given time as well as from unfavorable changes in the related geographic regions.

Our assets are not subject to any geographic diversification requirements or concentration limitations, and, as a result, circumstances or events that impact a geographic region in which we have a significant concentration of properties, including a downturn in regional economic conditions or natural disasters, could materially and adversely affect us. Entities that sell residential rental portfolios may group the portfolios by location or other metrics that could result in a concentration of our portfolio by geography, SFR property characteristics and/or tenant demographics. Such concentration could increase the risk of loss to us if the particular concentration in our portfolio is subject to greater risks or undergoing adverse developments. In addition, adverse conditions in the areas where our properties or tenants are located (including business layoffs or downsizing, industry slowdowns, changing demographics, oversupply, reduced demand and other factors) may have an adverse effect on the value of our investments. A material decline in the demand for single-family housing or rentals in the areas where we own assets may materially and adversely affect us. Lack of diversification can increase the correlation of non-performance and foreclosure risks among our investments.

Short-term leases of residential property expose us more quickly to the effects of declining market rents

The majority of our leases to tenants of SFR properties will be for a term of one year. As these leases permit the residents to leave at the end of the lease term without penalty, we anticipate our rental revenues will be affected by declines in market rents more quickly than if our leases were for longer terms. Short-term leases may result in high turnover, resulting in additional cost to renovate and maintain the property and lower occupancy levels. Because we have a limited operating history, our tenant turnover rate and related cost estimates may be less accurate than if we had more operating data upon which to base these estimates.

We may be unable to secure funds for property restoration or other capital improvements, which could limit our ability to attract, retain or replace tenants.

When we acquire or otherwise take title to single-family properties or when tenants fail to renew their leases or otherwise vacate their space, we may be required to expend funds for property restoration and leasing commissions in order to lease the property. If we have not collected or maintained tenant damage deposits or established reserves or set aside sufficient funds for such expenditures, we may have to obtain financing from other sources, as to which no assurance can be given. We may also have future financing needs for other capital improvements to restore our properties. If we need to secure financing for capital improvements in the future but are unable to secure such financing on favorable terms or at all, we may be unable or unwilling to make capital improvements or may choose to defer such improvements. If this happens, our properties may suffer from a greater risk of obsolescence or decreased marketability, a decline in value or decreased cash flow as a result of fewer potential tenants being attracted to the property or existing tenants not renewing their leases. If we do not have access to sufficient funding in the future, we may not be able to make necessary capital improvements to our properties, and our properties' ability to generate revenue may be significantly impaired.

Our revenue and expenses are not directly correlated, and, because a large percentage of our costs and expenses are fixed and some variable expenses may not decrease or may increase over time, we may not be able to adapt our cost structure to offset any declines in our revenue.

Many of the expenses associated with our business, such as acquisition costs, restoration and maintenance costs, Home Owners Association (“HOA”) fees, personal and real property taxes, insurance, compensation and other general expenses are fixed and would not necessarily decrease proportionally with any decrease in revenue. Our assets also will likely require a significant amount of ongoing capital expenditure. Our expenses, including capital expenditures, will be affected by, among other things, any inflationary increases, and cost increases may exceed the rate of inflation in any given period. Certain expenses, such as HOA fees, taxes, insurance and maintenance costs are recurring in nature and may not decrease on a per-unit basis as our portfolio grows through additional property acquisitions. By contrast, our revenue is affected by many factors beyond our control, such as the availability and price of alternative rental housing and economic conditions in our markets. As a result, we may not be able to fully, or even partially, offset any increase in our expenses with a corresponding increase in our revenues. In addition, state and local regulations may require us to maintain our properties, even if the cost of maintenance is greater than the potential benefit.

Competition could limit our ability to lease single-family rental properties or increase or maintain rents.

Our SFR properties compete with other housing alternatives to attract residents, including rental apartments, condominiums and other single-family homes available for rent as well as new and existing condominiums and single-family homes for sale. Our competitors’ properties may be of better quality, in a more desirable location or have leasing terms more favorable than we can provide. In addition, our ability to compete and generate favorable returns depends upon, among other factors, trends of the national and local economies, the financial condition and liquidity of current and prospective renters, availability and cost of capital, taxes and governmental regulations. Given significant competition, we cannot assure you that we will be successful in acquiring or managing SFR properties that generate favorable returns.

If rents in our markets do not increase sufficiently to keep pace with potential rising costs of operations, our operating results and cash available for distribution will decline.

The success of our business model will substantially depend on conditions in the SFR property market in our geographic markets. Our asset acquisitions are premised on assumptions about, among other things, occupancy and rent levels. If those assumptions prove to be inaccurate, our operating results and cash available for distribution will be lower than expected, potentially materially. Rental rates and occupancy levels have benefited in recent periods from macroeconomic trends affecting the U.S. economy and residential real estate and mortgage markets in particular, including a tightening of credit and increases in interest rates that has made it more difficult to finance a home purchase, combined with efforts by consumers generally to reduce their exposure to credit. A decrease in rental rates would have a material adverse effect on the performance of our SFR portfolio or could cause a default of our obligations under one or more financing agreements, and our business, results of operations and financial condition would therefore be materially harmed.

If the current trend favoring renting rather than homeownership reverses, the single-family rental market could decline

The SFR market is currently significantly larger than in historical periods. We do not expect the favorable trends in the SFR market to continue indefinitely. Eventually, continued strengthening of the U.S. economy and job growth, together with the large supply of foreclosed SFR properties, the current availability of low residential mortgage rates and government sponsored programs promoting home ownership, may contribute to a stabilization or reversal of the current trend that favors renting rather than homeownership. In addition, we expect that as investors increasingly seek to capitalize on opportunities to purchase undervalued housing properties and convert them to productive uses, the supply of SFR properties will decrease and the competition for tenants will intensify. A softening of the rental property market in our markets would adversely affect our operating results and cash available for distribution, potentially materially.

Suboptimal tenant underwriting and defaults by our tenants may materially and adversely affect us

Our success depends, in large part, upon our ability to attract and retain qualified tenants for our properties. This depends, in turn, upon our ability to screen applicants, identify good tenants and avoid tenants who may default. We may make mistakes in our selection of tenants, and we may rent to tenants whose default on our leases or failure to comply with the terms of the lease or HOA regulations could materially and adversely affect us. For example, tenants may default on payment of rent; make unreasonable and repeated demands for service or improvements; make unsupported or unjustified complaints to regulatory or political authorities; make use of our properties for illegal purposes; damage or make unauthorized structural changes to our properties that may not be fully covered by security deposits; refuse to leave the property when the lease is terminated; engage in domestic violence or similar disturbances; disturb nearby residents with noise, trash, odors or eyesores; fail to comply with HOA regulations; sub-let to less desirable individuals in violation of our leases or permit unauthorized persons to live with them. The process of evicting a defaulting tenant from a family residence can be adversarial, protracted and costly. Furthermore, some tenants facing eviction may damage or destroy the property. Damage to our properties may significantly delay re-leasing after eviction, necessitate expensive repairs, reduce the rental revenue generated by the property or impair its value. In addition, we will incur turnover costs associated with re-leasing the properties, such as marketing expenses and brokerage commissions, and will not collect revenue while the property is vacant. Although we will attempt to work with tenants to prevent such damage or destruction, there can be no assurance that we will be successful in all or most cases. Such tenants will not only cause us not to achieve our financial objectives for the properties in which they live, but may subject us to liability and may damage our reputation with our other tenants and in the communities where we do business.

A significant uninsured property or liability loss could have a material adverse effect on us

We carry commercial general liability insurance and property insurance with respect to our SFR properties on terms we considered commercially reasonable. However, many of the policies covering casualty losses are subject to substantial deductibles and exclusions, and we will be self-insured up to the amount of the deductibles and exclusions. For example, we may not always be fully insured against losses arising from floods, windstorms, fires, earthquakes, acts of war or terrorism or civil unrest because they are either uninsurable or the cost of insurance makes it economically impractical. If an uninsured property loss or a property loss in excess of insured limits were to occur, we could lose our capital invested in a property or group of properties as well as the anticipated future revenues from affected SFR properties or groups of properties. Further, inflation, changes in building codes and ordinances, environmental considerations and other factors might also prevent us from using insurance proceeds to replace or renovate a property after it has been damaged or destroyed.

In the event that we incur a casualty loss that is not fully covered by insurance, the value of our assets will be reduced by the amount of any such uninsured loss, and we could experience a significant loss of capital invested and potential revenues in these properties and could potentially remain obligated under any recourse debt associated with the property. Further, if an uninsured liability to a third party were to occur, we would incur the cost of defense and settlement with or court ordered damages to that third party. A significant uninsured property or liability loss could adversely affect our financial condition, operating results, cash flows and ability to make distributions on our common stock.

We rely on information supplied by prospective tenants in managing our business

We rely on information supplied to us by prospective tenants in their rental applications as part of our due diligence process to make leasing decisions, and we cannot be certain that this information is accurate. In particular, we rely on information submitted by prospective tenants regarding household income, tenure at current job, number of children and size of household. Moreover, these applications are submitted to us at the time we evaluate a prospective tenant, and we do not require tenants to provide us with updated information during the terms of their leases, notwithstanding the fact that this information can, and frequently does, change over time. Even though this information is not updated, we will use it to evaluate the overall average credit characteristics of our portfolio over time. If tenant-supplied information is inaccurate or our tenants' creditworthiness declines over time, we may make poor leasing decisions, and our portfolio may contain more credit risk than we believe.

Our single-family residential properties are not liquid assets, which could limit our ability to vary our portfolio or to realize the value at which such assets are carried if we are required to dispose of them.

Our SFR properties are not liquid assets, which could limit our ability to vary our portfolio or to realize the value at which such assets are carried if we are required to dispose of them. Our inability to sell individual or portfolios of SFR properties on acceptable terms and/or in accordance with our anticipated timing could materially and adversely affect our financial condition.

Changes in global economic and capital market conditions, including periods of generally deteriorating occupancy and real estate industry fundamentals, may materially and adversely affect us.

There are risks to the ownership of real estate and real estate related assets, including decreases in residential property values, changes in global, national, regional or local economic, demographic and real estate market conditions as well as other factors particular to the locations of our investments. A prolonged recession and a slow recovery could materially and adversely affect us as a result of, among other items, the following:

- joblessness or unemployment rates that adversely affect the local economy;
- an oversupply of or a reduced demand for SFR properties for rent;
- a decline in employment or lack of employment growth;
- the inability or unwillingness of residents to pay rent increases or fulfill their lease obligations;
- a decline in rental rate, which may be accentuated since we expect to generally have rent terms of one year;
- rent control or rent stabilization laws or other laws regulating housing that could prevent us from raising rents to offset increases in operating costs;
- changes in interest rates and availability and terms of debt financing; and
- economic conditions that could cause an increase in our operating expenses such as increases in property taxes, utilities and routine maintenance.

These conditions could also adversely impact the financial condition and liquidity of the renters that will occupy our real estate properties and, as a result, their ability to pay rent to us.

Residential properties that are subject to eviction are subject to risks of theft, vandalism or other damage that could impair their value

When a residential property is subject to an eviction, it is possible that the tenant may cease to maintain the property adequately or that the property may be abandoned by the tenant and become susceptible to theft or vandalism. Lack of maintenance, theft and vandalism can substantially impair the value of the property. To the extent we initiate eviction proceedings, some of our properties could be impaired.

Contingent or unknown liabilities associated with respect to our prior acquisitions of portfolios of properties could expose us to material litigation and unanticipated costs, which could adversely affect our financial condition, cash flows and operating results.

Assets and entities that we have acquired in connection with prior SFR portfolio or operating entity acquisitions may be subject to unknown or contingent liabilities for which we may have limited or no recourse against the sellers. Unknown or contingent liabilities might include liabilities for or with respect to liens attached to properties; unpaid real estate tax, utilities or HOA charges for which a subsequent owner remains liable; clean-up or remediation of environmental conditions or code violations; claims of customers, vendors or other persons dealing with the acquired entities; or tax liabilities. Purchases of single-family properties in portfolio purchases typically involve limited representations or warranties with respect to the properties and may allow us limited or no recourse against the sellers. Such properties also often have unpaid tax, utility and HOA liabilities for which we may be obligated but fail to anticipate. As a result, the total amount of costs and expenses that we may incur with respect to liabilities associated with prior SFR property or entity acquisitions may exceed our expectations, which may adversely affect our operating results and financial condition. Additionally, such prior SFR property acquisitions may be subject to covenants, conditions or restrictions that restrict the use or ownership of such properties, including prohibitions on leasing. We may not have discovered such restrictions during the acquisition process, and such restrictions (including undisclosed or contingent liabilities) may subject us to material litigation and cause us to experience significant losses, which could materially adversely affect our business, results of operations and financial condition and may adversely affect our ability to operate such properties as we intend.

The costs and amount of time necessary to secure possession and control of certain properties may exceed our assumptions, which would delay our receipt of revenue from, and return on, the property.

A majority of the SFR properties we have acquired have had an existing tenant at the time of acquisition. However, certain SFR properties require us to secure possession. In certain circumstances, we may have to evict occupants who are in unlawful possession before we can secure possession and control of the property. The holdover occupants may be the former owners or tenants of a property, or they may be squatters or others who are illegally in possession. Securing control and possession from these occupants can be both costly and time consuming. If these costs and delays exceed our expectations, our financial performance may suffer because of the increased expenses incurred or the unexpected delays in turning the properties into revenue-producing rental properties.

Eminent domain could lead to material losses on our investments.

It is possible that governmental authorities may exercise eminent domain to acquire land on which our properties are built in order to build roads or other infrastructure. Any such exercise of eminent domain would allow us to recover only the fair value of the affected properties, which we believe may be interpreted to be substantially less than the actual value of the property. Several cities are also exploring proposals to use eminent domain to acquire residential loans to assist borrowers to remain in their homes, potentially reducing the supply of single-family properties for sale in our markets. Any of these events can cause a material loss to us.

We likely will incur costs due to litigation, including but not limited to, class actions, tenant rights claims and consumer demands, which could directly limit and constrain our operations and may result in significant litigation expenses and reputational harm.

There are numerous tenants' rights and consumer rights organizations throughout the country. As we grow in scale, we may attract attention from some of these organizations and become a target of legal demands or litigation. Many such consumer organizations have become more active and better funded in connection with mortgage foreclosure-related issues and displaced home ownership. Some of these organizations may shift their litigation, lobbying, fundraising and grass roots organizing activities to focus on landlord-tenant issues as more entities engage in the SFR property market. Additional actions that may be targeted at us include eviction proceedings and other landlord-tenant disputes, challenges to title and ownership rights (including actions brought by prior owners alleging wrongful foreclosure by their lender or servicer) and issues with local housing officials arising from the condition or maintenance of an SFR property. While we intend to conduct our rental business lawfully and in compliance with applicable landlord-tenant and consumer laws, such organizations might work in conjunction with trial and pro bono lawyers in one state or multiple states to attempt to bring claims against us on a class action basis for damages or injunctive relief. We cannot anticipate what form such legal actions might take or what remedies they may seek. Any of such claims may result in a finding of liability that may materially and adversely affect us. We were named as a successor defendant in a class action lawsuit filed in Michigan federal court arising out of alleged actions that occurred prior to the Rental Home Portfolio Asset Purchase. We intend to vigorously defend our interests in this lawsuit and believe we have valid defenses. However, because litigation is inherently uncertain, there are no assurances that we will prevail, and any judgment or injunctive relief entered against us or any adverse settlement could adversely impact our business, financial condition, and operating results (See Item 3 - *Legal Proceedings*).

Additionally, these organizations may lobby local county and municipal attorneys or state attorneys general to pursue enforcement or litigation against us or may lobby state and local legislatures to pass new laws and regulations to constrain our business operations. If they are successful in any such endeavors, they could directly limit and constrain our business operations and impose on us significant litigation expenses, including settlements to avoid continued litigation or judgments for damages or injunctions. Any of the above-described occurrences may materially and adversely affect us.

ITEM 1B. Unresolved Staff Comments.

None.

ITEM 2. Properties.

On April 4, 2019, we moved our corporate headquarters to 237 W. 35th St., Suite 806, New York, NY 10001. Our current lease expires on October 31, 2021 and has 4,340 square feet which it subleases from Benchmark Builders, LLC under the terms of the Transition Support Agreement which was entered into and disclosed as part of the Strict Foreclosure. Our subsidiaries leased five additional office/warehouse facilities throughout the United States, which is summarized below.

Location:	Usage	Square Footage	Lease Start Date	Lease End Date	Monthly Obligation
Naples, FL ¹	Office	5,377	11/01/2015	11/30/2022	\$ 20,445
Indianapolis, IN	Office	2,500	12/1/2018	2/28/2022	\$ 1,550
Boise, ID ²	Office	1,500	7/1/2017	7/31/2020	\$ 2,668
New York, NY ³	Office	4,340	10/1/2010	10/31/2021	\$ 20,249
Columbia, SC ⁴	Office	3,000	N/A	N/A	\$ 3,000

N/A – Not applicable

¹ The Company is currently in default on the Naples office lease. We recorded the future rent, interest and penalties as accrued expenses on our consolidated balance sheet.

² The Company paid rent on the Boise ID office space through January 2020 and owes approximately \$20,000 through the lease termination date of July 31, 2020.

³ The Company paid rent on its New York office space through January 2020 and owes approximately \$141,000 to Benchmark Builders, LLC through August 31, 2020.

⁴ The Company is currently occupying office space at 16 Berryhill Road, Columbia SC, on a month to month basis.

We believe our properties are suitable and adequate for our business needs.

ITEM 3. Legal Proceedings.

From time to time, the Company may be involved in various legal proceedings arising in the ordinary course of business, and we may in the future be subject to additional legal proceedings and disputes.

The following is a summary of material legal proceedings as of December 31, 2019:

On May 10, 2018, Vista Capital Investments, LLC (“Vista”) filed suit against the Company for breach of contract and breach of the implied covenant of good faith and fair dealing arising out of a securities purchase agreement and a convertible note in the principal amount of \$275,000 in the Superior Court of California for the county of San Diego. Vista alleges damages in excess of \$9,000,000 stemming from the Company’s purported dilutive issuances of Company common stock. Vista was the holder of a convertible note for which there was no prior Board authorization (See Item 1, Recent Developments “*Internal Investigation*”). The Company and Vista reached a tentative settlement framework (subject to final documentation), following which the court dismissed this matter without prejudice.

On March 28, 2019, the Company obtained a temporary restraining order against Nevada Agency and Transfer Company (“NATCO”) in the Second Judicial District Court for the State of Nevada, enjoining NATCO, the Company’s transfer agent, from processing or issuing any conversion requests submitted on behalf of convertible noteholders whose notes were determined to have been issued without requisite Board approval (See Item 1, Recent Developments “*Internal Investigation*”). The Company obtained a preliminary injunction on April 11, 2019 and filed an amended complaint on January 23, 2020 adding Michael Palleschi (the Company’s former CEO) and certain related parties as defendants, seeking (among other damages) a declaratory judgment that the shares of Company stock issued to Mr. Palleschi and related parties were unauthorized and to compel the return of these shares to the Company’s authorized capital stock. The matter remains pending in Nevada and has been delayed because of COVID-19.

On April 11, 2019, the Company received a demand for arbitration, which was filed with the American Arbitration Association (AAA), Case No. 01-19-0001-0962, on behalf of Michael Palleschi, the former CEO, alleging a breach of his employment agreement and seeking \$11,300,000 in damages. The Company has asserted counterclaims and affirmative defenses to Mr. Palleschi’s claims and intends to vigorously defend this matter. This matter has been placed in abeyance, to be reopened upon motion and payment of panel deposit.

On June 26, 2019, Efraim Barenbaum filed a shareholder derivative suit in the United States District Court for the Southern District of New York against certain of the Company’s former directors and executive officers, alleging claims for breaches of fiduciary duties, unjust enrichment, waste, and violations of Section 14 of the Securities Exchange Act of 1934. The Company was named as a nominal defendant only. The Company filed a motion to dismiss the complaint on September 23, 2019. In response to the motion, the plaintiff filed an amended complaint on November 1, 2019, but the causes of action remained equally deficient. Having found the claims in the amended complaint also to be baseless, the Company filed a motion to dismiss that pleading as well on January 27, 2020. Motion practice is ongoing. On September 30, 2020, the court dismissed the plaintiff’s complaint with prejudice.

On August 17, 2019, Auctus Fund, LLC (“Auctus”) filed suit against the Company alleging, among other things, breach of contract and violations of state and federal securities laws, arising out of a securities purchase agreement and a convertible note in the principal amount of \$525,000. Auctus is the holder of a convertible note for which there was no prior Board authorization (See Item 1, Recent Developments “*Internal Investigation*”). The Company denies any alleged wrongdoing and intends to vigorously defend against these claims. The matter is pending in the United States District Court for the District of Massachusetts. The parties are continuing to negotiate the terms of a settlement.

On November 5, 2019, St. George Investments LLC (“St. George”) filed suit against the Company in the Third Judicial District Court for Salt Lake County in the state of Utah to compel arbitration, alleging, among other things, breach of contract arising out of a securities purchase agreement and convertible note in the principal amount of \$2,315,000. St. George is the holder of a convertible note for which there was no prior Board authorization (See Item 1, Recent Developments “*Internal Investigation*”). On June 4, 2020, the Company learned that the arbitrator, following a hearing on St. George’s motion for partial summary judgment, granted St. George’s motion and requested relief of approximately \$2.7 million. The Company believes the arbitrator’s decision is inconsistent with the underlying facts and applicable law and has filed papers to vacate the arbitration award, among other relief. On October 21, 2020, the district court granted St. George’s motion to confirm the arbitration award and denied the Company’s motion to vacate the arbitration award and its motion for leave to amend its answer. The Company is currently evaluating its legal options.

On November 26, 2019, David Lethem (the Company's former CFO) filed a complaint against the Company in the 20th Judicial Circuit Court for Lee county in the State of Florida for breach of contract arising out of a transition, separation and general release agreement. The Company filed a counterclaim to rescind the agreement based on fraudulent inducement. Discovery is ongoing in this case and the Company continues to vigorously defend its interests in this matter.

On January 3, 2020, CBRE, Inc. ("CBRE") filed suit against the Company's subsidiary, CrossLayer, Inc., for breach of contract arising out of a program participation agreement in the Superior Court of the state of Delaware. CBRE is alleging damages of \$1,333,000. The Company considers CBRE's claims to be without merit and has engaged counsel who is vigorously disputing this matter. On April 29, 2020, CBRE filed a notice of voluntary dismissal without prejudice.

On June 5, 2020, certain former directors of the Company (Christopher Ferguson, Luisa Ingargiola, Brad Mitchell, and Patrick O'Hare) filed suit against the Company in the District Court for Clark County in the State of Nevada to recover indemnification costs arising out of indemnification agreements. The Company denies any alleged wrongdoing and is defending its interests in this matter. The Company continues to assess and discuss terms of a possible settlement.

On September 29, 2020, a class action lawsuit was filed in the United States District Court for the Eastern District of Michigan against Vision Property Management, LLC and related entities, including the Company and US Home Rentals LLC, as successor defendants, in connection with claims arising out of various regulations, including the Fair Housing Act, the Michigan Consumer Protection Act, and the Truth in Lending Act. The Company is evaluating this action and intends to vigorously defend its interests in this matter. Moreover, the Company plans to seek indemnification from the Rental Home Portfolio Sellers for this and the legacy matters listed below pursuant to its indemnification rights under the Rental Home Portfolio Asset Purchase Agreement.

Additionally, there are legal proceedings arising out of the legacy Vision business that implicate certain of our existing rental properties. A brief summary of these matters follows:

- In November 2016, the State of Wisconsin filed a lawsuit against Vision Property Management, LLC and related entities owning properties within the state, in connection with claims arising out of state landlord-tenant laws. This matter was settled in December 2018, pending a final agreement regarding fines and restitution.
- In March 2017, the State of Maryland filed a lawsuit against Vision Property Management, LLC and related entities owning properties within the state, in connection with claims arising out of state lead paint laws. This matter was settled in December 2017, subject to the payment of fines, which remain outstanding as of the date of this filing.
- On August 1, 2018, the State of New York filed a lawsuit against Vision Property Management, LLC and related entities owning properties within the state, alleging violations of state lending laws in connection with claims arising out of certain lease-to-own agreements. This matter was settled in December 2019.
- On August 31, 2018, a private class action lawsuit was filed in New Jersey (not yet certified) against Vision Property Management, LLC and related entities owning properties within the state, in connection with claims arising out of state landlord-tenant laws. The case remains pending and settlement negotiations are underway.
- On October 10, 2019, the State of Pennsylvania filed a lawsuit against Vision Property Management, LLC and related entities owning properties within the state claims arising out of certain lease-to-own agreements. The case remains pending and settlement negotiations are ongoing.

There can be no assurance with respect to the outcome of any current or future litigation brought against us, and we may not have sufficient liquidity to fund the defense of any such litigation. An adverse outcome of any of the foregoing legal proceedings, or the inability to settle any such legal proceedings on favorable terms, could have a material adverse impact on our business, operating results and financial condition.

ITEM 4. Mine Safety Disclosures.

Not applicable.

PART II

ITEM 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.

On December 17, 2019, trading in our common stock was suspended from the NYSE American Market (See "Item 1. Business – Recent Developments – *Delisting of Common Stock from NYSE American*"). Prior to this date, our stock had been trading under the symbol FTNW.

As of the date of the filing, the Company's common stock is not quoted or trading on any stock market.

See "Item 1. Business – Recent Developments – *Delisting of Common Stock from NYSE American.*"

Stockholders of Record

There were approximately 435 holders of record of our common stock as of October 31, 2020.

Dividends

We have not declared or paid any dividends on our common stock and do not anticipate paying cash dividends in the foreseeable future. We plan to retain any future earnings for use in our business operations. Any decisions as to future payments of cash dividends will depend on our earnings and financial position and such other factors as the Board deems relevant. Under our Articles of Incorporation, we may not declare or pay any dividends on any shares of common stock without the affirmative vote or written consent of a majority of the then outstanding shares of Series A and Series A-1 Preferred Stock and even then, not unless we have paid in full the aggregate accrued dividends upon such preferred stock and such amounts that the holders of such preferred stock would receive if they were to convert their shares of preferred stock into shares of common stock. Additionally, certain of our debt include covenants that prohibit us from paying dividends on our common stock.

Securities Authorized for Issuance Under Equity Compensation Plans.

Our Board of Directors approved the 2017 Omnibus Incentive Plan (the "2017 Incentive Plan") which reserves 3,000,000 shares of our common stock for issuance to enable us to attract and retain highly qualified personnel who will contribute to the Company's success and provide incentives to participants in the 2017 Incentive Plan that are linked directly to increases in stockholder value. The 2017 Incentive Plan was approved stockholders on November 8, 2017.

The following table illustrates the common shares remaining available for future issuance under the 2017 Incentive Plan as of December 31, 2019:

Plan Category:	Number of securities to be issued upon exercise of outstanding options, warrants and rights	Weighted-average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity plans
Equity compensation plans approved by security holders	340,388	\$ 15.82	2,659,612
Equity compensation plans not approved by security holders	—	—	—
Total	340,388	\$ 15.82	2,659,612

Issuer Purchases of Equity Securities

During the year ended December 31, 2019, there were no purchases of our equity by us or any “affiliated purchaser.”

ITEM 6. Selected Financial Data.

Not required for a smaller reporting company.

ITEM 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations.

The following discussion should be read in conjunction with our historical financial statements and the related notes contained elsewhere in this report.

Overview

Prior to October 2019, we were a provider of end-to-end design, construction management, build and support solutions for networks, data centers, residential, and commercial properties and services at Fortune 100/500 companies (our “Historical Business”). Our primary activities included engineering, building, installation, maintenance and support solutions for state-of-the-art networks and commercial properties, including the following services: data center infrastructure, fiber optics, wireless integration, network engineering, internet service provider, construction management and general contracting under three operating subsidiaries, Benchmark, CrossLayer and FTE Network Services.

Our Current Business and Corporate Strategy

Following a year of corporate and financial restructuring in response to the findings of an internal investigation (see below) that examined the acts and omissions of certain former officers and directors, and the loss of our principal operating subsidiary through a foreclosure by our former senior secured lenders, we were presented with an opportunity to acquire a real estate portfolio consisting of approximately 3,200 rental homes across the United States moving us into a new direction which our current management believes offers substantial opportunity for the benefit of shareholders. Accordingly, on December 30, 2019, we closed on the Rental Home Portfolio Asset Purchase Agreement, acquiring approximately 3,200 real estate properties by and through our new subsidiary, US Home Rentals.

FTE Network Services, part of our core legacy business, continues to provide ISP services, which consist of rack, wiring build-outs, infrastructure build-outs and cable installation, among other things.

Critical Accounting Policies

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires us to make estimates and judgments that affect the reported amounts of assets and liabilities, revenues and expenses, and related disclosures of contingent assets and liabilities. These estimates and judgments are based on historical information, information that is currently available to us and on various other assumptions that we believe to be reasonable under the circumstances. Actual results could differ from those estimates. Our key estimates include: the recognition of revenue and project profit or loss (which we define as project revenue less project costs of revenue, including project-related depreciation), in particular, on construction contracts accounted for under the percentage-of-completion method, for which the recorded amounts require estimates of costs to complete projects, ultimate project profit and the amount of probable contract price adjustments as inputs; allowances for doubtful accounts; estimated fair values of acquired assets; asset lives used in computing depreciation and amortization; share-based compensation; other reserves and accruals; accounting for income taxes.

Revenue and Cost of Goods Sold Recognition

Rental income from rental home operations are recognized on a straight-line basis over the life of the respective lease when collectability is reasonably assured and the tenant has taken possession or controls the physical use of the rental home. Tenant recoveries related to reimbursement of real estate taxes, insurance, and other expense are recognized as revenue in the period the applicable costs are incurred. We did not recognize any revenue from rental operations during the years ended December 31, 2019 and 2018 as the assets were not acquired until the end of 2019.

Revenue from telecommunication services are derived from short-term projects performed under master and other service agreements as well as from contracts for specific projects or jobs requiring the installation of an entire infrastructure system or specified units within an entire infrastructure system. We have determined that these short-term projects provide a distinct service and, therefore, qualify as one performance obligation. We provide services under unit-price or fixed-price master service or other service agreements under which we furnish specified units of service for a fixed-price per unit of service and revenue is recognized upon completion of the defined project due to its short-term nature.

Valuation of Long-lived Assets

We evaluate our long-lived assets for impairment in accordance with related accounting standards. Assets to be held and used (including projects under development as well as property and equipment), are reviewed for impairment whenever indicators of impairment exist. If an indicator of impairment exists, we first group our assets with other assets and liabilities at the lowest level for which identifiable cash flows are largely independent of the cash flows of other assets and liabilities (the "asset group"). Secondly, we estimate the undiscounted future cash flows that are directly associated with and expected to arise from the completion, use and eventual disposition of such asset group. We estimate the undiscounted cash flows over the remaining useful life of the primary asset within the asset group. If the undiscounted cash flows exceed the carrying value, no impairment is indicated. If the undiscounted cash flows do not exceed the carrying value, then an impairment is measured based on fair value compared to carrying value, with fair value typically based on a discounted cash flow model. Upon foreclosure by our senior lender of our assets, the associated long-lived intangible assets were fully impaired as there are no future cash flows associated with the intangible assets.

Income Taxes

We record income taxes under the asset and liability method, whereby deferred tax assets and liabilities are recognized based on the future tax consequences attributable to temporary differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases, and attributable to operating loss and tax credit carryforwards. Accounting standards regarding income taxes requires a reduction of the carrying amounts of deferred tax assets by a valuation allowance, if based on the available evidence, it is more likely than not that such assets will not be realized. Accordingly, the need to establish valuation allowances for deferred tax assets is assessed at each reporting period based on a more-likely-than-not realization threshold. This assessment considers, among other matters, the nature, frequency and severity of current and cumulative losses, forecasts of future profitability, the duration of statutory carryforward periods, our experience with operating loss and tax credit carryforwards not expiring unused, and tax planning alternatives.

Significant judgment is required in evaluating our tax positions and determining our provision for income taxes. During the ordinary course of business, there are many transactions and calculations for which the ultimate tax determination is uncertain. Accounting standards regarding uncertainty in income taxes provides a two-step approach to recognizing and measuring uncertain tax positions. The first step is to evaluate the tax position for recognition by determining if the weight of available evidence indicates it is more likely than not that the position will be sustained on audit, including resolution of related appeals or litigation processes, if any. The second step is to measure the tax benefit as the largest amount which is more than 50% likely, based solely on the technical merits, of being sustained on examinations. We consider many factors when evaluating and estimating our tax positions and tax benefits, which may require periodic adjustments, and which may not accurately anticipate actual outcomes.

Fair Value of Financial Instruments

We adopted the Financial Accounting Standards Board (“FASB”) standard related to fair value measurement at inception. The standard defines fair value, establishes a framework for measuring fair value and expands disclosure of fair value measurements. The standard applies under other accounting pronouncements that require or permit fair value measurements and, accordingly, does not require any new fair value measurements. The standard clarifies that fair value is an exit price, representing the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants. As such, fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or liability. The recorded values of long-term debt approximate their fair values, as interest approximates market rates. As a basis for considering such assumptions, the standard established a three-tier fair value hierarchy, which prioritizes the inputs used in measuring fair value as follows:

Level 1: Observable inputs such as quoted prices in active markets;

Level 2: Inputs other than quoted prices in active markets that are observable either directly or indirectly; and

Level 3: Unobservable inputs in which there is little or no market data, which require the reporting entity to develop its own assumptions.

Our financial instruments consist of accounts receivable, other current assets, accounts payable, and notes payable. The recorded values of accounts receivable, other current assets, and accounts payable fair values due to the short maturities of such instruments. Recorded values for notes payable and related liabilities approximate fair values, since their amortization of deferred financing cost stated or imputed interest rates are commensurate with prevailing market rates for similar obligations.

Derivatives

We account for derivative instruments in accordance with applicable accounting standards and all derivative instruments are reflected as either assets or liabilities at fair value in the balance sheet.

We use estimates of fair value to value our derivative instruments. Fair value is defined as the price to sell an asset or transfer a liability in an orderly transaction between willing and able market participants. In general, our policy in estimating fair values is to first look at observable market prices for identical assets and liabilities in active markets, where available. When these are not available, other inputs are used to model fair value such as prices of similar instruments, yield curves, volatilities, prepayment speeds, default rates and credit spreads (including for our liabilities), relying first on observable data from active markets. We categorize our fair value estimates in accordance with Accounting Standard Codification 820, *Fair Value of Financial Instruments*, based on the hierarchical framework associated with the three levels of price transparency utilized in measuring financial instruments at fair value as discussed above.

Warrant Liability

We account for certain common stock warrants outstanding as a liability at fair value and adjusts the instruments to fair value at each reporting period. This liability is subject to re-measurement at each balance sheet date until exercised, and any change in fair value is recognized in our consolidated statements of operations.

Embedded Conversion Features

We evaluate embedded conversion features within convertible debt to determine whether the embedded conversion feature(s) should be bifurcated from the host instrument and accounted for as a derivative at fair value with changes in fair value recorded in our statements of operations. If the conversion feature does not require recognition of a bifurcated derivative, the convertible debt instrument is evaluated for consideration of any beneficial conversion feature requiring separate recognition.

In this section, we discuss the results of our operations for the year ended December 31, 2019 compared to the year ended December 31, 2018.

Consolidated Results of Operations

(dollars in thousands)

Overview

For the years ended December 31, 2019 and 2018, we reported a net loss of \$15,440 and \$46,592 which includes the loss from continuing operations of \$29,694 and \$65,552, respectively, and income from discontinued operations of \$14,254 and \$18,960. The discontinued operations represent the assets foreclosed upon by our senior lender. See Item 1. Business—“Recent Developments—Amendment and Cancellation of Senior Credit Facility – *Foreclosure by Senior Secured Lenders.*”

The decrease in the net loss from continuing operations of \$35,858 or 54.7%, is primarily due to the decrease in operating expenses of \$34,632 and total other expenses of \$2,631, partially offset by the increase in gross deficit of \$1,405.

Revenues and Gross Profit

Our consolidated revenues for the year ended December 31, 2019 were \$7,518 as compared to revenues of \$15,103 for the year ended December 31, 2018, a decrease of \$7,585 or 50.2%. Our cost of revenues decreased by \$6,180 or 45% year-over-year. Our gross (deficit) profit margin was approximately (0.3)% and 9.2% for the years ended December 31, 2019 and 2018, respectively.

Operating Expenses

Our operating expenses were \$25,041 and \$59,673 for the years ended December 31, 2019 and 2018, respectively, representing a decrease of \$34,632 or 58.4%. The decrease in operating expenses was primarily due to the following: i) the decrease in compensation expense of \$21,714 of which \$17,375 was attributable to share-based compensation and \$4,159 in salaries and wages due to the reduction in headcount during 2019, and ii) the decrease in selling, general and administrative of \$17,0384 which was primarily attributable to a decrease of \$8,490 in consulting fees, \$6,128 of expenses related to the write-off of the CrossLayer network platform, \$2,414 in bad debt expense and \$1,274 in depreciation and amortization expense, partially offset by an increase in insurance expense of \$897 and certain other expenses; these decreases in operating expenses were partially offset by the increase of \$3,708 in loss on lease termination due to the default on our Naples, FL office space.

Operating Loss

The operating loss decreased by \$33,226, from an operating loss of \$58,290 for the year ended December 31, 2018 to an operating loss of \$25,063 for the year ended December 31, 2019, primarily due to the decrease in total operating expenses.

Other (Expense) Income

Other (expense) income, net was \$(4,631) for the year ended December 31, 2019, as compared to \$(7,262) for the year ended December 31, 2018, a decrease of \$2,631 or 36.2%. The decrease in expense is primarily due to the decrease of: (i) amortization of deferred financing costs and debt discount of \$21,075; (ii) the gain on senior lender foreclosure of \$31,538; and (iii) loss on issuance notes of \$5,324. The decreases are partially offset by the increase in (i) gain on convertible derivative liability of \$18,779; (ii) gain on warrant derivative liability of \$12,104; (iii) the extinguishment loss of \$28,005; and (vii) increase in interest expense of \$1,288.

Liquidity and Capital Resources

(dollars in thousands)

Overview

As of December 31, 2019 and 2018, we had total assets of \$235,435 and \$164,290, current assets of \$3,531 and \$161,043, total liabilities of \$160,809 and \$223,749, and current liabilities of \$97,091 and \$193,328, respectively.

Current assets consist of operating cash of \$789 and \$342, restricted cash of \$1,351 and \$-0- accounts receivable of \$742 and \$1,449, other current assets of \$649 and \$1,575 and assets of discontinued operations of \$-0- and \$157,677 as of December 31, 2019 and 2018, respectively. Current liabilities consists of accounts payable \$2,986 and \$3,402, accrued expenses and other current liabilities of \$12,836 and \$4,964, senior notes payable of \$-0- and \$34,322, convertible notes payable, merchant credit agreements, notes payable and right-of-use and capital leases of \$34,612 and \$10,239, related party notes payable of \$10,750 and \$-0-, notes payable to Benchmark sellers of \$25,049 and \$13,397, debt and warrant derivative liabilities of \$10,858 and \$11,596 and liabilities of discontinued operations of \$-0- and \$115,408 as of December 31, 2019 and 2018, respectively.

As of December 31, 2019 and 2018, we had negative working capital of \$93,561 and \$32,285, respectively. As of October 31, 2020, the Company had approximately \$74 in cash and cash equivalents. As of the date of this filing, our cash and cash equivalents are insufficient to sustain operations in the near term. We have substantial cash requirements, which consist of payment obligations under existing indebtedness, settlement agreements for indebtedness to third parties incurred by former management, promissory notes issued as part of the purchase consideration for the Rental Home Portfolio Asset Purchase, indebtedness in place at the real estate entities we acquired in the Rental Home Portfolio Asset Purchase, payroll and other corporate expenses

Currently, our primary sources of cash have been from short-term borrowings and financings, which prospects have been hampered as a result of the uncertainty as to the duration of the COVID-19 pandemic (which has led to disruption and volatility in the financial and real estate markets). And even though we have already taken measures to mitigate the effect of COVID-19 on our business, including negotiating extensions or deferrals on outstanding debt and placing certain employees in impacted markets on furlough, there is no assurance that these efforts will be enough to continue supporting our daily operations in the near term without additional financing.

We applied for loans under the PPP and EIDL pursuant to the CARES Act through the U.S. Small Business Association programs and received net proceeds of \$979 in May 2020 and \$150 in June 2019, respectively. We are also continuing to explore and pursue various types of financing alternatives, including financings that leverage unencumbered properties in our real estate portfolio. We believe our debt and equity financing prospects will improve once we are current in our Exchange Act filings and we are able to resume trading on a national stock exchange or on an over-the-counter market, although no assurances can be provided in that regard either. And while we believe in the viability of our strategy to increase revenues and raise additional funds, we are unable to predict the impact of COVID-19 on our operations and liquidity, and depending on the magnitude and duration of the COVID-19 pandemic, such impact may be material.

Liquidity

Sources of liquidity in 2019 and 2018 included cash receipts from telecommunication service revenues, as well as funds from issuances of debt and equity securities in private financings. As of and during the year ended December 31, 2019 and 2018, we had an accumulated deficit of \$190,072 and \$174,632 and incurred net losses of \$15,440 and \$46,592, respectively. We expect our liquidity needs to include the payment of interest and principal on our indebtedness, capital expenditures, income taxes and other operating expenses. We use our cash inflows to manage the temporary increases in cash demand and utilize our borrowings to manage more significant fluctuations in liquidity.

Future sources of liquidity could include potential public or private issuances of debt or equity. However, there is no assurance that additional financing will be available when needed or that we will be able to obtain and close financing on terms acceptable to us, or whether our anticipated future profitable and positive operating cash flow generated through our backlog and rents will coincide with our debt service requirements and debt maturity schedule. If we are unable to raise sufficient additional funds or generate positive operating cash flow when required, we may need to develop and implement a plan which may include but may not be limited to such measures as extending payables, renegotiating debt facilities, extending debt maturities, the sale of SFR assets and reducing overhead, until sufficient additional capital is raised to support further operations. There can be no assurance that such a plan will be successful.

Cash Flows

(in thousands)

The following table summarizes our cash flow for 2019 and 2018:

	For Year Ended December 31,			
	2019	2018	Increase (Decrease)	
Net cash provided by (used in):				
Operating activities	\$ (4,297)	\$ 17,854	\$ (22,151)	(124.1)%
Investing activities	(6,841)	(631)	(6,210)	N/M*
Financing activities	1,108	(20,695)	21,803	(105.4)%
(Decrease) increase in cash	\$ (10,030)	\$ (3,472)	\$ (6,558)	230.9%

*N/M – Not meaningful

Cash Flows for the Years Ended December 31, 2019 and 2018

Cash (Used in) Provided by Operating Activities

Net cash used in operating activities for the year ended December 31, 2019 was \$4,297 as compared to net cash provided by \$17,854 for the year ended December 31, 2018. The unfavorable change in net cash from operating activities of \$(22,151), or approximately (124.1)%, is due to the following: i) the net \$(29,038) decrease in operating assets and liabilities, primarily due to the decrease in accounts payable of \$(64,973) and decrease in accounts receivable of \$28,578, as a result of the foreclosure of Benchmark, and ii) the net \$(24,265) decrease in non-cash operating expenses, partially offset by the decrease in the net loss of \$31,152.

Cash Used in Investing Activities

Net cash used in investing activities for the year ended December 31, 2019 and 2018, was \$6,841 and \$631, respectively, an increase in net cash used of \$6,210. The increase in the use of cash in investing activities was primarily due to the cash returned to Benchmark due to the foreclosure of \$8,029 partially offset by the decrease in cash used for the purchase of property and equipment of \$609 and payment of \$250 for the Rental Home Portfolio Asset Acquisition, partially offset by the cash received of \$1,460 from the Rental Home Portfolio Asset Acquisition.

Cash Provided by (Used in) Financing Activities

Net cash provided by financing activities was \$1,108 for the year ended December 31, 2019 as compared to cash used in financing activities of \$20,695 for the year ended December 31, 2018, a favorable change of \$21,803. During the year ended December 31, 2019, we received total cash proceeds of \$21,772 and made total cash payments of \$20,664 on the issuance of convertible notes and repayments of merchant credit agreements, senior notes and other payables. During the year ended December 31, 2018, we received total cash proceeds of \$35,347 and made total cash payments of \$63,974 on convertible notes, merchant credit agreements, senior notes and other notes payable and received proceeds from the sale of common stock of \$7,370 and \$562 from the exercise of warrants.

While it is often difficult for us to predict the impact of general economic conditions on our business, we believe that we will be able to meet our current and long-term cash requirements primarily through our operating cash flows and anticipate that we will be able to plan for and match future liquidity needs with future internal and available external resources.

Long-Term Debt and Credit Facilities

(dollars in thousands)

Senior Secured Promissory Notes

On January 27, 2020, we issued two senior promissory notes to Benchmark, one in the principal amount of \$4,129 and the other in the principal amount of \$600 (collectively, the “Senior Notes”), each such note secured by all of our non-real estate assets pursuant to a security agreement of even date therewith. The \$4,129 note, which matures on December 1, 2020 and has an annual interest rate of 10%, obligates us to repay certain monies previously paid or transferred to us at the time of the Foreclosure Proposal, including (i) \$3,000 in cash; (ii) two Working Capital Cash Payments totaling \$600; and (iii) approximately \$529 in cash remaining in a Benchmark bank account, was issued in consideration of a \$6,000 reduction to the \$28,000 Remaining Indebtedness. The \$600 note, which has a maturity date of December 1, 2020 and an annual interest rate of 10%, was issued to evidence the loan advanced by Benchmark on January 10, 2020 in the principal amount of \$300 and an additional \$300 loan from Benchmark advanced on January 27, 2020.

On February 12, 2020, we issued a senior promissory note to Lateral SMA Agent, LLC in the principal amount of \$800, consisting of approximately \$550 in expenses and advances previously made by Lateral on behalf of us and an additional \$250 loan from Lateral. The \$800 note is secured by all of our non-real estate assets pursuant to security agreement of even date therewith and has a maturity date of November 15, 2020 and an annual interest rate of 10%. On September 30, 2020, this note was amended to add a cross-default provision and was assigned to Lateral Home Agent, LLC, an entity controlled by Richard de Silva.

On February 27, 2020, we issued a senior promissory note to Lateral SMA Agent, LLC in the principal amount of \$75 for working capital purposes. The \$75 note is secured by all of our non-real estate assets pursuant to security agreement of even date therewith and has a maturity date of November 15, 2020 and an annual interest rate of 10%. On September 30, 2020, this note was amended to add a cross-default provision and was assigned to Lateral Home Agent, LLC, an entity controlled by Richard de Silva.

On April 29, 2020, we issued a senior promissory note to Lateral SMA Agent, LLC in the principal amount of \$200 for working capital purposes. The note is secured by all our non-real estate assets pursuant to a security agreement of even date therewith and has a maturity date of November 15, 2020 and an annual interest rate of 10%. The note including interest was paid in full on May 8, 2020.

On July 22, 2020, the Company issued a senior promissory note to Lateral SMA Agent, LLC in the principal amount of \$100 for working capital purposes. The note is secured by all of the Company’s non-real estate assets pursuant to a security agreement and has a maturity date of November 15, 2020 and an annual interest rate of 10%. On September 30, 2020, this note was amended to add a cross-default provision and was assigned to Lateral Home Agent, LLC, an entity controlled by Richard de Silva.

On August 3, 2020, the Company issued a senior promissory note to Lateral SMA Agent, LLC in the principal amount of \$250 for working capital purposes. The note is secured by all of the Company’s non-real estate assets pursuant to a security agreement and has a maturity date of November 15, 2020 and an annual interest rate of 10%. On September 30, 2020, this note was amended to add a cross-default provision and was assigned to Lateral Home Agent, LLC, an entity controlled by Richard de Silva.

On August 21, 2020, the Company issued a senior promissory note to Lateral SMA Agent, LLC in the principal amount of \$150 for working capital purposes. The note is secured by all the non-real estate assets pursuant to a security agreement of even date therewith and has a maturity date of November 15, 2020 and an annual interest rate of 10%. On September 30, 2020, this note was amended to add a cross-default provision and was assigned to Lateral Home Agent, LLC, an entity controlled by Richard de Silva.

On October 1, 2020, we issued a senior promissory note to Lateral Recovery, LLC in the principal amount of \$300 for working capital purposes. The note is secured by all our non-real estate assets pursuant to a security agreement of even date therewith and has a maturity date of November 15, 2020 and an annual interest rate of 10%. Lateral Recovery, LLC is an affiliate of Lateral, which is controlled by Richard de Silva, a member of our Board of Directors.

Rental Home Portfolio Asset Acquisition Promissory Notes and Notes Payable

On December 30, 2019, in conjunction with the Rental Home Portfolio Asset Purchase Agreement (“Agreement”), the parties amended the Agreement to, among other things, deliver \$9,750 in promissory notes to the Szkaradeks’ in satisfaction of the cash portion of the purchase price under the Agreement. Accordingly, we issued \$9,750 in promissory notes payable to the Szkaradeks’ with a January 31, 2020 maturity date, which date was extended to March 31, 2020 pursuant to a built in 60-day forbearance period and was further extended through January 1, 2021. As of the date of this filing, the Szkaradek Notes have not been repaid. See Part II, Item 8 Financial Statements and Supplementary Data, Note 14 “*Related Party*.”

On December 30, 2019, in conjunction with our closing under the Agreement, we assumed \$51,564 in notes payable, secured by certain of our rental properties (the “Secured Notes Payable”). On July 1, 2020, we received a written notice of default (the “Notice of Default”) from Inmost Partners LLC, in its capacity as Noteholder Agent (“Inmost”) to issuer noteholders of the Secured Notes Payable, asserting that certain events of default had occurred with respect to certain Note Issuance and Purchase Agreements each dated as of July 10, 2017 by and among, inter alia, certain Entities we acquired, Inmost, and the issuer noteholders named therein (the “Note Purchase Agreements”). Specifically, Inmost claimed that (i) we failed to satisfy the loan-to-value test (the “LTV Test”) as defined in the Note Purchase Agreements and that (ii) we failed to obtain consent from the Noteholder Agent before transferring the equity interests of certain Entities to US Home Rentals (the “Equity Interest Transfer”) pursuant to the Rental Home Asset Purchase Agreement dated December 20, 2019. The Notice of Default also includes certain demands by Inmost for additional capital contributions by us and Guarantors. As of the date of this filing, we have cured defaults associated with the LTV Test. Additionally, on November 3, 2020, Inmost granted its consent to the Equity Interest Transfer and rescinded the Default Notice in exchange for (i) a new guaranty agreement under which FTE Networks, Inc. and US Home Rentals LLC will jointly and severally guarantee the obligations of certain Entities under the Note Purchase Agreements, (ii) amendments to the Limited Liability Company Agreements for each of the subject Entities to provide for the appointment of a second manager of Noteholder Agent’s choosing, and (iii) amendments to the Note Purchase Agreements.

Convertible Notes Payable

During March 2018, we issued a convertible redeemable note in the principal amount of \$2,315. The note was due September 2018, accrues interest at 4% per annum and was secured by shares of our common stock. The note is convertible at any time at the option of the holder into shares of our common stock at a price equal to 50% of the lowest trading prices of our common stock during the prior twenty-one consecutive trading days. As of the date of this filing, the outstanding balance, including penalties and interest, is approximately \$2,522, which is past due. We are pursuing a settlement of all amounts due. See Part 1 Item 1. *Business, Recent Developments 2019 Internal Investigation* and Item 3. *Legal Proceedings*.

During September 2018, we issued a convertible redeemable note in the principal amount of \$525. The note was due September 2019, accrues interest at 4% per annum and was secured by shares of our common stock. The note is convertible at any time at the option of the holder into shares of our common stock at a price equal to 65% of the lowest trading prices of our common stock during the prior twenty-one consecutive trading days. As of the date of this filing, the outstanding balance including penalties and interest, is approximately \$1,749 which is past due. We are pursuing a settlement of all amounts due. See Part 1 Item 1. *Business, Recent Developments 2019 Internal Investigation* and Item 3. *Legal Proceedings*.

During March 2020, we issued a convertible redeemable note in the principal amount of \$1,800. The note is due May 10, 2021, accrues interest at 6% per annum and is secured by a mortgage covering certain real property. The note is convertible at any time at the option of the holder into shares of our common stock at a price equal to 66% of the average of the two lowest daily volume weighted average trading prices of our common stock during the prior twelve consecutive trading days. The outstanding balance is approximately \$1,800 as of the date of this filing.

Between April and October 2019, we entered into settlement and release agreements with nine convertible note holders to settle thirteen convertible notes, whereby, we agreed to pay the holders a total of \$5,511 in monthly payments through Jan 2021 to settle all existing convertible note principal and interest amounts and remove any conversion features. The balance outstanding on these settlement agreements is approximately \$3,335 as of the date of this filing.

Promissory Notes

On July 16, 2020, Cobblestone Ventures, Inc., an entity controlled by our interim CEO, loaned us \$70 for working capital purposes, evidenced by a demand note in the principal amount of \$70. The note bears an annual interest rate of 10% per annum and matures on November 15, 2020.

On July 31, 2020, Cobblestone Ventures, Inc., an entity controlled by our interim CEO loaned us \$250 for working capital purposes, evidenced by a demand note in the principal amount of \$250. The note bears annual interest of 10% and matures on November 15, 2020.

The Company is a party to pending legal proceedings arising out of certain of the foregoing loan arrangements. See Part I — Item 3 *Legal Proceedings*,” for further information regarding the Company’s pending legal proceedings.

Off Balance Sheet Arrangements

None.

ITEM 7A. Quantitative and Qualitative Disclosures about Market Risk.

FTE Networks, Inc. is a “smaller reporting company” as defined by Regulations S-K and as such, is not required to provide the information contained in this item pursuant to Regulation S-K.

ITEM 8. Financial Statements and Supplementary Data.

The financial statements required to be included in this Annual Report on Form 10-K appear immediately following the signature page to this Annual Report on Form 10-K beginning on page F-1.

ITEM 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.

On February 21, 2020, the Audit Committee of the Board of Directors dismissed Marcum LLP (“Marcum”) as the Company’s independent registered public accounting firm.

The audit reports of Marcum on the Company’s financial statements for the years ended December 31, 2018 and 2017, did not contain an adverse opinion or disclaimer of opinion and were not qualified or modified as to uncertainty, audit scope, or accounting principles. Marcum did not provide a report on the Company’s financial statements during fiscal years ended December 31, 2018 and December 31, 2019. During the fiscal years ended December 31, 2018 and December 31, 2019, and the subsequent period through February 21, 2020, there were (i) no disagreements between the Company and Marcum on any matter of accounting principles or practices, financial statement disclosure or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of Marcum, would have caused Marcum to make reference to the subject matter of the disagreement in Marcum’s reports on the Company’s consolidated financial statements for such years, and (ii) no “reportable events” as that term is defined in Item 304(a)(1)(v) of Regulation S-K, except as described below.

As previously reported in Current Reports on Form 8-K filed by the Company on April 4, 2019 and June 13, 2019, Marcum had informed the Company that Marcum’s audit reports included in the Company’s previously issued audited financial statements as of and for the years ended December 31, 2017 and December 31, 2016, and Marcum’s interim reviews of the financial statements for the periods ended March 31, June 30, and September 30, 2018, 2017 and 2016, should no longer be relied upon. The Company identified a number of material weaknesses in internal control over financial reporting as disclosed in Item 9A of the Company’s Annual Reports on Form 10-K for the years ended December 31, 2017, as well as several Quarterly Reports on Form 10-Q for quarterly periods during 2017 and 2018. The Audit Committee discussed these matters with Marcum.

On February 27, 2020, the Audit Committee of the Board of Directors approved the appointment of Turner, Stone & Company, L.L.P. as the Company's independent registered public accounting firm for the years ended December 31, 2017, 2018 and 2019, as well as the year ending December 31, 2020.

ITEM 9A. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures (as that term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934 (the "Exchange Act") that are designed to provide reasonable assurance that information required to be disclosed in our reports under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the U.S. Securities and Exchange Commission's rules and forms, and that such information is accumulated and communicated to our management, including our interim chief executive officer ("CEO") and interim chief financial officer ("CFO") as appropriate, to allow timely decisions regarding required disclosures.

In connection with the preparation of this Annual Report on Form 10-K, we carried out an evaluation under the supervision of and with the participation of management, including our CEO and CFO, as of December 31, 2019, of the effectiveness of the design and operation of our disclosure controls and procedures. Based upon this evaluation, our CEO and CFO concluded that as of December 31, 2019, our disclosure controls and procedures were not effective because of the material weaknesses in our internal control over financial reporting described below.

Notwithstanding the existence of the material weaknesses described below, management performed additional analysis and other procedures to ensure that our consolidated financial statements were prepared in accordance with U.S. GAAP. Accordingly, management believes that the consolidated financial statements and disclosures included in this Annual Report on Form 10-K fairly present, in all material respects, in accordance with U.S. GAAP, our financial position, results of operations and cash flows for the periods presented.

Management Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act. Management conducted an assessment of the effectiveness of our internal control over financial reporting based on the framework established in the 2013 *Internal Control-Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO"). Based on this assessment, Management has determined that our internal control over financial reporting were not effective as of December 31, 2019, and the periods covered under this Annual Report on Form 10-K due to the material weaknesses described below.

Disclosure controls are procedures that are designed with the objective of ensuring that information required to be disclosed in our reports filed under the Exchange Act, such as this Annual Report, is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. Disclosure controls are also designed with the objective of ensuring that such information is accumulated and communicated to our management, including the CEO and CFO, as appropriate, to allow timely decisions regarding required disclosure. Internal controls are procedures which are designed with the objective of providing reasonable assurance that (1) our transactions are properly authorized, recorded and reported; and (2) our assets are safeguarded against unauthorized or improper use, to permit the preparation of our consolidated financial statements in conformity with accounting principles generally accepted in the United States of America.

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis.

Management, under the supervision of our CEO and CFO, and oversight of the board of directors, conducted an assessment of the effectiveness of our internal control over financial reporting as of December 31, 2019, based on the criteria set forth in Internal Control–Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO 2013 Framework). Based on this assessment, management has identified deficiencies in our internal controls over financial reporting that contributed to the identified material weaknesses described below :

- We lacked sufficient controls over the bank accounts and disposition and transfer of properties acquired from the Rental Home Portfolio Asset Acquisition to protect the company's assets from misappropriation by third parties;
- We lacked a sufficient number of resources with assigned responsibility and accountability to ensure the application of generally accepted accounting principles and financial reporting and related internal controls over complex, significant non-routine transactions and routine transactions, which includes the integration of US Home Rentals LLC ;
- We did not have an effective risk assessment process to identify and analyze changes in business operations resulting from complex, significant non-routine transactions and, in turn, completeness and adequacy of required disclosures;
- We did not have an effective internal and external information and communication process to ensure that relevant and reliable information was communicated timely across the organization, to enable financial personnel to effectively carry out their financial reporting and internal control roles and responsibilities; and
- The Company did not design, implement and operate effective monitoring activities over account reconciliations, review and approval of manual journal entries, significant non-routine transaction such as troubled debt restructuring or the asset foreclosure and the timely preparation of financial statements.

The control deficiencies create a reasonable possibility that a material misstatement of our annual or interim consolidated financial statements would not be prevented or detected on a timely basis. Therefore, we concluded that these control deficiencies are material weaknesses and our internal control over financial reporting is not effective as of December 31, 2019.

Management's Remediation Plan

We have taken steps to enhance our internal control over financial reporting and plan to take additional steps to remediate the material weaknesses. Specifically, the following:

- Management has closed a significant number of the acquired bank accounts and opened new accounts which require review and approval of disbursements and (2) approvers signatures. Management believes this process will be complete by the December 31, 2020. Management is in the process of setting the proper authorizations and approvals for the disposition and transfer of assets.
- Management will review the assignment of roles and responsibilities of accounting personnel to ensure the proper matching of technical accounting skills to complex non-routine transactions and financial reporting requirements to ensure our financial reporting objectives are met.
- Management will document and assess key policies and internal control procedures to strengthen our identification of and accounting for complex, significant non-routine transactions and routine transactions.
- Management will ensure key process owners and other relevant personnel are adequately trained on our financial reporting processes and internal controls to ensure such processes and controls are performed timely and supported with adequate documentation evidencing control performance.
- Management will enhance internal communication processes through the formalization of internal control documentation and related documentation standards.
- Management will formalize and strengthen our oversight and monitoring controls to assess the effective functioning of controls over all components and functional areas of the organization and to monitor compliance with policies and procedures.

Our management will continue to monitor and evaluate the effectiveness of our internal controls and procedures and our internal controls over financial reporting on an ongoing basis and is committed to taking further action and implementing additional enhancements or improvements.

Because of its inherent limitations, internal controls over financial reporting may not prevent or detect misstatements. Projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate. All internal control systems, no matter how well designed, have inherent limitations and vulnerabilities. Therefore, even those systems determined to be effective can provide only reasonable assurance with respect to financial statement preparation and presentation.

Changes in Internal Control over Financial Reporting

Except for the material weaknesses discussed above in this Item 9A that were identified in the fourth quarter (and that arose in an earlier period), there were no changes in our internal control over financial reporting during the fourth quarter of 2019 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

ITEM 9B. Other Information.

None.

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

Directors and Executive Officers

For the Fiscal Year Ended December 31, 2019

Set forth below is information regarding the executive officers and directors for the fiscal year ended December 31, 2019:

<u>Name</u>	<u>Age</u>	<u>Titles</u>
Michael Palleschi	44	Former Chief Executive Officer, President, and Chairman of the Board
David Lethem	61	Former Chief Financial Officer
Lynn Martin	52	Former Chief Operating Officer
Luisa Ingargiola	52	Former Director and Audit Committee Chair
Christopher Ferguson	52	Former Director and Compensation Committee Chair
Patrick O'Hare	52	Former Director and Nominating and Corporate Governance Chair
Brad Mitchell	60	Former Director
Fred Sacramone	50	Former Director and Former Interim Chief Executive Officer
James Shiah	60	Former Director and Audit Committee Chair
Stephen Berini	71	Former Director
Irving Rothman	73	Former Director and Compensation Committee Chair
Jeanne Kingsley	51	Former Director
Richard Omanoff	78	Former Director and Nominating and Corporate Governance Chair

Set forth below is information regarding our current executive officers and directors as of the filing of this Annual Report on Form 10-K:

Name	Age	Titles	Date of Appointment
Michael P. Beys	48	Interim Chief Executive Officer, President and Director CEO of US Home Rentals LLC and CEO-Elect of FTE Networks, Inc.	October 18, 2019 as Director
			December 11, 2019 as Interim CEO
Munish Bansal	49	CEO of US Home Rentals LLC and CEO-Elect of FTE Networks, Inc.	September 25, 2020 as CEO of US Home Rentals LLC
Ernest J. Scheidemann	60	Interim Chief Financial Officer	May 5, 2020
Richard de Silva	47	Director	October 18, 2019
Peter Ghishan	42	Director and Compensation Committee Chair	October 18, 2019
Joseph Cunningham	72	Director and Audit Committee Chair	October 18, 2019

Michael P. Beys, Interim Chief Executive Officer and Director

Mr. Beys is a partner with the law firm Beys Liston & Mobargha LLP, which he founded in 2009. He focuses his practice on federal criminal defense, complex commercial litigation and real estate litigation. From 2000 to 2005, Mr. Beys served as a federal prosecutor in the U.S. Attorney’s Office for the Eastern District of New York, where he was the lead counsel in over 100 federal prosecutions and investigations involving racketeering, fraud, tax evasion, money laundering, narcotics trafficking, violent crimes and terrorism. Mr. Beys is also currently a director of Secure Property Development & Investment, PLC, a publicly listed (London’s AIM) owner and operator of commercial and industrial properties in Eastern Europe. In 2005, he co-founded Aristone Capital, a real estate investment firm which provided mezzanine debt financing to New York area real estate developers. In 1999, he founded Cobblestone Ventures, Inc., a real-estate development business which has invested in, or actively managed, numerous conversion and new construction projects in downtown Manhattan. Mr. Beys received a B.A. from Harvard College and a J.D. from Columbia Law School.

Munish Bansal, Chief Executive Officer of US Home Rentals LLC; CEO-Elect of FTE Networks, Inc.

Mr. Bansal was appointed as Chief Executive Officer of US Home Rentals LLC, the Company’s wholly-owned subsidiary on September 25, 2020. Pursuant to the terms of his employment agreement, Mr. Bansal will transition to the role of Chief Executive Officer of FTE Networks, Inc. following the resumption of trading of the Company’s common stock on an over-the-counter market. Mr. Bansal previously served as the Chief Financial Officer of Home Partners of America, a single-family rental real estate investment trust, from May 2016 to June 2018. Prior to that, Mr. Bansal served as the portfolio manager and Treasurer for the JP Morgan Chase Mortgage business unit. Mr. Bansal received a B.E.E. from the Indian Institute of Technology, Kanpur, India and an M.B.A. from the Indian Institute of Management, Ahmedabad, India.

Ernest J. Scheidemann, Interim Chief Financial Officer

Mr. Scheidemann was appointed Interim Chief Financial Officer on May 5, 2020. Mr. Scheidemann was the CFO of Benchmark from April 2017 through November 2018. From 2008 to 2015, Mr. Scheidemann was CFO of a private global software company. Prior to that, Mr. Scheidemann was the Treasurer and CFO of WCI Communities, a \$2.0 billion publicly traded homebuilder from 2004 to 2008 and held various progressive finance and accounting leadership roles with AT&T Corp from 1984 through 1999. Mr. Scheidemann is a Certified Public Accountant. He holds a Certified Global Management Accountant and Certified Financial Forensics designation issued from the American Institute of CPAs. Mr. Scheidemann received a B.A. in Accounting from William Paterson University and M.B.A. in Finance and International Business from Seton Hall University.

Richard de Silva, Director

Mr. de Silva serves as Managing Partner of Lateral Investment Management, LLC, a California-based credit and growth equity firm, which he joined in 2014. Mr. De Silva is responsible for leading the day to day investment activities and operations of the firm, which include investment origination, underwriting, asset management and fundraising. Mr. de Silva was previously a General Partner at Highland Capital Partners, a private equity firm. He joined Highland in 2003 and focused on investments in growth-stage technology companies. Mr. de Silva has also held operating roles in several companies as an entrepreneur and senior executive including as co-founder of IronPlanet, a marketplace for construction equipment. He received a B.A. from Harvard College, a Master of Philosophy in International Relations from Cambridge University and an M.B.A. from Harvard Business School.

Peter Ghishan, Director and Compensation Committee Chair

Mr. Ghishan is a partner at CPNV, a global real estate development and construction firm based in Nevada. Mr. Ghishan began his career as an attorney working for a regional media holding company based in Las Vegas from August 2002 to February 2005. In February 2005, Mr. Ghishan moved to real estate full time with Andiamo Ventures, LLC, where through September 2009, he developed nearly \$10,000,000 in residential projects in Lake Tahoe, overseeing all aspects of development project underwriting, financing, negotiating all entitlements, construction management and sales oversight. In his role as a commercial real estate broker with Commercial Partners of Nevada from February 2007 to June of 2018, Peter assisted a number of developers, lenders and investors in their acquisition and disposition of more than \$50,000,000 in commercial real estate assets. Mr. Ghishan received a B.A. from Duke University and a J.D. from the University of Arizona College of Law. Mr. Ghishan holds his New Mexico, California, and Nevada real estate broker licenses and is an active member of the State Bar of Nevada and an inactive member of the State Bars of Arizona, California, and Montana.

Joseph Cunningham, Director and Audit Committee Chair

Mr. Cunningham serves as President of Liberty Mortgage Acceptance Corporation, a private mortgage lender arranging commercial mortgage-backed securities and bridge financing, which he co-founded in 1992. In 2009, Mr. Cunningham co-founded Renew Lending, Inc., a residential mortgage banking firm. Mr. Cunningham left the firm in 2017. Prior to 2009, Mr. Cunningham served as Chief Operating Officer of Colwell Financial Corporation, where he was responsible for all divisions including residential production, secondary marketing, construction lending, joint ventures, commercial real estate brokerage, loan servicing, insurance, underwriting, personnel, REO, finance and administration, and legal activities. Mr. Cunningham also previously served as Executive Vice President and Chief Financial Officer of Granite Financial Corporation, a boutique mortgage banking firm. Earlier in his career, Mr. Cunningham practiced as a CPA in the Boston office of PwC. Mr. Cunningham received a B.S. in Accounting from Boston College.

Term of Office

Our Directors are appointed for a one-year term to hold office until the next annual general meeting of our stockholders or until removed from office in accordance with our bylaws. Our officers are appointed by our board of directors and hold office until removed by the Board.

All current Directors will remain in office until the next annual meeting of our stockholders, and until their successors have been duly elected and qualified. There are no agreements with respect to the election of Directors.

Family Relationships

There are no family relationships among the Company's current Directors or officers.

Involvement in Certain Legal Proceedings

During the past ten (10) years, none of our current officers have been involved in any legal proceeding that are material to the evaluation of their ability or integrity relating to any of the items set forth under Item 401(f) of Regulation S-K. None of our current officers is a party adverse to the Company or any of its subsidiaries in any material proceeding or has a material interest adverse to the Company or any of its subsidiaries.

Delinquent Section 16(a) Reports

Section 16(a) of the Exchange Act requires our executive officers and directors, and persons who own more than 10% of a registered class of our securities ("Reporting Persons"), to file reports of ownership and changes in ownership with the SEC. To our knowledge, and based solely on our review of the reports electronically filed by the Reporting Persons, the Company believes that all reports of securities ownership and changes in such ownership required to be filed during the year ended December 31, 2019 were timely filed, except that one Form 4 for each of the following former directors was not timely filed, in each case with respect to shares they received in connection with their respective separation agreements: Luisa Ingarciola, Christopher Ferguson, Patrick O'Hare, and Brad Mitchell and one Form 3 and one Form 4 by TTP8, LLC.

Code of Ethics

Each of the Company's directors and employees, including its executive officers, are required to conduct themselves in accordance with ethical standards set forth in the Code of Business Conduct and Ethics adopted by the Board of Directors on January 5, 2015.

A copy of the Company's current Code of Business Conduct and Ethics is available on our website at www.ftenet.com.

Director Nominations

We made no material changes to the procedures by which stockholders may recommend nominees to our Board of Directors.

Audit Committee

Our Board has a separately designated standing audit committee, established in accordance with Section 3(a)(58)(A) of the Exchange Act. It is governed by a charter, a copy of which is available on our website, www.ftenet.com. The current members of the audit committee are Joseph Cunningham (Chair) and Peter Ghishan each of whom is considered "independent" under the rules of the SEC. Each member of our audit committee can read and understand fundamental financial statements in accordance with audit committee requirements and our board of directors has determined that Mr. Cunningham is an "audit committee financial expert" as defined in Item 407(d)(5) of Regulation S-K, based upon past employment experience in finance and other business experience requiring accounting knowledge and financial sophistication. Our Board also has a standing compensation and nominating and corporate governance committee, comprised as set forth in the table below:

Audit Committee	Compensation Committee	Nominating and Governance Committee
Joseph Cunningham*	Peter Ghishan*	Joseph Cunningham
Peter Ghishan	Joseph Cunningham	Peter Ghishan

* Chairperson of the committee

ITEM 11. EXECUTIVE COMPENSATION

The following table sets forth certain information with respect to compensation, in accordance with Regulation S-K, for the years ended December 31, 2019 and 2018 paid to all who served as our chief executive officer and our two most highly compensated executive officers, other than our chief executive officer, whose total compensation exceeded \$100,000 (the "named executive officers" or "NEO's"), including the aggregate fair value of large grants of common stock issued to certain NEO's. Some of these shares of common stock have either been cancelled and returned to shares to be issued for lack of Board authorization or are the subject matter of a judicial action seeking their return. See Part 1 Item 3. Legal Proceedings.

Summary Compensation Table

Name and Principal Position	Year	Salary ⁽¹⁾ \$	Bonus \$	Stock awards \$	Stock options \$	All other compensation \$	Total \$
Michael Palleschi, <i>Former Chief Executive Officer</i>	2019	58,192	—	—	—	51,761	109,953 ⁽²⁾
	2018	1,164,572	850,000	16,278,843	—	2,623,370	20,916,785 ⁽³⁾
David Lethem, <i>Former Chief Financial Officer</i>	2019	91,163	—	—	—	53,211	144,374 ⁽⁴⁾
	2018	282,692	—	3,564,798	—	741,676	4,589,166 ⁽⁵⁾
Lynn Martin, <i>Former Chief Operating Officer</i>	2019	48,660	—	138,979	—	—	187,639 ⁽⁶⁾
	2018	356,731	—	—	—	395,400	752,132 ⁽⁷⁾
Anthony Sirotko, <i>Former Chief Executive Officer and Chief Administrative Officer</i>	2019	351,346	150,000	—	—	22,188	504,304 ⁽⁸⁾
	2018	486,538	—	3,565,150	—	136,457	4,188,145 ⁽⁹⁾
Fred Sacramone, <i>Former Chief Executive Officer</i>	2019	173,077	—	—	—	11,094	184,171 ⁽¹⁰⁾
Stephen Goodwin, <i>Former Chief Executive Officer</i>	2019	18,469	—	—	—	—	18,469 ⁽¹¹⁾
Michael P. Beys, <i>Current Chief Executive Officer</i>	2019	—	—	—	—	—	— ⁽¹²⁾

- (1) Amounts reflect net salary (pro-rated in some instances) paid for the respective fiscal year.
- (2) Mr. Palleschi's total compensation for the year ended December 31, 2019 included: (i) a net salary of \$58,192, pro-rated to reflect actual time served; and (ii) approximately \$51,761 in perquisites, including automobile and storage allowances. Mr. Palleschi was placed on leave without pay on January 19, 2019 and was subsequently terminated as CEO on May 13, 2019. On April 9, 2019, Mr. Palleschi served the Company with a demand for arbitration alleging a breach of his employment agreement and seeking approximately \$11,300,000 in damages. The Company is vigorously contesting the allegations and its liability for any damages and has filed defenses and counterclaims in respect of same. The arbitration is pending in the State of Florida.
- (3) Mr. Palleschi's total compensation for the year ended December 31, 2018 included:
- A net salary of \$1,164,572 and \$2,623,370 in perquisites, including health, life, dental, disability and vision benefits, automobile and storage allowances, private jet services, personal security, and certain other personal expenses. These and other forms of compensation are in dispute and are the subject of the pending arbitration;
 - A purported bonus of \$850,000 which was paid in 850 shares of Series A Preferred Stock;
 - 905,770 shares of Company common stock issued on or about August 24, 2018 to TLP Investments, LLC (an entity controlled by Mr. Palleschi and/or his spouse) with a fair value of \$12,217,931 and 400,524 shares of Company common stock issued on or about October 11, 2018 to Mr. Palleschi with a fair value of \$4,060,912. The Company's board of directors nullified the foregoing issuances to Mr. Palleschi and related parties and is presently engaged in litigation to secure their return to shares to be issued); and
- (4) Mr. Lethem's total compensation for the year ended December 31, 2019 included: (i) a net salary of \$91,163, pro-rated to reflect actual time served; (ii) approximately \$53,211 in perquisites, including a vehicle allowance and certain other personal expenses.
- (5) Mr. Lethem's total compensation for the year ended December 31, 2018 included: (i) a net salary of \$282,692; (ii) approximately \$741,676 in perquisites, including health, life, dental, disability, and vision benefits, private jet services, automobile allowance, payments to him and his spouse, and certain other personal expenses; and (iii) 351,558 shares of Company common stock issued on or around October 11, 2018 with a fair value of \$3,564,798.
- (6) Mr. Martin's total compensation for the year ended December 31, 2019 included: (i) a net salary of \$48,660, pro-rated to reflect actual time served as Chief Operating Officer; and (ii) 40,063 shares of Company common stock issued on or around January 8, 2019 with a fair value of \$139,019. Mr. Martin resigned as Chief Operating Officer on January 25, 2019.
- (7) Mr. Martin's total compensation for the year ended December 31, 2018 included: (i) a net salary of \$356,731; and (ii) approximately \$395,400 in perquisites including medical, dental, and vision benefits and other wages and advances.
- (8) Mr. Sirotko served as interim CEO from January 19, 2019 until his resignation on October 2, 2019, during which time his compensation included (i) a net salary of \$351,346, pro-rated to reflect actual time served; (ii) \$22,188.60 in perquisites, including medical, dental and vision benefits; and (iii) a \$150,000 bonus in consideration for providing a personal guaranty on certain Company debts.

- (9) Prior to serving as interim CEO, Mr. Sirotko served as the Company's Chief Administrative Officer (CAO). Mr. Sirotko's total compensation for his service as CAO for the year ended December 31, 2018 included: (i) a net salary of \$486,538; (ii) \$136,457 in perquisites, including medical, dental, and vision benefits, an automobile allowance, and certain other personal expenses; and (iii) 351,558 shares of Company common stock issued on or around October 11, 2018 with a fair value of \$3,565,150, which Mr. Sirotko returned in 2019.
- (10) Mr. Sacramone served as interim CEO from June 13, 2019 until his resignation on October 21, 2019, during which time his compensation included (i) a net salary of \$173,077, pro-rated to reflect actual time served; and (ii) \$11,094 in perquisites, including medical, dental, and vision benefits.
- (11) Mr. Goodwin served as interim CEO from October 21, 2019 until his resignation on December 11, 2019. He was paid a total of \$18,469 for his service. He currently serves as the Company's Executive Vice President of Operations.
- (12) Mr. Beys was appointed as interim CEO on December 11, 2019 and currently serves in this capacity. He earned \$30,000 pro-rated for his service as the Company's interim CEO in 2019, which was paid on May 12, 2020.

Employment Agreements

Below is a summary of the employment agreements with named executive officers for the year ended December 31, 2019.

On June 13, 2014, FTE Networks entered into an employment agreement with Michael Palleschi to serve as its Chief Executive Officer in consideration of a salary of \$250,000 per year, with standard employee insurance and other benefits through June 13, 2017, including a mandatory arbitration provision. Mr. Palleschi was placed on unpaid leave on January 19, 2019 and later served the Company with a demand for arbitration alleging a breach of his employment agreement on April 9, 2019, seeking damages of approximately \$11,900,000. The Company terminated Mr. Palleschi's employment on May 13, 2019 and has challenged the allegations set forth in the demand for arbitration including its liability for any damages thereunder, and has filed defenses and counterclaims in respect of same. The arbitration is pending in the state of Florida.

On June 2, 2014, the Company entered into an employment agreement with David Lethem to serve as its Chief Financial Officer in consideration of a salary of \$120,000 per year. The employment agreement had an initial term of three years and was continued on a year-to-year basis thereafter. Mr. Lethem resigned on March 11, 2019 in connection with a transition, separation and general release agreement, pursuant to which the Company agreed to pay Mr. Lethem a severance payment of \$87,500. In addition to certain releases and post-employment covenants, Mr. Lethem also returned 466,151 shares of Company common stock. The Company is actively litigating a dispute that arose in connection with Mr. Lethem's transition, separation, and general release agreement in the State of Florida.

On May 2, 2016, the Company entered into an employment agreement with Lynn Martin to serve as the Company's Chief Operating Officer in consideration of a salary of \$250,000 per year. The employment agreement had an initial term of three years and was continued on a year-to-year basis thereafter. Mr. Martin resigned on January 25, 2019.

The Company has not entered into an employment agreement with Michael Beys in connection with his service as interim CEO; however, the Company's compensation committee has approved a cash component of Mr. Beys' overall compensation package which provides for a monthly salary of \$50,000 for the duration of his service as interim CEO of which \$150,000 has been paid to Mr. Beys for services rendered in 2020.

Munish Bansal, Chief Executive Officer of US Home Rentals LLC; CEO-Elect of FTE Networks, Inc.

On September 25, 2020, Munish Bansal was appointed as Chief Executive Officer of US Home Rentals LLC, the Company's wholly-owned subsidiary, pursuant to an executive employment agreement. Pursuant to the terms of his employment agreement, Mr. Bansal will transition to the role of Chief Executive Officer of FTE Networks, Inc. following the resumption of trading of the Company's common stock on an over-the-counter market. Mr. Bansal is to receive, among other things and subject to certain exceptions and conditions set forth therein, (i) an annual base salary of \$500,000 (pro-rated for 2020), which salary Mr. Bansal has agreed to defer until the earlier of the closing of an equity capital raise of at least \$25 million, or six (6) months, but in no event later than March 15, 2021; (ii) a target bonus equal to 100% of his annual base salary upon the achievement of a performance milestone specified in the Employment Agreement (and the opportunity to earn future cash bonuses equal to 100% of his annual base salary based on performance metrics to be determined annually by the Compensation Committee) (iii) a restricted stock grant pursuant to the Company's 2017 Omnibus Incentive Plan (the "2017 Plan"), equal to six percent (6%) of the Company's issued and outstanding common stock, calculated on a fully-diluted basis and subject to certain exceptions and acceleration provisions; (iv) future performance stock awards of up to eight percent (8%) of the Company's issued and outstanding common stock under the 2017 Plan upon the achievement of certain milestones and subject to certain exceptions and acceleration provisions; (v) customary non-solicitation, non-disparagement and confidentiality provisions; (vi) and a severance for a termination without "cause" or for "good reason."

Pursuant to the formula set forth in Appendix A of Mr. Bansal's employment agreement, Mr. Bansal received 1,784,104 shares of restricted common stock as an initial inducement grant, which was calculated based on 25,572,148 shares of issued and outstanding common stock. This amount, however, does not currently account for all the Company's issued and outstanding securities.

Outstanding Equity Awards at Fiscal Year End

There were no grants of plan-based equity awards or non-equity awards to named executives during the years ended December 31, 2019.

Director Compensation

The following table provides the total compensation for each person who served as a non-employee member of our Board of Directors for each of the fiscal year ended December 31, 2019.

Name	Year	Fees earned or paid in cash (\$)	Stock awards (\$)	Option awards (\$)	All other compensation (\$)	Total (\$)
Luisa Ingargiola	2019	—	—	—	49,500 ⁽¹⁾	—
Patrick O'Hare	2019	—	—	—	99,000 ⁽²⁾	—
Brad Mitchell	2019	—	—	—	49,500 ⁽³⁾	—
Christopher Ferguson	2019	—	—	—	49,500 ⁽⁴⁾	—
<i>Directors appointed in the latter half of 2019</i>						
Irving Rothman	2019	21,500 ⁽⁵⁾	—	—	—	21,500
Richard Omanoff	2019	21,500 ⁽⁶⁾	—	—	—	21,500
Jeanne Kingsley	2019	17,500 ⁽⁷⁾	—	—	—	17,500
Stephen Berini	2019	17,500 ⁽⁸⁾	—	—	—	17,500
James Shiah	2019	51,000 ⁽⁹⁾	—	—	—	51,000
Joseph Cunningham	2019	30,000 ⁽¹⁰⁾	—	—	—	30,000
Michael Beys	2019	35,211 ⁽¹¹⁾	—	—	—	35,211
Peter Ghishan	2019	24,329 ⁽¹²⁾	—	—	—	24,329
Richard de Silva	2019	24,329 ⁽¹³⁾	—	—	—	24,329

- (1) Compensation paid to Ms. Ingargiola during fiscal year ended December 31, 2019 consisted of 50,000 shares of Company common stock, with a fair value of \$49,500, in connection with the terms of a separation agreement dated May 23, 2019.
- (2) Compensation paid to Mr. O'Hare during fiscal year ended December 31, 2019 consisted of a cash payment of \$22,500 and 100,000 shares of Company common stock, with a fair value of \$99,000, in connection with the terms of a separation agreement dated May 23, 2019.
- (3) Compensation paid to Mr. Mitchell during fiscal year ended December 31, 2019 consisted of a cash payment of \$21,692 and 50,000 shares of Company common stock, with a fair value of \$49,500, in connection with the terms of a separation agreement dated May 23, 2019.
- (4) Compensation paid to Mr. Ferguson during fiscal year ended December 31, 2019 consisted of 50,000 shares of Company common stock, with a fair value of \$49,500, in connection with the terms of a separation agreement dated May 23, 2019.
- (5) Compensation paid to Mr. Rothman during fiscal year ended December 31, 2019 consisted of cash paid for his service on the Board and as chair of the Board's Compensation Committee.
- (6) Compensation paid to Mr. Omanoff during fiscal year ended December 31, 2019 consisted of cash paid for her service on the Board and as chair of the Board's Nominating and Corporation Governance Committee.
- (7) Compensation paid to Ms. Kingsley during fiscal year ended December 31, 2019 consisted of cash paid for her service on the Board.
- (8) Compensation paid to Mr. Berini during fiscal year ended December 31, 2019 consisted of cash paid for his service on the Board.
- (9) Compensation paid to Mr. Shiah during fiscal year ended December 31, 2019 consisted of cash paid for his service on the Board, as chair of the Board's Audit Committee, and as Lead Independent Director.
- (10) Compensation paid to Mr. Cunningham during fiscal year ended December 31, 2019 consisted of cash paid for his service on the Board and as chair of the Board's Audit Committee.
- (11) As of fiscal year ended December 31, 2019, Mr. Beys had earned and accrued fees for his service on the Board and chair of the Board's Compensation Committee (pro-rated for time served as a director in Q4 2019) in connection with a Non-Employee Director Compensation Policy approved by the Board on January 13, 2020, with an effective date of October 18, 2019.
- (12) As of fiscal year ended December 31, 2019, Mr. Ghishan had earned and accrued fees for his service on the Board and as chair of the Board's Compensation Committee (pro-rated for time served as a director in Q4 2019) in connection with a Non-Employee Director Compensation Policy approved by the Board on January 13, 2020 with an effective date of October 18, 2019.
- (13) As of fiscal year ended December 31, 2019, Mr. de Silva had earned and accrued fees for his service on the Board (pro-rated for time actually served as a director in Q4 2019) in connection with a Non-Employee Director Compensation Policy approved by the Board on January 13, 2020 with an effective date of October 18, 2019.

*Board members who are also employees of FTE Networks, Inc. do not receive additional compensation for their service on the board. Accordingly, Michael Palleschi and Fred Sacramone did not receive compensation in connection with their service on the board for fiscal year ended December 31, 2019.

Pension, Retirement or Similar Benefit Plans

As the year ended December 31, 2019, there were no arrangements or plans in which we provide pension, retirement or similar benefits for directors or executive officers. We have no material bonus or profit sharing plans to which cash or non-cash compensation is or may be paid to our directors or executive officers, except that stock options may be granted at the discretion of the Board of Directors or the Compensation Committee.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

The following table sets forth, as of October 31, 2020, certain information concerning the beneficial ownership of our common stock by (i) each person known to us to beneficially own 5% or more of the outstanding shares of our common stock, (ii) each director of our company, (iii) the executive officers of our company, and (iv) all directors and officers of our company as a group. Unless otherwise indicated on the table or the footnotes below, the address for each beneficial owner is c/o FTE Networks, Inc., 237 West 35th Street, Suite 806, New York, NY 10001.

Beneficial ownership is determined in accordance with the rules of SEC and generally includes voting or investment power with respect to securities. Shares of Common Stock that are currently exercisable or exercisable within 60 days of October 31, 2020 are deemed to be beneficially owned by the person holding such securities and for the purpose of computing the percentage ownership of that person but are not treated as outstanding for the purpose of computing the percentage ownership of any other person.

Name of Beneficial Owner	Common Stock Beneficially Owned ⁽¹⁾	% of Class
<i>Directors and Officers</i>		
Michael P. Beys, Interim Chief Executive Officer and Director	-	-
Ernest J. Scheidemann, Interim Chief Financial Officer	-	-
Richard de Silva, Director ⁽²⁾	6,321,329	24.7%
Joseph Cunningham, Director	-	*
Peter Ghishan, Director	-	*
<i>All Directors and Officers as a group (5 persons)</i>	6,321,329	24.7%
<i>5% Shareholders</i>		
Lateral Investment Management (Lateral Entities) ⁽³⁾	6,321,329	24.7%
Suneet Singal ⁽⁴⁾	2,255,832	8.8%

* Less than 1%.

- (1) Based on 25,572,148 shares of common stock issued and outstanding as of September 30, 2020. This table does not include shares that will be issued to the Rental Home Portfolio Sellers in connection with the Rental Home Portfolio Acquisition, the inducement grant of restricted common stock issued to Munish Bansal in connection with his executive employment agreement and the grant of restricted common stock to each of Messrs. de Silva, Cunningham, and Ghishan pursuant to the Company's Non-Employee Director Compensation Policy.
- (2) Mr. de Silva, as managing partner of Lateral Investment Management may be deemed to beneficially own the shares held by the Lateral Entities. This amount does not include a total of 3,935,480 warrants held by the Lateral Entities.
- (3) The Lateral Entities are comprised of Lateral FTE Feeder LLC, Lateral BVM Feeder LLC, Lateral Juscom Feeder LLC, Lateral Partners LLC, Lateral SMA Agent LLC, Lateral US Credit Opportunities Fund, L.P, WVP Emerging Manager Private Onshore Fund, LLC, and Niagara Nominee LP. This amount does not include a total of 3,935,480 warrants held by the Lateral Entities. The address for Lateral Entities is 400 South El Camino Real, Suite 1100, San Mateo, CA 94402.
- (4) This amount includes shares beneficially owned by Mr. Singal's spouse and TTP8, LLC, an entity controlled by Mr. Singal. The address for TTP8 is 2355 Gold Meadow Way, Suite 160, Gold River, CA 95670.

We know of no arrangements, including pledges, by or among any of the forgoing persons, the operation of which could result in a change of control of us.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

Transactions with Related Persons

Except as disclosed below, none of the following parties has, during our last two fiscal years through the date of this Annual Report on Form 10-K, had any material interest, direct or indirect, in any transaction with us or in any presently proposed transaction that has or will materially affect us, in which the Company is a participant and the amount involved exceeds the lesser of \$120,000 or 1% of the average of the Company's total assets for the last two completed fiscal years:

- (i) Any of our directors or officers;
- (ii) Any person proposed as a nominee for election as a director;
- (iii) Any person who beneficially owns, directly or indirectly, shares carrying more than 5% of the voting rights attached to our outstanding common shares;
- (iv) Any of our promoters; and
- (v) Any relative or spouse of any of the foregoing persons who has the same house as such person.

Compensation Arrangements - See "*Executive Compensation – Summary Compensation Table*" and "*Executive Compensation – Director Compensation*."

Related Party Transactions:

- Our former CFO, David Lethem, personally guaranteed several secured equipment financing arrangements, which obligations still had a balance of approximately \$157,000 and \$291,000 as of December 31, 2019 and December 31, 2018, respectively.
- We issued two promissory notes to TBK327 Partners, LLC, an entity controlled by Christopher Ferguson, a former member of our Board of Directors who resigned in mid-2019. The first note was issued in or around January 23, 2014 in the principal amount of \$177,000 and the second note was issued in or around May 16, 2014 in the principal amount of \$80,000 (collectively the "TBK Notes"). As of December 31, 2019, and 2018, the TBK Notes had an aggregate outstanding principal balance of \$237,000, for each year.
- We issued a promissory note to SRM Entertainment Group, LLC, an entity controlled by Christopher Ferguson in or around July 6, 2017 in the principal amount of \$137,000 (the "SRM Note"). As of December 31, 2019, and 2018, the SRM Note had an outstanding principal balance of \$137,000 for each year.
- On April 20, 2017, in connection with the Company's acquisition of Benchmark Builders, Inc. ("Benchmark"), we issued 1,069,538 shares of our common stock to Fred Sacramone (former director) and Brian McMahon, former principals of Benchmark, our former primary operating subsidiary. The shares were valued at \$21,658,000 and were part of the purchase price consideration. Additionally, we issued Series A convertible promissory notes in the aggregate principal amount of \$12,500,000, Series B Notes in the aggregate principal of \$30,000,000, and Series C Notes in the aggregate principal amount of \$7,500,000 to Messrs. Sacramone and McMahon. The Series A and Series B notes each had a maturity date of April 20, 2020 and accrued interest at an annual rate of 5% and 3%, respectively. The Series C Notes matured on October 20, 2018 and accrued interest at a rate of 3% per annum. The remaining indebtedness was discharged on July 1, 2020.

- On or about February 8, 2019, we entered into an agreement for the purchase and sale of \$4,000,000 of our future receipts with CFG Merchant Solutions, LLC. This loan was secured by a personal guaranty from our former Interim CEO, Anthony Sirotko.
- On February 12, 2019, Lateral U.S. Credit Opportunities Fund, L.P. (“Lateral Fund”) received 1,429,638 and Niagara Nominee, LP (a Lateral affiliate) received 268,942 shares of Company common stock, pursuant to the Fourth Amendment to the Lateral Credit Agreement.
- On February 12, 2019, we issued a promissory note, for cash received, to Fred Sacramone in the principal amount of \$1,000,000 pursuant to the Fourth Amendment to the Lateral Credit Agreement and was issued 356,513 shares of the Company’s common stock.
- On February 20, 2019, Niagara Nominee, LP received 1,005,751 shares of the Company’s common stock for its role as a co-guarantor on a term note issued to LeoGroup Private Investment Access, LLC in the principal amount of \$5,000,000, which loan was secured by a personal guaranty from Anthony Sirotko.
- On July 2, 2019, Brian McMahon acquired 1,351 shares of Series A Preferred Stock and 197 shares of Series A-1 Preferred Stock as partial consideration for restructuring certain of the Mr. McMahon’s promissory notes in conjunction with the Company’s debt restructuring.
- On July 2, 2019, we entered into an Agreement to Exchange Series A and Series A-1 Convertible Preferred Stock for Series H Preferred Stock (the “Exchange Agreement”), with Mr. McMahon. The Exchange Agreement provided for the exchange by Mr. McMahon of 1,351 shares of the Company’s Series A Preferred Stock and 197 shares of the Company’s Series A-1 Convertible Preferred Stock for 67 shares of Series H Preferred Stock.
- On July 2, 2019, Fred Sacramone acquired 650 shares of Series A Preferred Stock and 99 shares of Series A-1 Preferred Stock as partial consideration for restructuring certain of the Mr. Sacramone’s promissory notes in conjunction with to the Company’s debt restructuring.
- On July 2, 2019, we entered into an Agreement to Exchange Series A and Series A-1 Convertible Preferred Stock for the Exchange Agreement, with Mr. Sacramone. The Exchange Agreement provided for the exchange by Mr. McMahon of 650 shares of the Company’s Series A Preferred Stock and 99 shares of the Company’s Series A-1 Convertible Preferred Stock for 33 shares of Series H Preferred Stock.
- On July 2, 2019, Lateral Fund received 1,049,285 shares of Company common stock and an additional 2,470,220 shares of the Company common stock underlying warrants with an exercise price of \$3.00 per share (subject to adjustment); other funds managed by Lateral Management received 450,715 shares of Company common stock and an additional 703,510 shares of Company common stock underlying warrants with an exercise price of \$3.00 per share (subject to adjustment); and Niagara received 505,724 shares of Company common stock; in each case, in connection with the extension of additional credit under the Lateral Credit Agreement.
- On October 10, 2019, we entered into an Agreement Regarding Debt and Series H Preferred Stock with Mr. McMahon and Mr. Sacramone pursuant to which Mr. McMahon released the Company and its affiliates from \$18,982,640 in the aggregate of the indebtedness represented by the Amended Series B Benchmark Note (as defined in the Credit Agreement) of the Company held by Mr. McMahon, which had an outstanding amount equal to \$21,823,620 at such time.

On October 10, 2019, we entered into an Agreement Regarding Debt and Series H Preferred Stock with Mr. Sacramone and Mr. McMahon pursuant to which Messrs. Sacramone and McMahon released the Company and its affiliates from (i) all obligations represented by a promissory note of the Company in favor of Mr. Sacramone, which had an outstanding amount equal to \$1,030,000 and (ii) indebtedness represented by the Series B Notes in the amount of approximately \$19,000,000. As a result, the total amount remaining outstanding under the Series A Notes and Series B Notes was \$28,000,000 (the “Remaining Indebtedness”). The Remaining Indebtedness was discharged on July 1, 2020.
- On October 10, 2019, we entered into a Standstill Agreement with each of Mr. McMahon and Mr. Sacramone.

- In October and November 2019, the Board approved a transaction pursuant to which the Company would issue shares of its common stock in exchange for the surrender and cancellation of four promissory notes issued or guaranteed by the Company and held by TTP8, LLC (“TTP8”) as assignee (such notes, the “Promissory Notes”) with aggregate principal and accrued interest outstanding of approximately \$3.9 million. On November 15, 2019, the Company, for purposes of effecting the exchange of the Promissory Notes, issued an aggregate of 5,468,379 shares of its common stock to TTP8. Due to a misunderstanding of the operation of Rule 713(a) of the NYSE American Company Guide, the number of shares of common stock issued to TTP8 in connection with the exchange transaction amounted to 26% of the number of shares of the Company’s common stock outstanding prior to the transaction.

After becoming aware of this error, the Board immediately took steps to rescind the original transaction and, concurrently with the execution of a rescission agreement, on December 13, 2019, the Company entered into a Note Exchange Agreement with TTP8 pursuant to which TTP8 agreed to surrender for cancellation four promissory notes originally issued or guaranteed by the Company, and held by TTP8 as assignee, in exchange for the issuance of 4,193,684 shares of our common stock, which was equal to 19.9% of the number of shares of common stock outstanding prior to the transaction and represents an exchange rate of \$0.9346.

- On December 23, 2019, we entered into a Preferred Stock Repurchase Agreement with Fred Sacramone and Brian McMahon, pursuant to which the Mr. Sacramone sold to the Company all of the shares of Series H Preferred Stock owned by Mr. Sacramone for an aggregate purchase price equal to \$33.00.
- On December 23, 2019, we entered into a Preferred Stock Repurchase Agreement with Brian McMahon and Fred Sacramone pursuant to which the Mr. McMahon sold to the Company all of the shares of Series H Preferred Stock owned by Mr. McMahon for an aggregate purchase price equal to \$67.00.
- On January 27, 2020, we issued two senior promissory notes to Benchmark Builders, LLC, one in the principal amount of \$4,129,000 and the other in the principal amount of \$600,000 (collectively, the “Senior Notes”), each such note is secured by all of our non-real estate assets pursuant to a security agreement of the same date. The \$4,129,000 note, which matures on December 1, 2020 and has an annual interest rate of 10%, and obligates us to repay certain monies previously paid or transferred to the Company at the time of the Foreclosure Proposal, including (i) \$3,000,000 in cash; (ii) two Working Capital Cash Payments totaling \$600,000; and (iii) approximately \$529,000 in cash remaining in a Benchmark bank account, was issued in consideration of a \$6,000,000 reduction to the \$28,000,000 Remaining Indebtedness. The \$600,000 note, which has a maturity date of December 1, 2020 and an annual interest rate of 10%, was issued to evidence the loan advanced by Benchmark on January 10, 2020 in the principal amount of \$300,000 and an additional \$300,000 loan from Benchmark advanced on January 27, 2020. Benchmark Builders, LLC is an affiliate of Lateral, which is controlled by Richard de Silva, a member of our Board of Directors. On September 30, 2020, the terms of these Senior Notes were amended to add a cross-default provision and were assigned to Lateral Home Agent, LLC, an entity controlled by Richard de Silva.

- On January 27, 2020, Alexander Szkaradek, one of the Equity Sellers and current noteholder, loaned the Company, \$100,000 for working capital purposes pursuant to an unsecured demand note at 0% interest per annum. The note is due upon demand.
- On February 12, 2020, we issued a senior promissory note to Lateral SMA Agent, LLC in the principal amount of \$800,000, consisting of approximately \$550,000 in expenses and advances previously made by Lateral on behalf of the Company and an additional \$250,000 loan from Lateral. The \$800,000 note is secured by all of our non-real estate assets pursuant to a security agreement of even date therewith and has a maturity date of November 15, 2020 and an annual interest rate of 10%. Lateral SMA Agent, LLC is an affiliate of Lateral, which is controlled by Richard de Silva. On September 30, 2020, this note was amended to add a cross-default provision and was assigned to Lateral Home Agent, LLC, an entity controlled by Richard de Silva.
- On February 27, 2020, we issued a senior promissory note to Lateral SMA Agent, LLC in the principal amount of \$75,000 for working capital purposes. The note is secured by all of our non-real estate assets pursuant to a security agreement of even date therewith and has a maturity date of November 15, 2020 and an annual interest rate of 10%. Lateral SMA Agent, LLC is an affiliate of Lateral, which is controlled by Richard de Silva, a member of our Board of Directors. On September 30, 2020, this note was amended to add a cross-default provision and was assigned to Lateral Home Agent, LLC, an entity controlled by Richard de Silva.
- On March 4, 2020, Cobblestone Ventures, Inc., an entity controlled by Michael Beys, the Company's interim CEO and a member of our Board of Directors, loaned the Company \$100,000 for working capital purposes, pursuant to a demand note at 5% per annum. The note, together with accrued interest of \$166.67, was repaid on March 16, 2020.
- On March 5, 2020, Mr. Ghishan, a member of our Board of Directors, loaned the Company \$30,000 for working capital purposes, pursuant to a demand note at 5% per annum. The note, together with accrued interest of \$45.83, was repaid on March 16, 2020.
- On April 16, 2020, Cobblestone Ventures, Inc., an entity controlled by Michael Beys, the Company's interim CEO and a member of our Board of Directors, loaned the Company \$100,000 for working capital purposes, pursuant to a demand note at 10% per annum. The note, together with accrued interest of \$611.11, was repaid on May 8, 2020.
- On April 29, 2020, we issued a senior promissory note to Lateral SMA Agent, LLC in the principal amount of \$200,000 for working capital purposes. The note is secured by all of our non-real estate assets pursuant to a security agreement of even date therewith and has a maturity date of November 15, 2020 and an annual interest rate of 10%. The note, together with accrued interest of \$444.44, was repaid on May 8, 2020. Lateral SMA Agent, LLC is an affiliate of Lateral, which is controlled by Richard de Silva, a member of our Board of Directors. On September 30, 2020, this note was amended to add a cross-default provision and was assigned to Lateral Home Agent, LLC, an entity controlled by Richard de Silva.
- On July 16, 2020, Cobblestone Ventures, Inc., an entity controlled by Michael Beys, the Company's interim CEO and a member of our Board of Directors, loaned us \$70,000 for working capital purposes, evidenced by a demand note in the principal amount of \$70,000. The note bears an annual interest rate of 10% per annum and matures on November 15, 2020.
- On July 22, 2020, we issued a senior promissory note to Lateral SMA Agent, LLC in the principal amount of \$100,000 for working capital purposes. The note is secured by all our non-real estate assets pursuant to a security agreement of even date therewith and has a maturity date of November 15, 2020 and an annual interest rate of 10%. Lateral SMA Agent, LLC is an affiliate of Lateral, which is controlled by Richard de Silva, a member of our Board of Directors. On September 30, 2020, this note was amended to add a cross-default provision and was assigned to Lateral Home Agent, LLC, an entity controlled by Richard de Silva.
- On July 31, 2020, Cobblestone Ventures, Inc., an entity controlled by Michael Beys, the Company's interim CEO and a member of our Board of Directors, loaned us \$250,000 for working capital purposes, evidenced by a demand note in the principal amount of \$250,000. The note bears an annual interest rate of 10% interest and matures on November 15, 2020.
- On August 3, 2020, we issued a senior promissory note to Lateral SMA Agent, LLC in the principal amount of \$250,000 for working capital purposes. The note is secured by all our non-real estate assets pursuant to a security agreement of even date therewith and has a maturity date of November 15, 2020 and an annual interest rate of 10%. Lateral SMA Agent, LLC is an affiliate of Lateral, which is controlled by Richard de Silva, a member of our Board of Directors. On September 30, 2020, this note was amended to add a cross-default provision and was assigned to Lateral Home Agent, LLC, an entity controlled by Richard de Silva.
- On August 21, 2020, we issued a senior promissory note to Lateral SMA Agent, LLC in the principal amount of \$150,000 for working capital purposes. The note is secured by all our non-real estate assets pursuant to a security agreement of even date therewith and has a maturity date of November 15, 2020 and an annual interest rate of 10%. Lateral SMA Agent, LLC is an affiliate of Lateral, which is controlled by Richard de Silva, a member of our Board of Directors. On September 30, 2020, this note was amended to add a cross-default provision and was assigned to Lateral Home Agent, LLC, an entity controlled by Richard de Silva.
- On October 1, 2020, we issued a senior promissory note to Lateral Recovery, LLC in the principal amount of \$300,000 for working capital purposes. The note is secured by all our non-real estate assets pursuant to a security agreement of even date therewith and has a maturity date of November 15, 2020 and an annual interest rate of 10%. Lateral Recovery, LLC is an affiliate of Lateral, which is controlled by Richard de Silva.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The Audit Committee of the Board appointed Turner Stone LLP (“Turner Stone”) as the Company’s independent registered public accountants on February 27, 2020, to audit the consolidated financial statements of the Company for the fiscal years ended December 31, 2017, 2018 and 2019. The Company paid Turner Stone \$413,500 in audit fees and \$30,000 in audit related fees as of August 31, 2020.

Prior to Turner Stone’s appointment, the Company used Marcum LLP (“Marcum”) as its independent registered public accountant for many years prior thereto, including the fiscal year ended December 31, 2018. Accordingly, the aggregate fees billed for the fiscal year ended December 31, 2018 for professional services rendered by Marcum during December 31, 2018 are described below:

Fee Category	December 31, 2019	December 31, 2018
Audit fees ⁽¹⁾	\$ —	\$ 442,300
Audit related fees ⁽²⁾	\$ —	\$ 464,011 ⁽²⁾
Total	\$ —	\$ 906,311

- (1) Aggregate fees billed or expected to be billed by the principal accountant for the audit of the annual financial statements and review of the financial statements included in the registrant’s form 10-Q or services that are normally provided by the accountant in connection with statutory and regulatory filings or engagements for the last two fiscal years.
- (2) Audit related fees consist of fees billed for services rendered in connection with the restatement of the financial statements from December 31, 2017 and December 31, 2016.

PART IV

ITEM 15. Exhibits and Financial Statement Schedules.

- (a) No financial statement schedules are provided because the information called for is not required or is shown either in the financial statements or notes thereto.
- (b) The following exhibits are provided as required by Item 601 of Regulation S-K (§229.601 of this chapter):

Exhibit Number	Description
2.4	Purchase Agreement dated as of December 20, 2019, by and among (i) FTE Networks Inc., (ii) US Home Rentals LLC, (iii) Alexander Szkaradek, (iv) Antoni Szkaradek, (v) VPM Holdings, LLC, (vi) Kaja 3, LLC, (vii) Kaja 2, LLC, (viii) Kaja, LLC, (ix) Dobry Holdings Master LLC, (x) Vision Property Management, LLC and (xi) Alexander Szkaradek, in his capacity as the representative of the sellers (incorporated by reference to Exhibit 2.1 to the Company’s Form 8-K filed on December 23, 2019).
3.1	Certificate of Amendment to the Company’s Articles of Incorporation increasing the aggregate number of shares the Company is authorized to issue (incorporated by reference to Exhibit 3.1 to the Company’s Annual Report on Form 10-K filed on April 17, 2018).
3.2	Restated Bylaws (incorporated by reference to Exhibit 3.2 to the Company’s Form 8-K filed June 25, 2013).
3.3	Certificate of Designation of the Series I Non-Convertible Preferred Stock (incorporated by reference to Exhibit 3.1 to the Company’s Form 8-K filed on December 30, 2019).
4.1	Description of Securities (incorporated by reference to Exhibit 4.1 to the Company’s Form 10-K for the fiscal year ended December 31, 2018, filed on May 11, 2020 (the “2018 Form 10-K”).
4.2	Form of warrant to purchase common stock granted to Lenders in connection with a debt restructuring (incorporated by reference to Exhibit 4.1 to the Company’s Form 8-K filed on July 8, 2019).

- 10.9 [Proposal for Surrender of Collateral and Strict Foreclosure dated as of October 10, 2019 from Lateral Juscom Feeder LLC, as Administrative Agent, Lateral Builders LLC, Benchmark Holdings, LLC and the other Lenders named therein, accepted and consented to by FTE Networks, Inc. and the other Credit Parties named therein \(incorporated by reference to Exhibit 10.1 to the Company's Form 8-K filed on October 11, 2019\).](#)
- 10.13 [Senior Secured Promissory Note dated January 27, 2020, issued to Benchmark Builders, LLC in the principal amount of \\$4,129,000 \(incorporated by reference to Exhibit 10.13 to the 2018 Form 10-K.\)](#)
- 10.14 [Senior Secured Promissory Note dated January 27, 2020, issued to Benchmark Builders, LLC in the principal amount of \\$600,000 \(incorporated by reference to Exhibit 10.14 to the 2018 Form 10-K.\)](#)
- 10.15 [Senior Secured Promissory Note dated February 12, 2020, issued to Lateral SMA, Agent, LLC in the principal amount of \\$800,000 \(incorporated by reference to Exhibit 10.15 to the 2018 Form 10-K.\)](#)
- 10.16 [Senior Secured Promissory Note dated February 27, 2020, issued to Lateral SMA, Agent, LLC in the principal amount of \\$75,000 \(incorporated by reference to Exhibit 10.16 to the 2018 Form 10-K.\)](#)
- 10.17 [Demand note dated March 4, 2020, issued to Cobblestone Ventures, Inc. in the principal amount of \\$100,000 \(incorporated by reference to Exhibit 10.17 to the 2018 Form 10-K.\)](#)
- 10.18 [Demand note dated March 5, 2020, issued to Peter Ghishan in the principal amount of \\$30,000 \(incorporated by reference to Exhibit 10.18 to the 2018 Form 10-K.\)](#)
- 10.19 [Demand note dated April 16, 2020, issued to Cobblestone Ventures, Inc. in the principal amount of \\$100,000 \(incorporated by reference to Exhibit 10.19 to the 2018 Form 10-K.\)](#)
- 10.20 [Senior Secured Promissory Note dated April 29, 2020, issued to Lateral SMA, Agent, LLC in the principal amount of \\$200,000 \(incorporated by reference to Exhibit 10.20 to the 2018 Form 10-K.\)](#)
- 10.21 [Amendment No. 2 to the Agreement Regarding Debt and Series H Preferred Stock, dated as of May 1, 2020, by and between FTE Networks, Inc. and Fred Sacramone and Brian McMahon \(incorporated by reference to the 2018 Form 10-K.\)](#)
- 10.22 [Demand note dated July 16, 2020, issued to Cobblestone Ventures, Inc. in the principal amount of \\$70,000.*](#)
- 10.23 [Senior Secured Promissory Note dated July 22, 2020, issued to Lateral SMA, Agent, LLC in the principal amount of \\$100,000.*](#)
- 10.24 [Demand note dated July 31, 2020, issued to Cobblestone Ventures, Inc. in the principal amount of \\$250,000.*](#)
- 10.25 [Senior Secured Promissory Note dated August 3, 2020, issued to Lateral SMA, Agent, LLC in the principal amount of \\$250,000.*](#)
- 10.26 [Senior Secured Promissory Note dated August 21, 2020, issued to Lateral SMA, Agent, LLC in the principal amount of \\$150,000.*](#)
- 10.27 [Senior Secured Promissory Note dated October 1, 2020, issued to Lateral Recovery, LLC in the principal amount of \\$300,000.*](#)
- 10.28 [FTE Networks, Inc. Non-Employee Director Compensation Policy.*](#)
- 10.29 [Loan Agreement 1 dated August 26, 2020 by and among DLP Lending Fund LLC and certain Company Borrowers.*](#)
- 10.30 [Promissory Note 1 dated August 26, 2020 by the Company in favor of DLP Lending Fund LLC.*](#)
- 10.31 [Loan Agreement 2 dated August 26, 2020 by and among DLP Lending Fund LLC and certain Company Borrowers.*](#)
- 10.32 [Promissory Note 2 dated August 26, 2020 by the Company in favor of DLP Lending Fund LLC.*](#)
- 10.33 [Loan Agreement 3 dated August 26, 2020 by and among DLP Lending Fund LLC and certain Company Borrowers.*](#)
- 10.34 [Promissory Note 3 dated August 26, 2020 by the Company in favor of DLP Lending Fund LLC.*](#)
- 10.35 [Loan Agreement 4 dated August 26, 2020 by and among DLP Lending Fund LLC and certain Company Borrowers.*](#)
- 10.36 [Promissory Note 4 dated August 26, 2020 by the Company in favor of DLP Lending Fund LLC.*](#)
- 10.37 [Loan Agreement 5 dated August 26, 2020 by and among DLP Lending Fund LLC and certain Company Borrowers.*](#)
- 10.38 [Promissory Note 5 dated August 26, 2020 by the Company in favor of DLP Lending Fund LLC.*](#)
- 10.39 [Loan Agreement 6 dated August 26, 2020 by and among DLP Lending Fund LLC and certain Company Borrowers.*](#)
- 10.40 [Promissory Note 6 dated August 26, 2020 by the Company in favor of DLP Lending Fund LLC.*](#)
- 10.41 [Loan Agreement 7 dated August 26, 2020 by and among DLP Lending Fund LLC and certain Company Borrowers.*](#)
- 10.42 [Promissory Note 7 dated August 26, 2020 by the Company in favor of DLP Lending Fund LLC.*](#)
- 14.1 [Securities Trading Policy adopted by the Board of Directors April 14, 2017 \(incorporated by reference to Exhibit 14.1 to the 2018 Form 10-K.\)](#)
- 14.2 [Code of Ethics \(incorporated by reference to Exhibit 14.2 to the 2018 Form 10-K.\)](#)
- 10.43 [Executive Employment Agreement dated September 25, 2020, between FTE Networks, Inc. and Munish Bansal \(incorporated by reference to Exhibit 10.1 to the Company's Form 8-K filed on October 1, 2020\).](#)
- 21 [Subsidiaries of the Registrant \(incorporated by reference to Exhibit 21 to the 2018 Form 10-K.\)](#)
- 23.1 [Consent of Independent Auditor*](#)
- 31.1 [Certification of the Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002*](#)
- 31.2 [Certification of the Principal Accounting Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002*](#)
- 32.1 [Certification of the Principal Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002***](#)
- 32.2 [Certification of the Principal Accounting Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002***](#)
- 101.INS XBRL Instance Document*
- 101.SCH XBRL Schema Document*
- 101.CAL XBRL Calculation Linkbase Document*
- 101.DEF XBRL Definition Linkbase Document*
- 101.LAB XBRL Label Linkbase Document*
- 101.PRE XBRL Presentation Linkbase Document*

* Filed herewith

** Denotes compensatory plan or management contract

*** Furnished herewith

ITEM 16. Form 10-K Summary.

Not Applicable.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this Annual Report to be signed on its behalf by the undersigned, thereunto duly authorized.

FTE NETWORKS, INC.

Date: November 5, 2020

By: /s/ Michael P. Beys

Principal Executive Officer

Date: November 5, 2020

By: /s/ Ernest Scheidemann

Principal Financial Officer

Pursuant to the requirement of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated:

Date: November 5, 2020

By: /s/ Michael P. Beys

Michael P. Beys
Interim Chief Executive Officer (principal executive officer)

Date: November 5, 2020

By: /s/ Ernest Scheidemann

Ernest Scheidemann
Interim Chief Financial Officer (principal financial officer)

Date: November 5, 2020

By: /s/ Joseph Cunningham

Joseph Cunningham
Director

Date: November 5, 2020

By: /s/ Peter Ghishan

Peter Ghishan
Director

Date: November 5, 2020

By: /s/ Richard de Silva

Richard de Silva
Director

FTE NETWORKS, INC. AND SUBSIDIARIES
CONSOLIDATED FINANCIAL STATEMENTS
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FOR THE YEARS ENDED DECEMBER 31, 2019 AND 2018

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Report of Independent Registered Public Accounting Firm

To the Stockholders and Board of Directors of
FTE Networks Inc. and Subsidiaries

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of FTE Networks, Inc. and Subsidiaries (the "Company") as of December 31, 2019 and 2018 and the related consolidated statements of operations, stockholders' equity (deficit) and cash flows for the two years then ended and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position for the Company as of December 31, 2019 and 2018, and the results of its operations and its cash flows for the two years then ended, in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatements, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ Turner, Stone & Company, LLP

Dallas, Texas
November 5, 2020

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**FTE NETWORKS, INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share amounts)**

	<u>2019</u>	<u>2018</u>
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 789	\$ 342
Restricted cash	1,351	—
Accounts receivable, net	742	1,449
Other current assets	649	1,575
Assets of discontinued operations	—	157,677
Total current assets	<u>3,531</u>	<u>161,043</u>
Investment in single-family residential properties		
Land	48,264	—
Buildings	181,564	—
Total investment in single-family residential properties	<u>229,828</u>	<u>—</u>
Property and equipment, net	1,038	3,247
Operating lease right-of-use assets	1,038	—
Total assets	<u>\$ 235,435</u>	<u>\$ 164,290</u>
LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)		
Current liabilities:		
Accounts payable	2,986	3,402
Accrued expenses and other current liabilities	12,836	4,964
Operating lease liabilities, current portion	557	—
Financing lease liabilities, current portion	69	—
Senior note payable, current portion, net of original issue discount and deferred financing costs	—	34,322
Convertible notes payable, net of original issue discount and deferred financing costs	4,147	4,498
Merchant credit agreements, net of original issue discount and deferred financing costs	—	2,102
Notes payable, current portion, net of original issue discount and deferred financing costs	29,839	3,639
Notes payable, Benchmark Sellers, current portion, net of original issue discount and deferred financing costs	25,049	13,397
Notes payable, related party, current portion, net of original issue discount	10,750	—
Debt derivative liability	4,169	8,038
Warrant derivative liability	6,689	3,558
Liabilities of discontinued operations	—	115,408
Total current liabilities	<u>97,091</u>	<u>193,328</u>
Notes payable and financing leases, non-current portion, net of original issue discount and deferred financing costs	62,962	1,268
Notes payable, Benchmark Sellers, non-current portion, net of original issue discount and deferred financing costs	—	29,153
Notes payable, related party, non-current portion, net of original issue discount and deferred financing costs	230	—

Operating lease liabilities, non-current portion	482	—
Financing lease liabilities, non-current portion	44	—
Total liabilities	160,809	223,749

Commitments and contingencies (Note 17)

Stockholders' equity (deficit):

Preferred stock; \$0.01 par value, 5,000,000 shares authorized:		
Series A convertible preferred stock, \$1,000 stated value, 4,500 shares designated and 500 shares issued and outstanding at December 31, 2019 and 2018, respectively (liquidation preference \$1,586)	—	—
Series A-1 convertible preferred stock, \$1,000 stated value, 1,000 shares designated and 295 shares issued and outstanding at December 31, 2019 and 2018, respectively (liquidation preference \$973)	—	—
Series I convertible preferred stock, \$0.001 stated value, 2,500 shares designated and -0- shares and -0- shares issued and outstanding at December 31, 2019 and 2018, respectively	—	—
Common stock, \$0.001 par value, 100,000,000 shares authorized 21,218,464 and 12,286,847 shares issued and outstanding at December 31, 2019 and 2018, respectively	21	12
Additional paid-in capital	131,366	113,881
Shares to be issued	133,311	1,280
Accumulated deficit	(190,072)	(174,632)
Total stockholders' equity (deficit)	74,626	(59,459)
Total liabilities and stockholders' equity (deficit)	\$ 235,435	\$ 164,290

The accompanying notes are an integral part of these consolidated financial statements.

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FTE NETWORKS, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except share and per share data)

	For the Year Ended December 31,	
	2019	2018
Revenue, net of discounts	\$ 7,518	\$ 15,103
Cost of revenues	7,540	13,720
Gross (deficit) profit	(22)	1,383
Operating expenses		
Compensation expense	6,869	28,583
Selling, general and administrative expenses	14,065	31,103
Loss (gain) on sale of asset	399	(13)
Loss on lease termination (Note 9)	3,708	—
Total operating expenses	25,041	59,673
Operating loss	(25,063)	(58,290)
Other income (expenses)		
Interest expense	(10,355)	(9,067)
Amortization of deferred financing costs and debt discount	(27,173)	(48,248)
(Loss) gain on debt derivative	(1,602)	17,177
Change in warrant fair value	(426)	11,678
(Loss) on issuance of debt	(67)	(5,391)
Gain on troubled debt restructuring	5,028	—
Gain on senior lender foreclosure	31,538	—
Extinguishment (loss) gain	(1,287)	26,718
Other (expense) income, net	(287)	(129)
Total other income (expenses), net	(4,631)	(7,262)
Loss from continuing operations before income taxes	(29,694)	(65,552)
Income taxes expense	—	—
Net loss from continuing operations	(29,694)	(65,552)
Discontinued operations, net of tax	14,254	18,960
Net loss	(15,440)	(46,592)
Preferred stock dividends	(80)	(80)
Net loss attributable to common shareholders	\$ (15,520)	\$ (46,672)
Basic and diluted income (loss) per common share		
Continuing operations	\$ (1.57)	\$ (8.53)
Discontinued operations	\$ 0.75	\$ 2.47
Net loss per common share	\$ (0.82)	\$ (6.06)
Weighted average number of common shares outstanding		
Basic and diluted	18,964,886	7,688,796

The accompanying notes are an integral part of these consolidated financial statements.

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FTE NETWORKS, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY (DEFICIT)

FOR THE YEARS ENDED DECEMBER 31, 2019 and 2018
(in thousands, except for share information)

	Preferred stock		Common stock		Paid in Capital	Shares to be Issued	Accumulated Deficit	Total Equity (Deficit)
	Shares	Amount	Shares	Amount				
January 1, 2018	2,575	\$ —	5,620,281	\$ 6	\$ 56,979	\$ 250	\$ (128,040)	\$ (70,805)
Common shares issued to investors	—	—	902,784	1	7,100	(6,306)	—	795
Common shares issued to employees	—	—	1,328,663	1	16,605	—	—	16,606
Common shares issued to consultants	—	—	810,106	1	8,686	—	—	8,687
Common shares issued to board of directors	—	—	33,000	—	533	—	—	533
Common shares issued to settle legal matter	—	—	58,083	—	553	—	—	553
Common shares issued to settle debt	—	—	40,000	—	919	—	—	919
Common shares issued to Senior Lender	—	—	854,599	1	1,096	—	—	1,097
Common shares issued for convertible notes – inducement	—	—	199,379	—	2,156	—	—	2,156
Common shares issued to convert debt	—	—	1,901,520	2	16,336	—	—	16,338
Common shares issued for convertible notes – financing, settlement and prepayment	—	—	11,519	—	185	—	—	185
Warrants exercised	—	—	429,027	—	1,818	—	—	1,818
Exchange of Series G convertible preferred stock for common stock	(1,780)	—	178,000	—	—	—	—	—
Share-based compensation	—	—	—	—	1,831	—	—	1,831
Shares to be issued	—	—	—	—	(761)	7,336	—	6,575
Shares returned to outstanding	—	—	(80,114)	—	(75)	—	—	(75)
Accrued dividends -preferred stock	—	—	—	—	(80)	—	—	(80)
Net loss	—	—	—	—	—	—	(46,592)	(46,592)
December 31, 2018	<u>795</u>	<u>\$ —</u>	<u>12,286,847</u>	<u>\$ 12</u>	<u>\$ 113,881</u>	<u>\$ 1,280</u>	<u>\$ (174,632)</u>	<u>\$ (59,459)</u>
Common shares issued to investors	—	—	160,000	—	1,280	(1,280)	—	—
Common shares issued to employees	—	—	62,839	—	218	—	—	218
Common shares issued to board of director	—	—	250,000	—	248	—	—	248
Common shares issued to a note guarantor	—	—	1,005,751	1	1,960	—	—	1,961
Common shares issued to a lender	—	—	356,513	—	613	—	—	613
Common shares issued to Senior lender	—	—	3,704,304	4	5,044	—	—	5,048
Common shares issued for convertible notes – inducement	—	—	35,056	—	94	—	—	94
Common shares issued to convert debt	—	—	3,123,548	3	6,783	—	—	6,786
Common shares issued in the settlement of convertible debt	—	—	353,202	1	155	—	—	156
Common shares to be issued for the acquisition	—	—	—	—	—	15,385	—	15,385
Series I preferred shares to be issued for the acquisition	—	—	—	—	—	117,926	—	117,926
Shares returned to outstanding	—	—	(119,596)	—	—	—	—	—
Share-based compensation	—	—	—	—	1,170	—	—	1,170
Accrued dividends -preferred stock	—	—	—	—	(80)	—	—	(80)
Net loss	—	—	—	—	—	—	(15,440)	(15,440)
December 31, 2019	<u>795</u>	<u>\$ —</u>	<u>21,218,464</u>	<u>\$ 21</u>	<u>\$ 131,366</u>	<u>\$ 133,311</u>	<u>\$ (190,072)</u>	<u>\$ 74,626</u>

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FTE NETWORKS, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	For the Year Ended December 31,	
	2019	2018
Cash flows from operating activities:		
Net loss	\$ (15,440)	\$ (46,592)
Adjustments to reconcile net loss to net cash (used in) provided by operating activities:		
Depreciation expense	1,562	934
Amortization of intangible assets	6,759	8,004
Amortization of debt discount and deferred financing costs	27,172	52,259
Provision for bad debts	(101)	(351)
Gain on disposal of assets - foreclosure	(31,538)	—
Loss on sale and disposal of asset	399	3,310
Payment in-kind interest- convertible debt	860	2,167
Payment in-kind interest, Benchmark Sellers	2,711	1,730
Share-based compensation	1,388	18,438
Common shares issued for board of director fees	248	533
Common shares issued for convertible note modifications, amendments, redemption agreements and settlements	—	805
Common shares issued for consulting services	—	8,686
Loss on issuance of convertible debt	67	5,319
Prepayment and late fee penalties on convertible note payments	2,728	1,078
Loss on debt conversion and repayment	3,741	—
Gain on troubled debt restructuring, net	(5,028)	—
Gain on extinguishment of debt	—	(35,425)
Gain on extinguishment of Benchmark Sellers notes	—	(530)
(Loss) gain on merchant credit and note payable settlement, net	(288)	987
(Gain) loss on warrant derivative liability	426	(11,678)

Loss (gain) on convertible derivative liability	1,601	(17,177)
Loss on lease termination	3,708	—
Accrued dividends, preferred stock	(80)	(80)
Benefit from deferred income taxes	—	1,591
Changes in operating assets and liabilities:		
Decrease (increase) in receivables	16,580	(11,998)
Decrease (increase) in cost and estimated earnings in excess of billings on uncompleted contracts	6,210	(3,530)
Net decrease in other current assets	871	3,229
Net (decrease) increase in accounts payable and accrued liabilities	(28,853)	36,120
Increase in due to related party	—	25
Net cash (used in) provided by operating activities	(4,297)	17,854
Cash flows from investing activities:		
Net cash paid for US Home Rentals asset acquisition	(250)	—
Net cash received from US Home Rentals asset acquisition	109	—
Net restricted cash received from US Home Rentals asset acquisition	1,351	—
Purchase of property and equipment	(22)	(631)
Cash transferred to Benchmark Builders upon foreclosure	(8,029)	—
Net cash used in investing activities	(6,841)	(631)
Cash flows from financing activities:		
Proceeds from issuance of convertible notes	550	15,226
Payments on convertible notes	(952)	(5,947)
Proceeds from issuance of merchant credit agreements	2,755	17,356
Payments on merchant credit agreements	(13,957)	(47,545)
Proceeds from issuance of notes payable, net	5,835	650
Payments on notes payable, financing leases and settlement notes	(3,850)	(1,981)
Proceeds from issuance of senior note payable, net	12,632	2,115
Payment of Benchmark Seller notes	—	(7,541)
Payments on notes payable – related parties	(16)	(420)
Proceeds from sale of common stock	—	7,370
Proceeds from exercise of warrants	—	562
Payment of deferred financing costs	(1,889)	(540)
Net cash provided by (used in) financing activities	1,108	(20,695)
Net decrease in cash and cash equivalents	(10,030)	(3,472)
Cash and cash equivalents at beginning of year	12,170	15,642
Cash and cash equivalents at the end of year	2,140	12,170
Supplemental disclosure of cash flow information:		
Cash paid for interest	\$ 1,114	\$ 5,083
Cash paid for income taxes	\$ —	\$ —
Non-cash investing and financing activities:		
Debt issued for US Home Rentals asset acquisition	\$ 85,507	\$ —
Related party debt issued for acquisition of US Home Rentals asset acquisition	\$ 10,980	\$ —
Preferred Series I shares to be issued for acquisition of US Home Rentals asset acquisition	\$ 117,782	\$ —
Common shares to be issued for acquisition of US Home Rentals asset acquisition	\$ 15,529	\$ —
Common shares issued for convertible note conversions	\$ 3,045	\$ 16,338
Common shares issued for convertible note inducement	\$ 94	\$ 2,156
Common shares issued to noteholder for debt discount	\$ 7,009	\$ 1,097
Common shares issued for note payable and other accrued debt conversions and inducement	\$ 613	\$ 853
Common shares issued for cashless warrant exercise	\$ —	\$ 1,256
Common shares issued to investors held in shares to be issued	\$ 1,280	\$ —
Common shares issued for debt modification	\$ 156	\$ —
Note payable issued for settlement of convertible notes	\$ 5,012	\$ —
Note payable issued for settlement of litigation	\$ 60	\$ —
Debt discount and deferred financing costs from issuance of merchant credit agreements	\$ 1,535	\$ 34,602
Debt discount and deferred financing costs from issuance of convertible notes payable	\$ 591	\$ 2,082
Debt discount from warrant and conversion derivative liability	\$ 2,264	\$ 14,647
Debt discount and deferred financing costs from issuance of notes payable	\$ 166	\$ 741
Issuance of notes payable and financing leases for the purchase of fixed assets	\$ —	\$ 25
Receivable from merchant credit agreement overdraw	\$ 131	\$ 885
Senior lender accrued interest converted to principal	\$ —	\$ 2,816
Effect of adopting the new leasing standard	\$ 2,242	\$ —
Notes payable classification from related party	\$ 48,169	\$ —

The accompanying notes are an integral part of these consolidated financial statements.

Description of Business

FTE Networks, Inc. (collectively with its subsidiaries, “FTE” or the “Company”), by and through its wholly-owned subsidiary, US Home Rentals, LLC, (“USHR”) is a major owner and operator of single-family rental homes in tier 3 and 4 markets. With approximately 3,200 rental home properties across the United States, FTE seeks to transform its sizeable rental home portfolio into high quality single-family homes to meet the demands and needs of an evolving real estate market and demographic.

Basis of Presentation and Consolidation

The accompanying consolidated financial statements include all accounts of the Company and its wholly-owned subsidiaries. The accompanying consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (“US GAAP”). All significant intercompany balances and transactions have been eliminated in consolidation.

Use of Estimates

The preparation of consolidated financial statements in conformity with U. S. GAAP requires management to make estimates and judgments that affect the reported amounts of assets and liabilities, revenues and expenses, and related disclosures of contingent assets and liabilities. These estimates and judgments are based on historical information, information that is currently available to the Company and on various other assumptions that the Company believes to be reasonable under the circumstances. Actual results could differ materially from those estimates.

Reclassification

Certain reclassifications have been made to the 2018 consolidated financial statement presentation to correspond to the current year’s presentation. Reclassifications primarily relate to related party borrowings as of December 31, 2018, which are no longer considered related party borrowings as of December 31, 2019, due to the disposition of Benchmark Builders, Inc. (“Benchmark”) on October 10, 2019. (see Notes 4 and 12). Total stockholders’ equity (deficit) and net loss are unchanged due to these reclassifications.

Liquidity and Managements’ Plans

The consolidated financial statements have been prepared assuming that the Company will continue as a going concern and do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets, or the amounts and classification of liabilities that may result from the outcome of this uncertainty. In accordance with Accounting Standards Update, (“ASU”), 2014-15, *Presentation of Financial Statements—Going Concern* (Subtopic 205-40) (“ASC 205-40”), the Company has the responsibility to evaluate whether conditions and/or events raise substantial doubt about its ability to meet its future financial obligations as they become due within one year after the date that the financial statements are issued. This evaluation requires management to perform two steps. First, management must evaluate whether there are conditions and events that raise substantial doubt about the entity’s ability to continue as a going concern. Second, if management concludes that substantial doubt is raised, management is required to consider whether it has plans in place to alleviate that doubt. As required by ASC 205-40, this evaluation shall initially not take into consideration the potential mitigating effects of plans that have not been fully implemented as of the date the financial statements are issued. Disclosures in the notes to the consolidated financial statements are required if management concludes that substantial doubt exists or that its plans alleviate the substantial doubt that was raised.

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The Company’s ultimate success is dependent on its ability to obtain additional financing and generate sufficient cash flow to meet its obligations on a timely basis. The Company’s business will require significant amounts of capital to sustain operations and the Company will need to make the investments it needs to execute its longer-term business plan. Absent generation of sufficient revenue from the execution of the Company’s long-term business plan, the Company will need to obtain debt or equity financing, especially if the Company experiences downturns in its business that are more severe or longer than anticipated, or if the Company experiences significant increases in expense levels resulting from being a publicly-traded company or operations. Such additional debt or equity financing may not be available to the Company on favorable terms, if at all.

At December 31, 2019, the Company had \$2,140 in cash and working capital deficit of \$93,561. The Company reported aggregated net losses from continuing operations of \$95,246 for the two-year period ended December 31, 2019.

Management has assessed the Company’s ability to continue as a going concern in accordance with the requirement of ASC 205-40. Management believes the Company’s present cash flows from operations will not enable it to meet its obligations for the twelve months from the date these consolidated financial statements are available to be issued. Management currently has available certain bridge financing from a significant shareholder to fund its operations, but is actively seeking new sources of financing at more favorable terms and conditions, that will enable the Company to meet its obligations for the twelve-month period from the date the financial statements are available to be issued. There is no assurance that management will be successful in raising additional funds.

NOTE 2. SUMMARY OF SIGNIFICANT POLICIES

Acquisition of Real Estate Assets

Upon the acquisition of real estate assets, the Company evaluates its acquired single-family residential properties for purposes of determining whether a transaction should be accounted for as an asset acquisition or business combination. The Company expects that substantially all of its transactions will be accounted for as asset acquisitions. The Company’s purchase of the residential real estate was treated as an asset acquisition and recorded at fair value at the acquisition date, which is allocated between land and building, based upon their relative fair values as of the date of acquisition.

Cash and Cash Equivalents and Restricted Cash

Cash consisting of interest-bearing demand deposits is carried at cost, which approximates fair value. The Company considers cash in banks and holdings of highly liquid investments with original maturities of three months or less when purchased to be cash or cash equivalents. At various times throughout the year, and as of December 31, 2019, some accounts held at financial institutions were in excess of the federally insured limit of \$250. The Company reduces its exposure to credit risk by maintaining its cash deposits with major financial institutions and monitoring their credit ratings. The Company has not experienced any losses on these accounts and believes credit risk to be minimal.

As a condition of certain loan arrangements associated with the Rental Home Portfolio Asset Purchase, the Company is restricted as to use of funds of certain bank accounts without the approval of the lender. (See Note 4). These balances have been excluded from the Company’s cash and cash equivalents balance and are classified as restricted cash in the Company’s consolidated balance sheets.

Allowance for Doubtful Accounts

The Company maintains an allowance for doubtful accounts for estimated losses due to the inability of its customers and lessees to make the required payments. Management analyzes the collectability of rents, trade accounts and other receivables and the adequacy of the allowance for doubtful accounts on a regular basis taking into consideration the aging of the account balances, historical bad debt experience, customer concentration, customer credit-worthiness, customer financial condition and credit report and the current economic environment. In addition, an allowance is established when it is probable that a specific receivable is not collectible, and the loss can be reasonably estimated. Amounts are written off against the allowance when they are considered to be uncollectible. The allowance for doubtful accounts is included in general and administrative

Deferred Financing Costs and Amortization of Deferred Financing Cost

Deferred financing costs relate to the Company's debt instruments, the short- and long-term portions of which are reflected as a deduction from the carrying amount of the related debt instruments, including the Company's Senior Debt. Deferred financing costs are amortized using the straight-line method over the term of the related debt instrument which approximates the effective interest method.

Long-Lived Assets- Impairments

The Company's long-lived assets consist primarily of its investment in real estate and property and equipment. Depreciation is computed on a straight-line basis over the remaining useful lives of the related tangible assets. Property and equipment are stated at cost. Depreciation is calculated using the straight-line method over the estimated useful lives of the assets.

Property and equipment under capital leases are depreciated over their estimated useful lives. Expenditures for repairs and maintenance are charged to expense as incurred. The carrying amount of assets sold or retired and the related accumulated depreciation are eliminated in the year of disposal, with resulting gains or losses on disposition of property and equipment included in other income or expense. When the Company identifies assets to be sold, those assets are valued based on their estimated fair value less costs to sell, classified as held-for-sale and depreciation is no longer recorded. Estimated losses on disposals are included within operating expenses.

The carrying amounts of long-lived assets are periodically reviewed for impairment whenever events or changes in circumstances indicate that the carrying value of these assets may not be recoverable.

Revenue and Cost of Goods Sold Recognition

On January 1, 2018, the Company adopted ASU 2014-09, *Revenue from Contracts with Customers*, ("ASU 2014-09") and all subsequent amendments, which (i) creates a single framework for recognizing revenue from contracts with customers that fall within its scope and (ii) revises when it is appropriate to recognize a gain (loss) from the transfer of nonfinancial assets. The core principle of ASU 2014-09 is that revenue is recognized when the transfer of goods or services to customers occurs in an amount that reflects the consideration to which the Company expects to be entitled in exchange for those goods or services. ASU 2014-09 requires the disclosure of sufficient information to enable readers of the Company's consolidated financial statements to understand the nature, amount, timing and uncertainty of revenue and cash flows arising from customer contracts. ASU 2014-09 also requires disclosure of information regarding significant judgments and changes in judgments, and assets recognized from costs incurred to obtain or fulfill a contract.

The Company recognizes revenue from continuing operations from two sources, rental income and telecommunications services.

Rental Income

Rental income is recognized on a straight-line basis over the life of the respective leases when collectability is reasonably assured, and the tenant has taken possession or controls the physical use of the leased assets. Tenant recoveries related to reimbursement of real estate taxes, insurance and other expenses are recognized as revenue in the period the applicable costs are incurred.

Telecommunications Services

Revenue from telecommunication services are derived from short-term projects performed under master and other service agreements as well as from contracts for specific projects or jobs requiring the installation of an entire infrastructure system or specified units within an entire infrastructure system. The Company has determined that these short-term projects provide a distinct service and, therefore, qualify as one performance obligation. The Company provides services under unit-price or fixed-price master service or other service agreements under which the Company furnishes specified units of service for a fixed-price per unit of service and revenue is recognized upon completion of the defined project due to its short-term nature.

The Company also derives service revenues by managing wireless networks for customers to offer to their tenants and bills monthly in advance for the month's services. The Company determined the wireless service contracts cover a single performance obligation and transfer control of access to the wireless service continuously as the customer simultaneously receives and consumes the benefits. Therefore, the revenue for the monthly wireless service is considered to be recognized over time.

Discontinued Operation

Prior to the strict foreclosure of the Company's equity interests in Benchmark on October 10, 2020, which is classified as discontinued operations on the Company's consolidated balance sheets and statement of operations, the Company derived revenue from construction services at Benchmark from short-term construction projects ranging from 6 to 12 months in duration under fixed-price contracts. The Company determined that these short-term construction projects provided a distinct service and, therefore, qualified as one performance obligation as the promise to transfer the individual goods or services were not separately identifiable from other promises in the contracts and, therefore, not distinct. Revenue from fixed-price contracts provided for a fixed amount of revenue for the entire project, subject to certain additions for modified scope or specifications to the original project. Revenue was recognized over time, because of the continuous transfer of control to the customer as all the work is performed at the customer's site and, therefore, the customer controls the asset as it is being constructed. This continuous transfer of control to the customer is further supported by clauses in the contract that allow the customer to unilaterally terminate the contract for convenience, pay us for costs incurred plus a reasonable profit and take control of any work in process.

Under ASC 606, the cost-to-cost measure of progress continues to best depict the transfer of control of assets to the customer, which occurs as the Company incur costs. Contract costs include labor, material, and other direct costs. Contract modifications are routine in the performance of the contracts. Contracts are often modified to account for changes in the contract specifications or requirements. In most instances, contract modifications are for goods or services that are not distinct, therefore, accounted for as part of the existing contract. Cost to obtain contracts (pre-contract costs) are generally charged to expense as incurred and included in operating expenses on the consolidated statements of operations.

Certain construction contracts include retention provisions to provide assurance to the customers that the Company will perform in accordance with the contract terms and therefore, not considered a financing benefit. The balances billed but not paid by customers pursuant to these provisions generally become due upon completion and acceptance of the project work or products by the customer. The Company has determined that there are no significant financing components in its contracts during the year ended December 31, 2018.

Costs to mobilize equipment and labor to a job site prior to substantive work beginning are capitalized as incurred and amortized over the expected duration of the contract. On December 31, 2018 and January 1, 2018, the Company had no material capitalized mobilization costs.

Income Taxes

The Company records income taxes under the asset and liability method, whereby deferred tax assets and liabilities are recognized based on the future tax consequences attributable to temporary differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases, and attributable to operating loss and tax credit carryforwards. Accounting standards regarding income taxes requires a reduction of the carrying amounts of deferred tax assets by a valuation

allowance, if based on the available evidence, it is more likely than not that such assets will not be realized. Accordingly, the need to establish valuation allowances for deferred tax assets is assessed at each reporting period based on a “more likely than not” realization threshold. This assessment considers, among other matters, the nature, frequency and severity of current and cumulative losses, forecasts of future profitability, the duration of statutory carryforward periods, the Company’s experience with operating loss and tax credit carryforwards not expiring unused, and tax planning alternatives.

Significant judgment is required in evaluating the Company’s tax positions and determining its provision for income taxes. During the ordinary course of business, there are many transactions and calculations for which the ultimate tax determination is uncertain. Accounting standards regarding uncertainty in income taxes provides a two-step approach to recognizing and measuring uncertain tax positions. The first step is to evaluate the tax position for recognition by determining if the weight of available evidence indicates it is more likely than not that the position will be sustained on audit, including resolution of related appeals or litigation processes, if any. The second step is to measure the tax benefit as the largest amount which is more than 50% likely, based solely on the technical merits, of being sustained on examinations. The Company considers many factors when evaluating and estimating its tax positions and tax benefits, which may require periodic adjustments and which may not accurately anticipate actual outcomes.

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Stock-Based Compensation

Compensation expense for all stock-based employee and director compensation awards granted is based on the grant date fair value estimated in accordance with the provisions of ASC Topic 718, *Stock Compensation* (“ASC 718”). The Company recognizes these compensation costs on a straight-line basis over the requisite service period of the award, which is generally the option vesting term. Vesting terms vary based on the individual grant terms. These costs are recorded in selling, general and administrative expenses.

The Company estimates the fair value of stock-based compensation awards on the date of grant using the Black-Scholes-Merton option pricing model. This method considers among other factors, the expected term of the award and the expected volatility of the Company’s stock price. Expected terms are calculated using the Simplified Method, volatility is determined based on the Company’s historical stock price and the discount rate is based upon U.S. treasury rates with instruments of similar expected terms.

Fair Value of Financial Instruments

Under ASC Topic 820, *Fair Value Measurement* (“ASC 820”), the Company uses inputs from the three levels of the fair value hierarchy to measure its financial assets and liabilities. The three levels are as follows:

Level 1- Inputs are unadjusted quoted prices in active markets for identical assets or liabilities that the Company has the ability to access at the measurement date.

Level 2- Inputs are other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly. Level 2 inputs include quoted prices for similar assets and liabilities in active markets, quoted prices for identical or similar assets or liabilities in markets that are not active, inputs other than quoted prices that are observable for the asset or liability (i.e., interest rates, yield curves, etc.), and inputs that are derived principally from or corroborated by observable market data by correlation or other means (market corroborated inputs).

Level 3- Inputs are unobservable and reflect the Company’s assumptions that market participants would use in pricing the asset or liability. The Company develops these inputs based on the best information available.

Derivatives

The Company accounts for derivative instruments in accordance with ASC Topic 815, *Derivatives and Hedging* (“ASC 815”) and all derivative instruments are reflected as either assets or liabilities at fair value in the balance sheet.

The Company uses estimates of fair value to value its derivative instruments. Fair value is defined as the price to sell an asset or transfer a liability in an orderly transaction between willing and able market participants. In general, the Company’s policy in estimating fair values is to first look at observable market prices for identical assets and liabilities in active markets, where available. When these are not available, other inputs are used to model fair value such as prices of similar instruments, yield curves, volatilities, prepayment speeds, default rates and credit spreads (including for the Company’s liabilities), relying first on observable data from active markets. Additional adjustments may be made for factors including liquidity, credit, bid/offer spreads, etc., depending on current market conditions. Transaction costs are not included in the determination of fair value. When possible, the Company seeks to validate the model’s output to market transactions. Depending on the availability of observable inputs and prices, different valuation models could produce materially different fair value estimates. The values presented may not represent future fair values and may not be realizable. The Company categorizes its fair value estimates in accordance with ASC 820 based on the hierarchical framework associated with the three levels of price transparency utilized in measuring financial instruments at fair value as discussed above.

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Warrant Liability

The Company accounts for certain common stock warrants outstanding as a liability at fair value and adjusts the instruments to fair value at each reporting period. This liability is subject to re-measurement at each balance sheet date until exercised, and any change in fair value is recognized in the Company’s consolidated statements of operations. The fair value of the warrants issued by the Company has been estimated using the Monte Carlo simulation and or the Black-Scholes-Merton model.

Leases

The Company leases corporate and regional office space and related office equipment. Certain vehicle leases, subject to purchase options are leased under finance leases. As of January 1, 2019, these leases are accounted for under the ASC 842, *Leases* (See Note 3).

The Company accounts for leases for the corporate and regional offices as operating leases. The lease term may include options to extend or terminate the lease when it is reasonably certain the Company will exercise that option. For leases with initial terms greater than 12 months, we record operating lease right-of-use assets and corresponding operating lease liabilities. Operating lease right-of-use assets represent our right to use the underlying asset for the lease term and operating lease liabilities represent our obligation to make the related lease payments. These assets and liabilities are recognized at the commencement date based on the present value of lease payments over the lease term. As our leases do not provide an implicit rate, we use our incremental borrowing rate based on the information available at the commencement date in determining the present value of lease payments.

We have elected the short-term lease recognition exemption for our office equipment leases and therefore do not record these leases on our consolidated balance sheets. These office equipment leases are not material to our consolidated financial statements.

Embedded Conversion Features

The Company evaluates embedded conversion features within convertible debt to determine whether the embedded conversion feature(s) should be bifurcated from the host instrument and accounted for as a derivative at fair value with changes in fair value recorded in the Statement of Operations in accordance with ASC 815. If the conversion feature does not require recognition of a bifurcated derivative, the convertible debt instrument is evaluated for consideration of any beneficial conversion feature (“BCF”)

requiring separate recognition. When the Company records a BCF, the intrinsic value of the BCF is recorded as a debt discount against the face amount of the respective debt instrument (offset to additional paid-in capital) and amortized to interest expense over the life of the debt.

Sequencing

As of October 13, 2016, the Company adopted a sequencing policy whereby all future instruments may be classified as a derivative liability with the exception of instruments related to share-based compensation issued to employees or directors and convertible preferred stock.

Equity Preferred Stock

The Company applies the classification and measurement principles in accordance with ASC 815 with respect to accounting for its issuance of preferred stock. The Company evaluates convertible preferred stock at each reporting date for appropriate balance sheet classification.

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Segments

The Company operates in two segments in accordance with the ASC Topic 280 “Segment Reporting”, (“ASC 280”). Operating segments as defined in ASC 280, are components of public entities that engage in business activities from which they may earn revenues and incur expenses for which separate financial information is available and which is evaluated regularly by the Company’s chief operating decision maker in deciding how to assess performance and allocate resources. The two primary segments are the infrastructure segment and real estate segment. The Company is reporting one segment as the acquisition of the real estate segment occurred on December 30, 2019, no results from operations or cash flows were recorded in the Company’s financial statement during 2019 for the real estate segment.

Advertising

Advertising costs, if any, are expensed as incurred. For the years ended December 31, 2019 and 2018, the Company’s spending on advertising was immaterial.

Customer Concentrations

For the years ended December 31, 2019 and 2018, the Company had three customers that exceeded 10% of revenues from the infrastructure segment. These customers accounted for 75% and 68% of revenues in each of the years ended December 31, 2019 and 2018, respectively.

(in thousands)	Revenues		% of Total Revenue	
	2019	2018	2019	2018
Customer A	\$ 2,620	\$ 4,368	35%	29%
Customer B	\$ 1,963	\$ 2,816	26%	20%
Customer C	\$ 1,081	\$ 1,952	14%	13%

(in thousands)	Accounts Receivable		% of Accounts Receivable	
	2019	2018	2019	2018
Customer A	\$ 325	\$ 552	44%	38%
Customer B	\$ 267	\$ —	36%	—%
Customer C	\$ —	\$ 216	—%	15%
Customer D	\$ —	\$ 153	—	10%

The Company’s infrastructure segment customer base is highly concentrated. Revenues are non-recurring, project-based revenues, therefore, it is not unusual for significant period-to-period shifts in customer concentrations. Revenue may significantly decline if the Company were to lose one or more of its significant customers, or if the Company were not able to obtain new customers upon the completion of significant contracts.

Net Loss Per Common Share

Basic net income (loss) per share is computed by dividing net income (loss) attributable to common stockholders (the numerator) by the weighted average number of common shares outstanding for the period (the denominator). Diluted net income per common share attributable to common shareholders is computed by dividing net income by the weighted average number of common shares outstanding during the period adjusted for the dilutive effects of common stock equivalents. In periods when losses from continuing operations are reported, the weighted-average number of common shares outstanding excludes common stock equivalents because their inclusion would be anti-dilutive. For the years ended December 31, 2019 and 2018 no dilutive effect for common stock equivalents was considered in the calculation of diluted loss per share as their effect was anti-dilutive.

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The Company had the following common stock equivalents at December 31, 2019 and 2018.

	2019	2018
Convertible preferred stock, Series A	1,548,666	2,395,830
Convertible preferred stock, Series A-1	975,508	767,040
Convertible preferred stock, Series H	—	—
Convertible notes	8,686,546	21,303,158
Common stock warrants	—	287,484
Options	—	19,010
Total potentially dilutive shares	11,210,720	24,772,522

The above table excludes any common shares related to the convertible debt for the Series A and Series B notes since such debt is only convertible at the then prevailing market price upon default.

Recent Accounting Pronouncements

Recently Adopted Accounting Standards

In February 2016, the Financial Accounting Standards Board (“FASB”) issued ASU No. 2016-02 – Leases (Topic 842), (“ASU 2016-02”). For all leases with terms greater than 12 months, the new guidance requires lessees to recognize right-of-use assets and corresponding lease liabilities on the balance sheet and to disclose qualitative and quantitative

information about lease transactions. The new standard maintains a distinction between finance leases and operating leases. As a result, the effect of the new guidance on leases in the statement of operations and statement of cash flows is largely unchanged.

Effective January 1, 2019, the Company adopted the requirements of ASU 2016-02 using the transition provisions at the date of adoption instead of at the earliest comparative period presented in the financial statements. Accordingly, comparative financial statements for periods prior to the date of adoption were not adjusted. The Company elected the package of practical expedients permitted under the transition guidance. Utilizing the practical expedients, the Company did not reassess (i) whether any expired or existing contracts are or contain leases, (ii) the lease classification for any expired or existing leases, or (iii) initial direct costs for any existing leases.

The impact of the adoption of ASU 2016-02 on the accompanying consolidated balance sheets resulted in recording operating right-of-use assets and lease liabilities of approximately \$2,032 and \$2,032, respectively, at January 1, 2019. Comparative periods presented reflect the former lease accounting guidance and the required comparative disclosures are included in Note 3. The adoption of ASU 2016-02 did not have a material impact on our consolidated statements of operations or cash flows.

In June 2018, the FASB issued ASU 2018-07, *Compensation – Stock Compensation (Topic 718), Improvements to Nonemployee Share-Based Payment Accounting*, (“ASU 2018-07”). The standard simplifies the accounting for share-based payments granted to nonemployees for goods and services. In accordance with ASU 2018-07, most of the guidance on such payments to nonemployees would be aligned with the requirements for share-based payments granted to employees. The adoption of ASU 2018-07 on January 1, 2019 did not have a material impact on the consolidated statements of operation or cash flows.

In July 2017, the FASB issued ASU 2017-11 – Earnings Per Share (Topic 260); Distinguishing Liabilities from Equity (Topic 480); Derivatives and Hedging (Topic 815): (Part I) Accounting for Certain Financial Instruments with Down Round Features, (Part II) Replacement of the Indefinite Deferral for Mandatorily Redeemable Financial Instruments of Certain Nonpublic Entities and Certain Mandatorily Redeemable Noncontrolling Interests with a Scope Exception. ASU 2017-11 is intended to reduce the complexity associated with the issuer’s accounting for certain financial instruments with characteristics of liabilities and equity. Specifically, the Board determined that a down round feature (as defined) would no longer cause a freestanding equity-linked financial instrument (or an embedded conversion option) to be accounted for as a derivative liability at fair value with changes in fair value recognized in current earnings. ASU 2017-11 is effective for fiscal years, and interim periods within fiscal years beginning after beginning after December 15, 2018. The adoption of ASU 2017-11 on January 1, 2019 did not have a material impact on the consolidated statements of operation or cash flows.

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In July 2018, the FASB issued ASU 2018-09, *Codification Improvements*. These amendments provide clarifications and corrections to certain ASC subtopics including *Compensation – Stock Compensation – Income Taxes* (Topic 718-740), *Business Combinations – Income Taxes* (Topic 805-740) and *Fair Value Measurement – Overall* (Topic 820-10). The adoption of ASU 2018-09 on January 1, 2019 did not have a material impact on the consolidated statements of operation or cash flows.

Accounting Pronouncements Issued

In June 2016, the FASB issued ASU 2016-13, *Financial Instruments – Credit Losses (Topic 326)*. The new guidance requires entities to measure all expected credit losses for financial assets held at the reporting date based on historical experience, current conditions, and reasonable and supportable forecasts. This replaces the existing incurred loss model and is applicable to the measurement of credit losses on financial assets measured at amortized cost. This pronouncement will be effective for fiscal years beginning after December 15, 2019. The Company is currently evaluating the effect of the standard on its consolidated financial statements.

In December 2019, the FASB issued ASU 2019-12 – *Income Taxes (Topic 740) – Simplifying the Accounting for Income Taxes* (“ASU 2019-12”). The amendments in ASU 2019-12 simplify the accounting for income taxes by removing certain exceptions regarding the incremental approach for intra-period tax allocations, deferred tax liabilities for equity method investments, and general methodology calculations when a year-to-date loss exceeds the anticipated loss. Additionally, ASU 2019-12 further simplifies accounting for income taxes by requiring certain franchise taxes to be accounted for as income-based tax or non-income-based tax, requiring evaluation of the tax basis of goodwill in business combinations, specifying the requirements and elections for allocating consolidated current and deferred tax expense to legal entities separately not subject to tax and requiring reflection of the effect of an enacted change in tax laws or rates in the annual effective tax rate computation in the interim period that includes the enactment date. ASU 2019-12 is effective for fiscal years beginning after December 15, 2020, with early adoption permitted. The various amendments can be applied on a retrospective, modified retrospective, or prospective basis, depending on the amendment. The Company is currently evaluating the effect of the standard on its consolidated financial statements.

NOTE 3. LEASES

As of December 31, 2019, operating leases and finance leases are included in the Consolidated Balance Sheets as follows:

	Classification	
Lease assets		
Operating right-of-use assets, net		\$ 1,038
Finance right-of-use assets, net	Property, plant and equipment, net	—
Total lease assets		\$ 1,038
Lease Liabilities		
Operating lease liabilities, current		\$ 557
Operating lease liabilities, non-current		482
Finance lease liabilities, current	Notes payable, current portion, net of original issue discount and deferred financing fees	69
Finance lease liabilities, non-current	Notes payable and financing leases, non-current portion, net of original issue discount and deferred financing fees	44
Total lease liabilities		\$ 1,152

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Rental expense, resulting from property lease agreements, for the year ended December 31, 2018 was approximately \$1,373. Operating lease costs are recorded on a straight-line basis over the lease term. The components of lease cost from continuing operations recognized within the Consolidated Statements of Operations were as follows for the year ended December 31, 2019:

Operating leases		
Operating lease costs		\$ 657
Variable lease costs		—
Short-term lease costs		—
Total operating lease costs		\$ 657

Maturities of lease liabilities as of December 31, 2019 are as follows:

Operating	Finance	Total
-----------	---------	-------

Year ended December 31, 2020	\$ 909	\$ 76	\$ 985
Year ended December 31, 2021	762	31	793
Year ended December 31, 2022	239	15	254
Year ended December 31, 2023	—	—	—
Year ended December 31, 2024	—	—	—
Year ended December 31, 2025 and Thereafter	—	—	—
Total lease payments	1,910	122	2,032
Less imputed lease interest	(871)	(9)	(880)
Total lease liabilities	\$ 1,039	\$ 113	\$ 1,152

Minimum lease payments under ASC 840, Leases, as of December 31, 2018, are as follows:

2019	402
2020	280
2021	269
2022	239
2023	—
Thereafter	—
Total Lease Obligations	\$ 1,190

Additional information related to our leasing arrangements is presented as follows:

	Year ended December 31, 2019	
	Operating leases	Financing leases
Weighted average remaining lease term	1.74	\$ 1.78
Weighted average discount rate	16%	8%
Operating cash flows from operating leases	746	—
Financing cash flows from financing leases	—	(527)

NOTE 4. ASSET ACQUISITION

On December 20, 2019, the Company entered into a purchase agreement (the “Rental Home Portfolio Asset Purchase Agreement”) with (i) USHR, (ii) the holders (the “Equity Sellers”) of 100% of the equity interests in the entities owned by the Equity Sellers that collectively hold a real estate asset portfolio consisting of 3,184 rental homes located across the United States (the “Entities”), (iii) Vision Property Management, LLC, a South Carolina limited liability company (“Vision” and together with the Equity Sellers, the “Sellers”), and (iv) Alexander Szkaradek, in his capacity as the representative of the Sellers (the “Sellers’ Representative”). On December 30, 2019, the parties amended the Rental Home Portfolio Agreement in order to address certain changes to the Rental Home Portfolio Agreement, including, among other things, to allow the \$9,750 balance of the cash portion of the purchase price to be paid in cash or short-term promissory notes, and to reduce the Equity Sellers’ indemnification deductible to \$100. On December 30, 2019, the Company completed the acquisition of the Entities pursuant to the Rental Home Portfolio Agreement, as amended. The Company accounted for the asset acquisition in accordance with ASC 350, *Intangibles-Goodwill and Other*, whereby the purchase price was allocated to the individual assets purchased and liabilities assumed based on their fair value.

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Pursuant to the Rental Home Portfolio Asset Purchase, as amended, USHR purchased (a) all of the equity interests in the Entities and (b) all of rental home portfolio assets that are related to its business, including certain assumed contracts and assumed intellectual property, excluding certain specified assets. The fair value of consideration transferred was \$229,828 consisting of (i) \$250 of cash; (ii) \$9,750 in promissory notes payable on or before March 31, 2020 as extended by the forbearance period; (iii) the amount of outstanding indebtedness of the Entities, of \$86,737, of which \$1,230 was due to related parties; (iv) 4,222,474 shares of the Company’s common stock, par value \$0.001, which had a fair value at the time of acquisition of \$15,385; and (v) shares of a newly designated Series I Non-Convertible Preferred Stock having a fair value of \$117,926 at the date of acquisition.

The following table summarizes the fair value of the consideration transferred for the acquisition of Rental Home Portfolio Assets:

Cash	\$ 250
Promissory notes payable, related party	9,750
Assumed indebtedness	85,507
Assumed indebtedness, related party	1,230
Assumed legal settlements	1,240
Common stock	15,385
Series I non-convertible preferred stock	117,926
Less: Cash received	(109)
Restricted cash received ⁽¹⁾	(1,351)
Consideration paid	\$ 229,828

⁽¹⁾The Company is required to keep certain accounts at the issuing bank for one of the assumed notes payable for the i) aggregate amount of interest due and payable under all outstanding issuer notes on the next monthly payment date, and ii) the estimated costs and expenses related to the ownership, servicing, operation and maintenance of the purchased assets and iii) reserve for applicable tax liabilities, with cash balances temporarily restricted for regular business operations.

The following table summarizes the acquisition date fair value of the purchase price allocation assigned to each major class of assets acquired and liabilities assumed as of December 30, 2019, the closing date for the Rental Home Portfolio Assets:

ASSETS ACQUIRED	
Single-home residential rental properties	\$
Land	48,264
Buildings	181,564
Total Assets Acquired	229,828
LIABILITIES ASSUMED	
Notes payable	85,507
Notes payable, related party	1,230
Legal settlements	1,240

Total Liabilities Assumed	87,977
Total consideration transferred	<u>\$ 141,851</u>

The fair values are based on management's analysis, including work performed by third-party valuation specialists. A number of significant assumptions and estimates were involved in the application of the valuation methods, including revenues, royalty rates, expenses, tax rates, capital spending, discount rates, and working capital changes. Cash flow forecasts were generally based on USHR forecasts. Valuation methodologies used for the identifiable assets acquired and liabilities assumed utilize Level 1, Level 2, and Level 3 inputs including quoted prices in active markets and discounted cash flows using current interest rates. See Note 15.

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NOTE 5. DISCONTINUED OPERATIONS

During July 2019, the Company was notified that judgments had been entered against the Company in favor of six holders of the Company's convertible notes in the state of New York. Certain of these convertible noteholders sought to levy against the bank account of the Company's former subsidiary, Benchmark, and filed an order directing the Company to turn over all Company's assets. The Company's failure to satisfy, vacate or stay these judgments constituted an event of default under the Credit Agreement. As a result, on October 10, 2019, the Company consented to a Proposal for Surrender of Collateral and Strict Foreclosure (the "Foreclosure Proposal"), from Lateral, Lateral Builders LLC ("Lateral Builders") and Benchmark Holdings, LLC ("Benchmark Holdings" and together with Lateral Recovery LLC ("Lateral Recovery"), the ("Foreclosing Lenders")), pursuant to which the Lenders took possession and ownership of the Subject Collateral (see below) by means of a strict foreclosure by the Foreclosing Lenders (the "Benchmark Foreclosure").

On October 10, 2019, pursuant to the Foreclosure Proposal, the Company transferred: (i) to Benchmark Holdings all of its (a) equity interests in Benchmark, the Company's principal operating subsidiary, and (b) cash on hand in excess of levels specified in the Foreclosure Proposal; and, (ii) to Lateral Recovery, all of the Credit Parties' interests in certain commercial tort litigation claims, fraud claims, and insurance claims as specified in the Foreclosure Proposal. Accordingly, a total of \$56,156 in Lateral Existing Term Loans and the Super Senior Term Loan principal and interest, as well as \$6,416 in unamortized deferred finance costs, was removed from the Company books. See Note 13.

As a result of the actions taken in accordance with the Foreclosure Proposal, on October 10, 2019, the Company removed the debts and its investment in its wholly-owned subsidiary Benchmark of \$44,262 and recognized a gain on the foreclosure of \$31,538.

The disposition of Benchmark qualified as discontinued operations, as it represented a significant strategic shift of the Company's operations and financial results. In addition, the operations and cash flows of Benchmark could be distinguished, operationally and for financial reporting purposes, from the rest of the Company.

The historical balance sheet and statements of operations of the Benchmark business have been presented as discontinued operations in the consolidated financial statements for periods prior to the foreclosure. Discontinued operations include the results of Benchmark, except for certain allocated corporate overhead costs and certain costs associated with transition services provided by the Company to Benchmark. Certain of these previously allocated costs remain part of continuing operations.

The carrying amounts of the major classes of assets and liabilities of the Company's discontinued operations as of December 31, 2018 were as follows:

Cash	\$ 11,828
Accounts receivable	72,599
Costs and estimated earnings in excess of billings on uncompleted contracts	5,974
Other current assets	2,418
Current assets of discontinued operations	<u>92,819</u>
Property, plant and equipment	159
Intangible assets	19,692
Goodwill	45,007
Total assets of discontinued operations	<u>\$ 157,677</u>
Accounts payable	\$ 73,674
Billings in excess of costs and estimated earnings on uncompleted contract	34,690
Accrued expenses and other current liabilities	5,403
Current liabilities of discontinued operations	<u>113,767</u>
Deferred tax liabilities, net	1,641
Total liabilities of discontinued operations	<u>\$ 115,408</u>

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The operating results of the Company's discontinued operations through the date of the foreclosure are as follows:

	Year Ended December 31,	
	2019	2018
Major line items constituting income from discontinued operations		
Revenues, net of discounts	\$ 245,352	\$ 369,652
Cost of revenue	<u>215,423</u>	<u>318,148</u>
Gross profit	29,929	51,504
Compensation expense	7,985	18,572
Selling, general and administrative	4,844	9,184
	2,813	3,751
Amortization of intangible assets		
Other (income)	—	(49)
Income from discontinued operations before provision for income taxes	14,287	20,046
Provision for income taxes	33	1,086
Income from discontinued operations, net of tax	<u>\$ 14,254</u>	<u>\$ 18,960</u>

The significant operating and investing cash and noncash items of the discontinued operations included in the Consolidated Statements of Cash Flows for the years ended December 31, 2019 and 2018 were as follows:

Year Ended

	December 31,	
	2019	2018
Depreciation and amortization	\$ 6,780	\$ 8,027
Capital expenditures	\$ —	\$ 113

NOTE 6. ACCOUNTS RECEIVABLE

The following table presents accounts receivable, net for the years ended December 31, 2019 and 2018:

	December 31	
	2019	2018
Completed contracts	\$ 749	\$ 1,598
Allowance for doubtful accounts	(7)	(149)
Accounts receivable, net	<u>\$ 742</u>	<u>\$ 1,449</u>

Accounts receivable from customers are generated from revenues earned after the installation or service for a job has been completed, inspected and approval has been obtained by its customer. The Company segments some of its large contracts into smaller more manageable contracts which allows for certain jobs to be completed, inspected and approved for payment by the customer in less time than non-segmentation. The payment terms are generally 30 days.

NOTE 7. OTHER CURRENT ASSETS

Other current assets consist of the following:

	December 31,	
	2019	2018
Notes receivables, promissory note	\$ —	\$ 885
Receivable for the sale of assets	112	—
Prepaid insurance	210	65
Prepaid legal	212	—
Prepaid operating expenses	115	625
Other current assets	<u>\$ 649</u>	<u>\$ 1,575</u>

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NOTE 8. PROPERTY AND EQUIPMENT, NET

Property and equipment, net consist of the following:

	Estimated Life (in years)	December 31,	
		2019	2018
Machinery and equipment	6-8	\$ 192	\$ 1,851
Vehicles and trailers	7-10	860	2,276
Computer equipment and software	2-5 years	721	749
Leasehold improvements	2-5 years	602	603
Furniture and fixtures	2-5 years	36	36
		2,411	5,515
Less: accumulated depreciation		(1,373)	(2,268)
Property and equipment, net		<u>\$ 1,038</u>	<u>\$ 3,247</u>

Depreciation expense from continuing operations for the years ended December 31, 2019 and 2018, was \$811 and \$895, respectively.

The Company leases various equipment under financing leases. Assets held under financing leases are included in property and equipment as follows:

	December 31,	
	2019	2018
Machinery & equipment	\$ 323	\$ 1,375
Less: accumulated depreciation	(123)	(575)
	<u>\$ 200</u>	<u>\$ 800</u>

NOTE 9. ACCRUED EXPENSES AND OTHER CURRENT LIABILITIES

Accrued expenses and other current liabilities consist of the following:

	December 31,	
	2019	2018
Accrued interest payable ^[1]	\$ 2,431	\$ 1,673
Accrued dividends payable	769	690
Accrued compensation expense ^[2]	2,029	2,495
Accrued rent ^[3]	4,350	—
Accrued legal settlement expense ^[4]	1,240	—
Accrued legal expense	1,836	—
Accrued taxes payable	76	76
Other accrued expense	105	30
Accrued expenses, current	<u>\$ 12,836</u>	<u>\$ 4,964</u>

- [1] Accrued interest payable as of December 31, 2019 and 2018 includes \$1,735 and \$1,461, respectively, of estimated penalties and interest associated with prior period unpaid payroll taxes.
- [2] Accrued compensation includes \$1,868 in both December 31, 2019 and 2018, associated with prior period unpaid payroll taxes.
- [3] Accrued rent is due to the default on the lease of the Company's former office space in Naples, FL. The default terms include accruing interest monthly at 18% on the outstanding balance.
- [4] Accrued legal settlement expense includes legal settlements that were outstanding at the Rental Home Portfolio Asset Purchase date, as amended on December 30, 2019 in excess of the \$100 indemnification. (See Note 4 and 17).

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NOTE 10: MERCHANT ACCOUNT AGREEMENTS

2019

During February 2019, the Company entered into a purchase agreement for future receivables, whereby, for receipt of \$2,755 in cash, the Company agreed to repay the holder a total of \$4,290 in four monthly payments of \$382 and twenty nine weekly payments of \$95. During October 2019, after repaying \$3,147 in cash payments, the remaining \$1,143 balance was written off to gain on foreclosure as part of the foreclosure of certain Company assets and extinguishment of debts (See Note 5).

During the year ended December 31, 2019, the Company paid \$8,804 in principal payments, \$2,005 in debt settlement payments, reclassified \$131 of overpayments to a short term receivable account and recognized a \$288 loss on debt settlement on the remaining eighteen merchant account agreements with outstanding principal balances of \$11,228. As of December 31, 2019, there were no merchant account agreements outstanding.

During the years ended December 31, 2019 and 2018, the Company recognized \$10,197 and \$30,008, respectively, in amortization of deferred financing costs and debt discounts from the amortization of original issuance discounts and deferred debt issuance costs on the straight-line method over the term of the related merchant account agreement, which approximates the effective interest method.

2018

During the year ended December 31, 2018, the Company entered into 65 merchant account agreements, whereby the Company agreed to borrow an aggregate of \$70,947, net of \$25,126 in original issue discounts and \$6,914 in deferred financing costs, in exchange for daily repayment funded through the Company's future receivables. The merchant account agreements were collateralized by the assets of the Company and are due in terms between one and six months. As of December 31, 2018, there were 18 merchant account agreements with an aggregate balance of \$11,228, net of original issue discount of \$6,746 and deferred financing costs of \$2,380.

NOTE 11: CONVERTIBLE NOTES PAYABLE

2019

During the year ended December 31, 2019, the Company entered into three convertible notes payable, borrowing an aggregate of \$618, net of original issuance discounts of \$40 and deferred financing costs of \$28, recognized paid-in kind interest principal additions of \$7, late fees, prepayment and settlement expenses of \$3,439; and, as inducement, the Company issued a total of 35,056 shares of the Company's common stock valued at \$94. During the year ended December 31, 2019, the Company repaid convertible note principal of \$902, prepayment penalties of \$50 and accrued interest of \$16 on five convertible notes and issued a total of 3,123,548 shares of the Company's common stock for the conversion of \$2,988 in convertible debt principal and \$57 in accrued interest.

During April 2019, a convertible note with a principal balance of \$525 was restructured to remove all conversion rights and replace it with a new non-convertible promissory note requiring twelve equal monthly payments of \$44 beginning April 2019 and ending February 2020. As a result of the restructure, the Company derecognized the related conversion option derivative liability of \$554 and accrued interest payable of \$22, resulting in a \$576 gain during the year ended December 31, 2019. The balance of the note is \$88 as of December 31, 2019.

During April 2019, a holder agreed to terminate two convertible notes with principal balances totaling \$337 in exchange for a termination fee of \$17 for accrued and interim default interest through April 1, 2019 and a new note payable in the amount of \$337. The new note payable bears interest at the rate of 23% per annum and is due in monthly payments of interest and principal through October 2021, including lump sum principal payments of \$84 due May 1, 2020 and a final balloon payment of \$251 due October 1, 2021. As a result of the convertible notes debt modification, the Company derecognized the related conversion option derivative liability in the amount of \$335 and recognized a \$88 gain on extinguishment during the year ended December 31, 2019. The balance of the note is \$336 at December 31, 2019.

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During September 2019, holders of three convertible notes with principal balances totaling \$1,521 were restructured to remove all conversion rights and replace the existing convertible notes and accrued interest and penalties with new non-convertible promissory notes having principal balances totaling \$1,693. As a result of the restructure, the Company derecognized the related conversion option derivative liabilities totaling \$1,510 and accrued interest payable of \$182 resulting in a \$1,520 gain during the year ended December 31, 2019. The balance of the notes total \$974 at December 31, 2019.

During October 2019, holders of eight convertible notes with principal balances totaling \$2,629 were restructured to remove all conversion rights and replace the existing convertible notes and accrued interest and penalties with new non-convertible promissory notes having principal balances totaling \$2,956. Additionally, the holders were issued a total of 353,202 shares of common stock as inducement valued at \$156. As a result of the restructure, the Company derecognized related conversion option derivative liabilities totaling \$2,616, accrued interest payable of \$327, and recognized new debt discounts totaling \$156. As a result of the convertible note debt modifications, the Company recognized gains of \$2,616 during the year ended December 31, 2019. The balance of the notes totals \$2,324 at December 31, 2019.

As of December 31, 2019, the Company has two past-due outstanding convertible notes payable with principal balances totaling \$4,147. The outstanding convertible notes of the Company are unsecured, bear interest at 4% per annum, with default rates of 22% and 24% per annum. The convertible notes had original maturity terms of six months and one year, are past-due and are convertible at variable rates of 50% and 65% of the quoted market prices of the Company's common stock. The conversion options contained in the convertible notes were evaluated for derivative accounting (see Note 15). Aggregate amortization of the debt discounts and deferred financing costs on convertible debt for the year ended December 31, 2019 was \$2,731.

2018

During the year ended December 31, 2018, the Company entered into 39 convertible notes payable, borrowing an aggregate of \$17,307, net of original issuance discounts of \$1,556 and deferred financing costs of \$526. Additionally, as inducement, the Company issued a total of 198,746 shares of the Company's common stock valued at \$2,563. During the year ended December 31, 2018, the Company repaid \$5,231 of the convertible notes in cash and issued a total of 1,889,144 shares of the Company's common stock for the conversion of \$6,668 in convertible debt principal and \$242 in accrued interest.

As of December 31, 2018, the Company had 25 outstanding convertible notes payable totaling \$9,042, net of unamortized original issuance discounts and deferred financing

costs of \$4,544. The outstanding convertible notes of the Company are unsecured, bear interest between 4% and 12% per annum or require a one-time payment of 4% of principal in the form of shares of the Company's common stock. The convertible notes have original maturity terms between six months and one year and are convertible at variable rates between 50% and 75% of the quoted market price of the Company's common stock. All notes that contained convertible terms during the year ended December 31, 2018 were evaluated for derivative accounting (see Note 15). Aggregate amortization of the debt discounts and deferred financing costs on convertible debt for the year ended December 31, 2018 was \$17,304.

During February 2018, the Company entered into an amendment to extend two past due convertible promissory notes held by one holder with an outstanding principal balance of \$900. The amendment extended the maturity date and provided a conversion standstill for 72 days in exchange for a principal payment of \$150. During February 2018, the Company entered into a second amendment to the convertible promissory notes extending the maturity date another 89 days in exchange for imposing a floor price of no less than 50% of the closing trade price of the Company's common stock and a cash payment right to elect to pay conversion notices in cash, for a 10% cash payment premium.

During August 2018, the Company entered into a settlement agreement with a holder of a convertible promissory note in the amount of \$556, whereby, the Company agreed to a \$44 increase in the principal balance and allowing immediate conversion by the holder in the exchange for waivers of certain events of default and a leak-out provision, limiting the holder's sale of the Company's common stock to 10% of the average daily share trading volume. As a result of the modification, the Company recognized a derivative liability of \$99 as a result of the conversion allowance and a loss on debt modification of \$408.

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Outstanding convertible notes payable consist of the following at December 31, 2019 and 2018:

Name	December 31,	
	2019	2018
Note 1	\$ —	\$ 365
Note 2	2,449	800
Note 3	—	310
Note 4	—	211
Note 5	—	165
Note 6	—	263
Note 7	—	525
Note 8	—	315
Note 9	—	211
Note 10	—	660
Note 11	—	525
Note 12	1,698	525
Note 13	—	158
Note 14	—	130
Note 15	—	211
Note 16	—	100
Note 17	—	1,070
Note 18	—	1,070
Note 19	—	281
Note 20	—	168
Note 21	—	168
Note 22	—	281
Note 23	—	168
Note 24	—	321
Note 25	—	41
Total	4,147	9,042
Less: Unamortized discount	—	(4,544)
Net	\$ 4,147	\$ 4,498

NOTE 12: NOTES PAYABLE AND FINANCING LEASES

Benchmark Builders Seller Notes

On April 20, 2017, the Company issued Series A convertible promissory notes ("Series A Notes"), in the aggregate principal amount of \$12,500 to the Benchmark Sellers ("Benchmark Sellers"), which matured on April 20, 2019. These notes were convertible into conversion shares, at the holder's option, upon an event of default at a conversion price per share of \$11.88. Interest was computed at the rate of 5% percent per annum on the outstanding principal through July 2, 2019, when it was increased to 8% as discussed below. Interest expense was \$900 and \$695 for the year ended December 31, 2019 and 2018, respectively.

On April 20, 2017, the Company issued Series B Notes in the aggregate principal amount of \$30,000 to the Benchmark Sellers, which mature on April 20, 2020. Interest was computed at the rate of 3% per annum on the outstanding principal through July 2, 2019, when it was increased to 8% as discussed below. Interest expense was \$1,934 and \$929 for the years ended December 31, 2019 and 2018, respectively.

On April 20, 2017, the Company issued Series C Notes in the aggregate principal amount of \$7,500 to the Benchmark Sellers, which matured on October 20, 2018 and were repaid in full. Interest was computed at the rate of 3% per annum on the outstanding principal. Interest expense was \$138 for the year ended December 31, 2018.

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On February 12, 2019, in conjunction with the Amendment No. 4 of the Senior Credit Facility (see Note 13), the Company issued a promissory note to Fred Sacramone, a Benchmark Seller, for cash received in the principal amount of \$1,000 (the "Sacramone Bridge Note"), which note originally matured on March 31, 2019, incurred interest at 12% per annum and was unsecured. The default interest rate on the note was 15%, which began accruing April 1, 2019. As inducement, Mr. Sacramone was issued 356,513 shares of Common Stock valued at \$613, or \$1.72 per share, which was deferred and amortized to expense through the maturity date of March 31, 2019.

On July 2, 2019, in conjunction with the Amendment No. 5 of the Senior Credit Facility (see Note 13), the Series A Notes and Series B Notes were amended to extend the maturity dates to July 30, 2021 and change the interest rate to 8% per annum to be paid in kind until the borrowings under the Amended and Restated Credit Agreement were repaid in full. Additionally, the Sacramone Bridge Note was amended to extend the maturity date to September 30, 2020 to capitalize the accrued interest as of July 2, 2019 and to provide for monthly cash interest payments.

As consideration for amending and restating the Series A and Series B Notes, the Company entered into subscription agreements for 1,951 shares of the Company's Series A Preferred Stock and 296 shares of the Company's Series A-1 Preferred Stock (collectively, the "Series A Preferred"), which the Benchmark Sellers immediately exchanged,

pursuant to exchange agreements, for an aggregate of 100 shares of a new series of preferred stock, Series H Preferred Stock (See Note 19). The Series H Preferred Stock had no dividend rights, no liquidation preference, was not convertible and had perpetual voting rights equivalent to 51% of the total number of votes that could be cast by all outstanding shares of capital stock of the Company.

On October 10, 2019, as part of the Foreclosure Proposal (see Note 13) and pursuant to an Agreement Regarding Debt and Series H Preferred Stock (the "Debt and Series H Agreement") between the Company and the Benchmark Sellers. The Benchmark Sellers released the Company from (i) all obligations represented by the Sacramone Bridge Note, which had an outstanding amount equal to approximately \$1,097 and (ii) indebtedness represented by the Series B Notes in the amount of \$18,983. The remaining indebtedness was to be automatically released and discharged as of December 31, 2019 unless (i) on or before November 10, 2019, the Company entered into a business combination transaction that enabled the Company's common stock to remain listed on the NYSE American Exchange or any other U.S. national securities exchange and (ii) such business combination transaction was consummated on or before December 31, 2019 (such transaction, a "Qualified Business Combination"). Additionally, the Debt and Series H Agreement also required Benchmark Sellers to sell their shares of Series H Preferred Stock to the Company for a nominal price in the event an agreement for a Qualified Business Combination was entered into on or before November 10, 2019, and such Qualified Business Combination was consummated on or before December 31, 2019.

On November 8, 2019, the Company and Benchmark Sellers entered into an amendment to the Debt and Series H Agreement, pursuant to which the parties agreed to extend the date by which an agreement for a Qualified Business Combination must be entered into from November 10, 2019 to December 31, 2019 and to extend the date by which a Qualified Business Combination must close from December 31, 2019 to February 28, 2020.

On December 23, 2019, the Company entered into a separate agreement with Benchmark Sellers pursuant to which the Company repurchased all outstanding shares of its Series H Preferred Stock for \$1.00 per share, as a result of which no shares of Series H Preferred Stock remain outstanding at December 31, 2019.

The following is a summary of the balance of Benchmark Seller Notes as of December 31, 2019 and 2018:

	December 31	
	2019	2018
Series A Notes	\$ 14,506	\$ 13,603
Series B Notes	14,390	31,564
Total Benchmark Seller Notes	28,896	45,167
Less: discount on Benchmark Seller Notes	(3,847)	(2,617)
Benchmark Seller Notes, net of discount	25,049	42,550
Less: current portion	(25,049)	(13,397)
Total non-current Benchmark Seller Notes	<u>\$ —</u>	<u>\$ 29,153</u>

(See Note 22)

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During the years ended December 31, 2019 and 2018, the Company recognized \$2,415 and \$1,730 in interest expense and \$3,474 and 2,427 in amortization expense on debt discount and deferred finance costs on the Benchmark Seller Notes, respectively.

Promissory Notes and Other Notes Payable

Outstanding promissory and other notes payable consist of the following:

	December 31,	
	2019	2018
Notes payable bearing interest at stated rates between 4% and 12% per annum. Terms range from 3 to 36 months	\$ 2,941	\$ 3,019
Notes payable issued for settlement of convertible notes payable, payable in scheduled weekly and monthly payments including interest at rate between 0% and 23% over terms ranging from 10 – 17 months (See Note 10)	3,722	—
Notes payable, former related parties, past due, unsecured, accrue interest at 6% per annum (See Note 14)	379	379
Secured promissory notes payable assumed for the acquisition of assets (see Note 4), notes bear interest between 4% and 12.25%, are secured by certain assets of the Company and are due over terms ranging from 7 to 37 months	85,507	—
Obligations under former capital leases, bearing interest rates between 4.1% and 8.2% per annum, secured by equipment having a value that approximates the debt value.	—	320
Various equipment notes, bearing interest rates between 2% and 41% per annum, secured by equipment having a value that approximates the debt value. Terms range from 30 to 72 months	362	1,189
Total notes payable	92,911	4,907
Less: Original issue discount and deferred financing costs	(110)	—
Notes payable, net of original issue discount and deferred financing costs	92,801	4,907
Less: Current portion	(29,839)	(3,639)
Total notes payable, non-current portion	<u>\$ 62,962</u>	<u>\$ 1,268</u>

Fair Value of Debt

	December 31, 2019	
	Carrying Amount	Fair Value
Secured promissory notes	\$ 79,063	\$ 85,507

The Company used the market approach to value the secured promissory notes using the services of a third-party valuation specialists to determine the fair value of these debt instruments. Based on the assumptions used to value these liabilities at fair value, these debt instruments are categorized as Level 2 in the fair value hierarchy.

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Debt Maturities Schedule

The required principal payments for all borrowings for each of the five years following the balance sheet date are as follows:

2020	29,839
2021	59,361
2022	51
2023	3,550
2024	—
Thereafter	—
Total	<u>\$ 92,801</u>

During the years ended December 31, 2019 and 2018, the Company recognized \$1,315 and \$704 in interest expense and \$753 and \$0 in amortization expense on debt discount and deferred finance costs on notes payable, respectively, and have included \$571 and 84 in accrued expenses at December 31, 2019 and 2018, respectively.

NOTE 13. SENIOR DEBT

Credit Facility

On October 28, 2015, the Company entered into an \$8,000 senior credit facility (“Facility”). The Facility had a two-year term and provided for cash interest payments in the amount of 12%, paid quarterly in arrears and a PIK provision providing a 4% per annum increase in the principal balance monthly. The Facility was secured by all assets of the Company. As a condition of the Facility, the Company issued 163,441 shares of its Series D Preferred Stock and 391,903 shares of its Series F Preferred Stock to the lender.

On April 5, 2016, the Company entered into an amendment agreement to the Facility to include equity raises and changes to certain financial and operational covenants. On September 30, 2016, the Company entered into a second amendment agreement, amending certain covenants, consolidating a series of short-term bridge loans into a \$5,000 loan, with a maturity date of April 30, 2017 bearing interest at 12% and a PIK provision of 4% and issuing warrants to purchase 93,750 shares of the Company’s common stock at any time for five years at an initial exercise price of \$20 per share.

On April 20, 2017, as part of the Benchmark acquisition, the Facility was amended to provide for an additional \$11,480 of which approximately \$10,100 was applied to the cash purchase price and extended the maturity date of the Facility to March 31, 2019. We issued 256,801 shares of our common stock to the senior lender with a fair value of \$5,649 as a term of the amendment which were recorded as a debt discount.

Between April and December 2017, we borrowed an additional \$1,600 under the terms of the Facility and incurred extension fees and penalties totaling \$552 to extend the terms of the Facility to March 31, 2019, which was added to the principal amount of the Facility.

Between January and October 2018, the Company received total cash of \$4,536 for advances under the terms of the Facility due March 31, 2019, converted \$867 in accrued interest into principal and recognized a total of \$562 in debt discounts and \$30 in deferred finance costs.

On February 12, 2019, the Company entered into an Amendment No. 4 (“Amendment No. 4”) to the Facility to provide for an additional \$12,632 in funding, the “Super Senior Term Loans”. As part of Amendment No. 4, the Company issued 1,698,580 shares of its common stock to the lenders valued at \$2,922 and paid \$1,301 in fees to the lender. The Amendment No. 4 was recognized as a debt extinguishment, with the carrying value of the Facility being derecognized and recorded at fair value by present valuing the expected future cash flows discounted at the Company’s estimated effective borrowing rate as of the amendment date, resulting in the recognition of a loss on extinguishment of \$2,547 during the year ended December 31, 2019.

On July 2, 2019, the Company entered into Amendment No. 5 to the Facility (“Amendment No. 5”). Pursuant to Amendment No. 5, the Super Senior Term Loans were amended to: (i) extend the maturity to September 30, 2019; (ii) amend the interest rate to 12% per annum payable in cash; (iii) add a 4% extension fee to the principal amount; and (iv) provide for monthly amortization payments based on available cash flow. In addition, the existing term loans under the Credit Agreement, with an aggregate balance of approximately \$37,900 (“Existing Term Loans”) were amended to: (i) extend the maturity to April 30, 2021; (ii) amend the interest rate to 12% per annum payable in cash; (iii) add a 4% extension fee to the principal amount totaling \$2,114, which was added to the existing outstanding principal at the time of the amendment; and (iv) include monthly amortization payments based on available cash flow. In addition, accrued interest of \$2,234 on the existing Term Loans was converted into principal and accrued interest on the Super Senior Term Loans totaling \$592 was paid in cash. Amendment No. 5 was recognized as a troubled debt restructuring; however, no adjustment to the carrying amount of the existing Term Loans was required as total undiscounted future cash payments of the amended Term Loans exceeding the carrying amount of the existing Term Loans. Fees paid to the lenders, including common stock, warrants and the extension fees were capitalized and amortized over the remaining term of the Super Senior Term Loans through September 30, 2019.

As consideration for the Amended and Restated Credit Amendment, the Company issued to the Lenders 2,055,724 shares of its common stock valued at \$2,126 and warrants to purchase 3,173,730 shares of the Company’s common stock valued at \$2,705 with an initial exercise price of \$3.00 per share. Pursuant to the terms of the Warrants, in the event the Super Senior Term Loans were not paid and satisfied by October 31, 2019, the exercise per share of half of the Warrants would be automatically reset to \$0.01 and in the event the Super Senior Term Loans were not paid by December 31, 2019, the exercise per share of the other half of the Warrants would be automatically reset to \$0.01. The Company also agreed that on December 31, 2019, the aggregate number of shares of the Company’s common stock issuable upon exercise of the Warrants would be automatically adjusted such that Lateral and its affiliates would beneficially own, in the aggregate, inclusive of all shares of common stock previously issued, 25% of the outstanding shares of the Company’s common stock on a fully-diluted basis, subject to certain exceptions.

As additional consideration for the Amended and Restated Credit Agreement, the Company and Lateral entered into a registration rights agreement (the “Registration Rights Agreement”) whereby the Company agreed to register the common stock issued to Lateral. The Company and Lateral also entered into an investor rights agreement (the “Investor Rights Agreement”) whereby the Company agreed that within sixty days of its execution, the Company would set the number of directors on its Board of Directors at seven and Lateral would be entitled to nominate one of such seven directors.

Foreclosure Proposal

During July 2019, the Company was notified that judgments had been entered against the Company in favor of six holders of the Company’s convertible notes in the state of New York. Certain of these convertible noteholders sought to levy against the bank account of the Company’s former subsidiary, Benchmark, and filed an order directing the Company to turn over all Company’s assets. The Company’s failure to satisfy, vacate or stay these judgments constituted an event of default under the Credit Agreement. As a result, on October 10, 2019, the Company consented to the Foreclosure Proposal, the Foreclosing Lenders, pursuant to which the Lenders took possession and ownership of the Subject Collateral (see below) by means of a strict foreclosure by the Foreclosing Lenders.

On October 10, 2019, pursuant to the Foreclosure Proposal, the Company transferred: (i) to Benchmark Holdings all of its (a) equity interests in Benchmark, the Company’s principal operating subsidiary, and (b) cash on hand in excess of levels specified in the Foreclosure Proposal; and, (ii) to Lateral Recovery, all of the Credit Parties’ interests in certain commercial tort litigation claims, fraud claims, and insurance claims as specified in the Foreclosure Proposal. Accordingly, a total of \$56,156 in Lateral Existing Term Loan and Super Senior Term Loan principal and interest, as well as \$6,416 in unamortized deferred finance costs, was removed from the Company books.

Additional terms of the Foreclosure Proposal provided for: (i) the forgiveness of a note payable and accrued interest due to the Company’s former interim CEO totaling \$1,097; (ii) the forgiveness of \$18,993 in principal balance on a Series B Promissory Note issued as part of the acquisition of Benchmark in 2017; (iii) the transfer to Benchmark Holdings of a merchant credit agreement with a principal balance of \$1,143 and unamortized deferred finance costs of \$418; and, (iv) the transfer to Benchmark Holdings of a

promissory note with a balance of \$3,686 and unamortized deferred finance costs of \$1,374.

As a result of the above-mentioned Foreclosure Proposal actions, on October 10, 2019, the Company removed the above-mentioned debts and its investment in its wholly-owned subsidiary Benchmark of \$44,261 and recognized a gain on foreclosure of \$31,538 as part of discontinued operations.

As part of the Foreclosure Proposal, Benchmark Holdings agreed to provide working capital cash payments to the Company of \$3,000 on October 21, 2019 and monthly payments of \$300 per month. Benchmark Holdings made two monthly payments to the Company in 2019 totaling \$600. The above cash payments, as well as \$529 in additional freed up restricted cash due under the foreclosure agreement, were recorded as cash totaling \$4,129 for the year ended December 31, 2019. During January 2020, the Company entered into a note payable with Benchmark Builders for \$4,129 (see Note 22).

The following table summarizes the remaining balances on Senior debt as of:

	December 31,	
	2019	2018
Senior note payable	\$ —	\$ 36,441
Less: Original issue discount	—	(1,768)
Less: Deferred financing cost	—	(351)
Total Senior Debt	<u>\$ —</u>	<u>\$ 34,322</u>

During the years ended December 31, 2019 and 2018, the Company recognized \$6,937 and \$4,540 in original issuance discounts and deferred finance costs additions on related senior debt issuances and recognized \$5,753 and \$5,835 in amortization expense on the straight-line method over the term of the Facility, respectively, which approximates the effective interest method. The unamortized original issuance discount and deferred finance costs balance was \$0 and \$2,118 as of December 31, 2019 and 2018, respectively.

NOTE 14. RELATED PARTY

Rental Home Portfolio Asset Acquisition:

On December 30, 2019, as consideration for the Rental Home Portfolio Asset Acquisition, the Company agreed to issue 4,222,474 of the Company's common stock valued at \$15,385 and Series I, nonconvertible preferred stock valued at \$117,926 to the Szkaradeks'. (See Note 4).

The Company also issued two promissory notes, in the aggregate principal amount of \$9,750 to the Szkaradeks' which accrue interest at the rate of 8% per annum and mature on January 31, 2020 with a forbearance through January 1, 2021. (See Note 22).

As part of the Rental Home Portfolio Asset Acquisition, the Company assumed notes with a fair value totaling \$86,737, of which, \$1,230 were related party notes payable from the Szkaradeks'. (See Note 4).

The following is a summary of the balances of related party notes assumed in the acquisition of Rental Home Portfolio Asset Acquisition as of December 31, 2019

	December 31 2019
Promissory note payable to Alexander Szkaradek, assumed for the acquisition of the assets (see Note 4), bears interest at 8% and matures on January 31, 2020	\$ 4,875
Promissory note payable to Antoni Szkaradek, assumed for the acquisition of the assets (see Note 4), bears interest at 8% and matures on January 31, 2020	4,875
Alexander Szkaradek, unsecured borrowings due upon demand, no stated interest rate	600
Antoni Szkaradek, \$400 unsecured borrowings due upon demand, no stated interest rate and \$205 bearing interest at 8% and is due on January 1, 2021	605
Maria Szkaradek, bears interest at 8% and is due on June 30, 2021	25
Total notes payable, related party	10,980
Less: current portion	(10,750)
Total non-current notes, related party	<u>\$ 230</u>

The following is a summary of the fair value of the related party notes assumed in the acquisition of Rental Home Portfolio Asset Acquisition as of December 31, 2019.

	December 31, 2019	
	Carrying Amount	Fair Value
Secured promissory notes	\$ 1,221	\$ 1,230

The required principal payments for all borrowings for each of the five years following the balance sheet date are as follows:

2020	10,750
2021	230
2022	—
2023	—
Thereafter	—
Total	<u>\$ 10,980</u>

Benchmark Sellers

As of the October 10, 2019, the date of the senior lender foreclosure, the Benchmark Sellers were no longer considered to be related parties. (See Note 12).

On April 20, 2017, the Company issued Series A convertible promissory notes, in the aggregate principal amount of \$12,500 to the former owners of Benchmark and to significant shareholders of the Company, which matured on April 20, 2019. Interest is computed at the rate of 5% percent per annum on the outstanding principal. Interest expense was \$695 for the year ended December 31, 2018. These notes shall be convertible into conversion shares, at the holder's option, upon an event of default at a conversion price per share of \$11.88.

On April 20, 2017, the Company issued Series B Notes in the aggregate principal amount of \$30,000 to the former owners of Benchmark and to significant shareholders of the Company, which mature on April 20, 2020. Interest is computed at the rate of 3% per annum on the outstanding principal. Interest expense was \$929 for the year ended December 31, 2018.

On April 20, 2017, the Company issued Series C Notes in the aggregate principal amount of \$7,500 to the former owners of Benchmark and to significant shareholders of the Company, which matured on October 20, 2018. Interest is computed at the rate of 3% per annum on the outstanding principal. Interest expense was \$138 for the year ended December 31, 2018.

The following is a summary of the balance of related party notes as of December 31, 2018:

	December 31, 2018
Series A notes	\$ 13,603
Series B notes	31,564
Total notes payable, related party	45,167
Less: discount on notes payable, related party	(2,617)
Notes payable, net of discount	42,550
Less: current portion	(13,379)
Total non-current notes, related party	\$ 29,153

During October 2018, the Company paid the remaining principal and accumulated in-kind interest balance totaling \$4,891 on its Series C Notes in the aggregate principal amount of \$7,500 to the former owners of Benchmark.

Note 15. FAIR VALUE MEASUREMENTS

In accordance with ASC 820, the Company uses various inputs to measure the outstanding warrants and certain embedded conversion feature associated with convertible debt on a recurring basis to determine the fair value of the liability. ASC 820 also establishes a hierarchy categorizing inputs into three levels used to measure and disclose fair value. The hierarchy gives the highest priority to quoted prices available in active markets and the lowest priority to unobservable inputs. An explanation of each level in the hierarchy is described below:

Level 1 – Unadjusted quoted prices in active markets for identical instruments that are accessible by the Company on the measurement date

Level 2 – Quoted prices in markets that are not active or inputs which are either directly or indirectly observable

Level 3 – Unobservable inputs for the instrument requiring the development of assumptions by the Company

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The following table classifies the Company's liabilities measured at fair value on a recurring basis into the fair value hierarchy as of December 31, 2019 and 2018:

	December 31, 2019			
	Fair value at December 31, 2019	Quoted prices in active markets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
Secured promissory notes	\$ 85,507	\$ —	\$ 85,507	\$ —
Secured promissory notes, related party	1,230	—	1,230	—
Warrant derivative liability	6,689	—	—	6,689
Debt derivative liability	4,169	—	—	4,169
Total fair value	\$ 97,595	\$ —	\$ 86,737	\$ 10,858

	December 31, 2018			
	Fair value at December 31, 2018	Quoted prices in active markets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
Warrant derivative liability	\$ 3,558	\$ —	\$ —	\$ 3,558
Debt derivative liability	8,038	—	—	8,038
Total fair value	\$ 11,596	\$ —	\$ —	\$ 11,596

There were no transfers between Level 1, 2 or 3 during the years ended December 31, 2019 and 2018.

The following table presents changes in Level 3 liabilities measured at fair value for the years ended December 31, 2019 and 2018. Both observable and unobservable inputs were used to determine the fair value of positions that the Company has classified within the Level 3 category. Unrealized gains and losses associated with liabilities within the Level 3 category include changes in fair value that were attributable to both observable (e.g., changes in market interest rates) and unobservable (e.g., changes in unobservable long-dated volatilities) inputs.

	Warrant Liability	Debt Derivative Liability	Total
Balance – December 31, 2017	\$ 16,492	\$ 48,195	\$ 64,687
Additional derivative liability from issuance of convertible notes	—	17,882	17,882
Extinguishment of warrant liabilities related to warrants exercise	(1,256)	—	(1,256)
Extinguishment of derivative liabilities related to debt conversion and repayment	—	(40,862)	(40,862)
Change in fair value	(11,678)	(17,177)	(28,855)
Balance – December 31, 2018	3,558	8,038	11,596
Additional derivative liability from issuance of convertible notes	—	523	523

Extension of derivative liability	—	1,955	1,955
Additional derivative warrant liabilities related to issuance of warrants	2,705	—	2,705
Extinguishment of derivative liabilities related to debt conversion and repayment	—	(2,932)	(2,2,932)
Gain on troubled debt restructuring	—	(5,016)	5,016
Change in fair value	426	1,601	2,027
Balance – December 31, 2019	<u>6,689</u>	<u>4,169</u>	<u>10,858</u>

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A summary of the weighted average (in aggregate) significant unobservable inputs (Level 3 inputs) used in measuring the Company's warrant liabilities and embedded conversion feature that are categorized within Level 3 of the fair value hierarchy as of December 31, 2019 and 2018 is as follows:

	As of December 31, 2019		As of December 31, 2018	
	Warrant Liability	Embedded Conversion Feature	Warrant Liability	Embedded Conversion Feature
Strike price	\$ 4.76	\$ 2.85	\$ 7.80	\$ 2.61
Contractual term (years)	3.3	1.5	2.7	0.6
Volatility (annual)	152.2%	127.7%	91.2%	91.2%
Risk-free rate	1.6%	1.5%	2.24%	2.36%
Dividend yield (per share)	0%	0%	0%	0%

NOTE 16. BENEFIT PLANS

Defined Contribution Plan

The Company has a defined contribution plan covering all full-time employees qualified under Section 401(k) of the Internal Revenue Code, in which the Company matches a portion of an employee's salary deferral. The Company's contributions to this plan were \$128 and \$78, for the years ended December 31, 2019 and 2018, respectively.

NOTE 17. COMMITMENTS AND CONTINGENCIES

Legal Matters

The Company is involved in litigation claims arising in the ordinary course of business. Legal fees and other costs associated with such actions are expensed as incurred. In addition, the Company assesses, in conjunction with its legal counsel, the need to record a liability for litigation and contingencies. The Company reserves for costs relating to these matters when a loss is probable, and the amount can be reasonably estimated.

On May 10, 2018, Vista Capital Investments, LLC ("Vista") filed suit against the Company for breach of contract and breach of the implied covenant of good faith and fair dealing arising out of a securities purchase agreement and a convertible note in the principal amount of \$275 in the Superior Court of California for the county of San Diego. Vista alleges damages in excess of \$9,000 stemming from the Company's purported dilutive issuances of Company common stock. Vista was the holder of a convertible note for which there was no prior Board authorization (See Note 2). The Company and Vista reached a tentative settlement framework (subject to final documentation), following which the court dismissed this matter without prejudice.

On March 28, 2019, the Company obtained a temporary restraining order against Nevada Agency and Transfer Company ("NATCO") in the Second Judicial District Court for the State of Nevada, enjoining NATCO, the Company's transfer agent, from processing or issuing any conversion requests submitted on behalf of convertible noteholders whose notes were determined to have been issued without requisite Board approval (See Item 1, Recent Developments "Internal Investigation"). The Company obtained a preliminary injunction on April 11, 2019 and filed an amended complaint on January 23, 2020 adding Michael Palleschi (the Company's former CEO) and certain related parties as defendants, seeking (among other damages) a declaratory judgment that the shares of Company stock issued to Mr. Palleschi and related parties were unauthorized and to compel the return of these shares to the Company's authorized capital stock. The matter remains pending in Nevada and has been delayed as a result of COVID-19.

On April 11, 2019, the Company received a demand for arbitration, which was filed with the American Arbitration Association (AAA), Case No. 01-19-0001-0962, on behalf of Michael Palleschi, the Company's former CEO, alleging a breach of his employment agreement and seeking \$11,300 in damages. The Company has asserted counterclaims and affirmative defenses to Mr. Palleschi's claims and intends to vigorously defend this matter. Discovery is pending. This matter has been placed in abeyance, to be reopened upon motion and payment of panel deposit.

On June 26, 2019, Efraim Barenbaum filed a shareholder derivative suit in the United States District Court for the Southern District of New York against certain of the Company's former directors and executive officers, alleging claims for breaches of fiduciary duties, unjust enrichment, waste, and violations of Section 14 of the Securities Exchange Act of 1934. The Company was named as a nominal defendant only. The Company filed a motion to dismiss the complaint on September 23, 2019. In response to the motion, the plaintiff filed an amended complaint on November 1, 2019, but the causes of action remained equally deficient. Having found the claims in the amended complaint also to be baseless, the Company filed a motion to dismiss that pleading as well on January 27, 2020. Motion practice is ongoing. On September 30, 2020, the court dismissed the plaintiff's complaint with prejudice.

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On August 17, 2019, Auctus Fund, LLC ("Auctus") filed suit against the Company alleging, among other things, breach of contract and violations of state and federal securities laws, arising out of a securities purchase agreement and a convertible note in the principal amount of \$525. Auctus is the holder of a convertible note for which there was no prior Board authorization. The Company denies any alleged wrongdoing and intends to vigorously defend against these claims. The matter is pending in the United States District Court for the District of Massachusetts. The parties are presently engaged in settlement discussions.

On November 5, 2019, St. George Investments LLC ("St. George") filed suit against the Company in the Third Judicial District Court for Salt Lake County in the state of Utah to compel arbitration, alleging, among other things, breach of contract arising out of a securities purchase agreement and convertible note in the principal amount of \$2,315. St. George is the holder of a convertible note for which there was no prior Board authorization. The Company is vigorously defending its interests in this matter. On June 4, 2020, the Company learned that the arbitrator, following a hearing on St. George's motion for partial summary judgment, granted St. George's motion and requested relief of approximately \$2.7 million. The Company believes the arbitrator's decision is inconsistent with the underlying facts and applicable law and has filed papers to vacate the arbitration award, among other relief. There has been no decision rendered on the briefs and the matter remains pending.

On November 26, 2019, David Lethem, the Company's former CFO, filed a complaint against the Company in the 20th Judicial Circuit Court for Lee county in the State of Florida for breach of contract arising out of a transition, separation and general release agreement. The Company filed a counterclaim to rescind the agreement based on fraudulent inducement. Discovery is ongoing in this case and the Company continues to vigorously defend its interests in this matter.

On January 3, 2020, CBRE, Inc. ("CBRE") filed suit against the Company's subsidiary, CrossLayer, Inc., for breach of contract arising out of a program participation agreement

in the Superior Court of the state of Delaware. CBRE is alleging damages of \$1,333. The Company considers CBRE's claims to be without merit and has engaged counsel who is vigorously disputing this matter. On April 29, 2020, CBRE filed a notice of voluntary dismissal without prejudice. This matter is, effectively, closed.

On June 5, 2020, certain former directors of the Company (Christopher Ferguson, Luisa Ingargiola, Brad Mitchell, and Patrick O'Hare) filed suit against the Company in the District Court for Clark County in the State of Nevada to recover indemnification costs arising out of indemnification agreements. The Company denies any alleged wrongdoing and is defending its interests in this matter. The Company continues to assess and discuss terms of a possible settlement.

On September 29, 2020, a class action lawsuit was filed in the United States District Court for the Eastern District of Michigan against Vision Property Management, LLC and related entities, including the Company and US Home Rentals LLC, as successor defendants, in connection with claims arising out of various regulations, including the Fair Housing Act, the Michigan Consumer Protection Act, and the Truth in Lending Act. The Company is evaluating this action and intends to vigorously defend its interests in this matter.

Additionally, there are legal proceedings arising out of the legacy Vision business that implicate certain of our existing rental properties. Most of these matters have either settled or are close to settling based on an agreed upon settlement structure. The Company has accrued \$1,240 in legal settlement expense in its Consolidated Balance Sheets as part of its current liabilities and on its Statement of Operations as part of its general and administrative total.

NOTE 18. INCOME TAXES

The Company is required to file a consolidated U.S. federal income tax return and various state tax returns.

The Company has accumulated net losses for the past two years and has not recorded an income tax provision or benefit from continuing operations during the years ended December 31, 2019 and 2018.

Deferred income taxes reflect the net effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. The Company's deferred tax assets relate primarily to its net operating loss carryforwards and other balance sheet basis differences. In accordance with ASC 740, "Income Taxes," the Company recorded a valuation allowance to fully offset the gross deferred tax asset, because it is not more likely than not that the Company will realize future benefits associated with these deferred tax assets at December 31, 2019 and 2018.

At December 31, 2019 and 2018, the Company had net deferred tax assets from continuing operations of \$52,252 and \$41,121, respectively, against which a full valuation allowance of \$52,252 and \$41,121, respectively, had been recorded. The change in the valuation allowance for the year ended December 31, 2019 was an increase of \$11,131. The increase in the valuation allowance for the year ended December 31, 2019 was mainly attributable to the net operating losses. The increase in the valuation allowance for the year ended December 31, 2018 was mainly attributable to increases in net operating losses and accrued liabilities.

The Company recorded a deferred tax liability of \$1,641 as of December 31, 2018, related to the acquisition of Benchmark Builders, Inc. This deferred tax liability was recorded to account for the book vs. tax basis difference related to the goodwill intangible asset, which was recorded in connection with the acquisition. This deferred tax liability was excluded from sources of future taxable income, as the timing of its reversal cannot be predicted due to the indefinite life of the goodwill. As such, this deferred tax liability cannot be used to offset the valuation allowance. This deferred tax liability is recorded in Liabilities of discontinued operation on the Consolidated Balance Sheets as of December 31, 2018 and has been disposed of as of December 31, 2019.

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Significant components of the Company's deferred tax assets at December 31, 2019 and 2018 are as follows:

	December 31,	
	2019	2018
Deferred tax assets:		
Net operating loss carryforwards	\$ 48,121	\$ 39,996
Interest expense limitation	4,394	1,983
Accrued liabilities	2,126	1,442
Stock-based compensation	1,740	1,395
Intangible assets	96	1,201
Reserves	17	95
Gross deferred tax assets	56,494	46,112
Valuation allowance	(52,252)	(41,121)
Gross deferred tax assets after valuation allowance	4,242	4,991
Deferred tax liability – unrealized gains	(4,185)	(4,557)
Deferred tax liability – property and equipment	(57)	(434)
Net deferred tax liability	\$ —	\$ —

A reconciliation of the federal statutory tax rate and the effective tax rates from continuing operations for the years ended December 31, 2019 and 2018 is as follows:

	December 31,	
	2019	2018
U.S federal statutory rate	21.0%	21.0%
State income taxes, net of federal benefit	1.1%	6.5%
Nondeductible – meals & entertainment	—%	(0.1)%
Warrant derivative gains or losses	0.1%	3.7%
Change in valuation allowance	(22.2)%	(29.7)%
Other	—%	(1.4)%
Effective tax rate	—%	—%

The Company had approximately \$206,650 and \$166,300 of available gross net operating loss ("NOL") carryforwards (federal and state) as of December 31, 2019 and 2018, respectively, which begin to expire in 2023. However, the Company has not yet filed its tax returns for its fiscal years ended September 30, 2013, September 30, 2014, September 30, 2015, September 30, 2016, December 31, 2016, December 31, 2018 or December 31, 2019. Therefore, the Company's NOLs will not be available to offset future taxable income, if any, until the returns are filed.

Sections 382 and 383 of the Internal Revenue Code, and similar state regulations, contain provisions that may limit the NOL carryforwards available to be used to offset income in any given year upon the occurrence of certain events, including changes in the ownership interests of significant stockholders. In the event of a cumulative change in ownership in excess of 50% over a three-year period, the amount of the NOL carryforwards that the Company may utilize in any one year may be limited. Beacon had generated approximately \$25,000 of NOLs prior to the Beacon Merger, which the Company's preliminary analysis indicates would be subject to significant limitations pursuant

to Internal Revenue Code Section 382, such that no deferred tax asset has been reflected herein related to the Beacon NOLs.

The Company has not yet assessed whether an ownership change under Section 382 occurred during the years ended December 31, 2019 and 2018. If an ownership change occurred, there is a potential that a portion of the Company's NOLs could be limited. However, since there is a full valuation allowance offsetting the deferred tax asset related to the NOL, a limitation should not have a material impact on the Company's financial statements. The Company will continue to monitor its ownership changes for purposes of Section 382.

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During the period of September 30, 2014 through December 31, 2017, the Company operated primarily in Florida, Indiana, Nevada, North Carolina, Colorado, Texas, Iowa, Washington, Missouri, Georgia, and New York. If the Company is required to pay income taxes or penalties in the future, penalties will be recorded in general and administrative expenses and interest will be separately stated as interest expense. The Company has not yet filed its tax returns for its fiscal years ended September 30, 2012, September 30, 2013, September 30, 2014, September 30, 2015, September 30, 2016, December 31, 2016, December 31, 2018 or December 31, 2019, but has engaged an accounting firm to begin to compile the past due returns. The Company's tax returns for the periods from October 1, 2012 through December 31, 2019 remain subject to examination and may be subject to penalties for late filing.

The Company does not have any uncertain tax positions for which it is reasonably possible that the total amount of gross unrecognized tax benefits will increase or decrease within 12 months as of December 31, 2019. The unrecognized tax benefits may increase or change during the next year for items that arise in the ordinary course of business.

NOTE 19. STOCKHOLDERS' EQUITY

Authorized Capital

The Company is currently authorized to issue up to 100,000,000 shares of common stock, par value \$0.001 per share, and 5,000,000 shares of convertible preferred stock, par value \$0.01 per share, of which the following series have been designated: 4,500 shares of Series A, 1,000 shares of Series A-1, 1,780 shares of Series G, 100 shares of Series H and 2,000 shares of Series I.

Common Stock

The Company is presently authorized to issue up to 100,000,000 shares of common stock, \$0.001 par value per share, of which 21,218,464 and 12,286,847 shares of common stock were issued and outstanding as of December 31, 2019 and 2018, respectively. The holders of the Company's common stock are entitled to receive dividends equally when, as and if declared by the Board of Directors, out of funds legally available.

The holders of the Company's common stock have sole voting rights, one vote for each share held of record, and are entitled upon liquidation of the Company to share ratably in the net assets of the Company available for distribution after payment of all obligations of the Company and after provision has been made with respect to each class of stock, if any, having preference over the common stock, currently including the Company's preferred stock. The shares of common stock are not redeemable and have no preemptive or similar rights.

Equity Transactions (in whole dollars)

2019

Investors

During the year ended December 31, 2019, the Company issued 160,000 shares of common stock to individual investors. Net proceeds of \$1,280,000 were received by the Company during 2018 and the unissued shares were recorded in the Consolidated Balance Sheet as Shares to be Issued until the shares of common stock were issued in 2019.

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Share-Based Compensation

During the year ended December 31, 2019, the Company issued shares 62,839 of common stock with a fair value of \$218,052 to employees.

Board of Directors

During the year ended December 31, 2019, the Company issued 250,000 shares of common stock with a fair value of \$247,500 as settlement with our former board of directors.

Senior Lender

During the year ended December 31, 2019, the Company issued 1,698,580 shares of common stock with a fair value of \$2,921,557 to its Senior Lender in accordance with Amendment No. 4 to the Lateral Credit Agreement dated February 12, 2019.

During the year ended December 31, 2019, the Company issued 1,500,000 shares of common stock with a fair value of \$1,590,000 to its Senior Lender in accordance with the Lateral Credit Agreement dated July 2, 2019.

Board of Directors

During the year ended December 31, 2019, the Company issued 356,513 shares of common stock with a market value of \$613,202 to a member of the Board of Directors who was also an employee for providing the Company with \$1,000,000 bridge note on February 12, 2019.

Other

During the year ended December 31, 2019, the Company issued 1,005,751 shares of common stock with a fair value of \$1,961,214 to an affiliate of the Senior Lender to co-guarantee on a term note issued on February 20, 2019.

During the year ended December 31, 2019, the Company issued 505,724 shares of common stock with a fair value of \$536,067 to an affiliate of its Senior Lender in connection with the extension of additional credit under the Lateral Credit Agreement dated July 2, 2019.

Convertible Notes – Conversions, Inducements and Related Costs

During the year ended December 31, 2019, the Company issued 35,056 shares of common stock with a fair value of \$93,788 for inducement shares to certain convertible note

holders.

During the year ended December 31, 2019, the Company issued 3,123,548 shares of common stock with a fair value of \$6,786,311 for conversion shares to certain convertible note holders.

During the year ended December 31, 2019, the Company issued 353,202 shares of common stock with a market value of \$155,754 in accordance with certain Settlement Agreements made with certain of the convertible note holders.

Shares Returned

During the year ended December 31, 2019, 119,593 shares of its common stock were returned to the Company from an employee as a term of a separation agreement.

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Settlement of Legal Matters

During the year ended December 31, 2018, the Company issued 58,083 shares of its common stock with a fair value of \$552,962 for settlement of legal matters.

Investors

During the year ended December 31, 2018, the Company issued 902,784 shares of its common stock to individual investors, which resulted in net proceeds to the Company of \$6,232,273.

Consultants

During the year ended December 31, 2018, the Company issued 810,106 shares of its common stock with a fair value of \$8,686,205 pursuant to consulting agreements.

Share-Based Compensation

During the year ended December 31, 2018, the Company issued 1,328,663 shares of common stock with a fair value of \$16,606,729 to employees.

Board of Directors

During the year ended December 31, 2018, the Company issued 33,000 shares of its common stock with a fair value of \$532,680 to certain board of directors.

Senior Lender

During the year ended December 31, 2018, the Company issued 854,599 shares of its common stock with a fair value of \$1,096,575 to its Senior Lender.

Settlement of Debt and Related Costs

During the year ended December 31, 2018, the Company issued 40,000 shares of its common stock with a fair value of \$919,200 to settle debt having an approximate value \$314.

Convertible Notes – Conversions, Inducements and Related Costs

During the year ended December 31, 2018, the Company issued 1,901,520 shares of its common stock with a fair value of \$16,338,223 to its convertible note holders upon conversion of outstanding convertible notes to common shares.

During the year ended December 31, 2018, the Company issued 199,376 shares of its common stock with a fair value of \$2,156,227 to its convertible note holders as an inducement upon the funding of the respective convertible note.

During the year ended December 31, 2018, the Company issued 11,519 shares of its common stock with a fair value of \$18,923 to its convertible note holders as certain financing, settlement and prepayment costs.

Exercise of Warrant Shares

During the year ended December 31, 2018, the Company issued 429,027 shares of its common stock with a fair value of \$1,818,700 for the exercise of warrant shares.

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Shares Returned

During the year ended December 31, 2018, 80,114 shares of its common stock was returned to the Company with a fair value of \$74,990.

Shares to be issued

During the year ended December 31, 2019, the Company acquired the assets of USHR, as part of the Rental Home Portfolio Asset Acquisition, 4,222,474 shares of common stock with a market value of \$15,384,954 are to be issued to the seller. As of December 31, 2019, the fair value of the shares to issued is recorded as Shares to be Issued on the consolidated balance sheet.

Preferred Stock

The Company is authorized to issue a total of 5,000,000 shares of convertible preferred stock with such designations, rights, preferences and/or limitations as may be determined by the Board, and as expressed in a resolution thereof.

The following table presents the convertible preferred stock activity for the years ended December 31, 2019 and 2018.

Series A		Series A-1		Series G		Series H		Preferred Stock	
Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount

Balance, December 31, 2017	500	\$ —	295	\$ —	1,780	\$ —	—	\$ —	2,575	\$ —
Exchange to common shares	—	—	—	—	(1,780)	—	—	—	(1,780)	—
Balance, December 31, 2018	500	\$ —	295	\$ —	—	\$ —	—	\$ —	795	\$ —
Issuance of Series A and A-1	1,951	—	296	—	—	—	—	—	2,247	—
Exchange of Series A and Series A-1 to Series H	(1,951)	—	(296)	—	—	—	100	—	(2,147)	—
Repurchase of Series H	—	—	—	—	—	—	(100)	—	(100)	—
Balance, December 31, 2019	500	\$ —	295	\$ —	—	\$ —	—	\$ —	795	\$ —

Dividend charges recorded during the years ended December 31, 2019 and 2018 are as follows:

Series	December 31,	
	2019	2018
A	\$ 50	\$ 50
A-1	30	30
Total	\$ 80	\$ 80

Accrued dividends payable in accrued expenses at December 31, 2019 and 2018 are as follows:

Series	December 31,	
	2019	2018
A	\$ 460	\$ 410
A-1	310	280
Total	\$ 770	\$ 690

Series A and Series A-1 Convertible Preferred Stock

The Company has designated 4,500 shares of Series A Convertible Preferred Stock (“Series A”) and 1,000 shares of Series A-1 Convertible Preferred Stock (“Series A-1”), of which 500 and 295 shares, respectively, are currently issued and outstanding. Holders of the Series A and Series A-1 are entitled to receive contractual cumulative dividends in preference to any dividend on the common stock at the rate of 10% per annum on the initial investment amount commencing on the date of issue. Such dividends are payable on January 1, April 1, July 1 and October 1 of each year, upon the declaration of payment by the Board of Directors.

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The Series A and Series A-1 shares also contain a right of redemption in the event of liquidation or a change in control. The redemption feature provides for payment of a liquidation fee of 110% of the face value of the Series A shares and 125% of the face value of the series A-1 shares plus any accrued unpaid dividends in the event of bankruptcy, change of control, or any actions to take the Company private.

On July 2, 2019, as consideration for amending and restating the Benchmark Notes, the Company entered into subscription agreements (the “Subscription Agreements”) pursuant to which it issued to Benchmark Sellers an aggregate of 1,951 shares of the Company’s Series A Preferred Stock and 296 shares of the Company’s Series A-1 Preferred Stock (collectively, the “Series A Preferred”), which the Benchmark Sellers immediately exchanged, pursuant to exchange agreements, for an aggregate of 100 shares of a new series of preferred stock (Series H Preferred).

During the years ended December 31, 2019 and 2018, the Company accrued \$80 and \$80 of preferred stock dividends, respectively.

Series G Convertible Preferred Stock

The Board of Directors of the Company authorized the designation of a new series of preferred stock, the Series G Convertible Preferred Stock (“Series G”), out of its available “blank check preferred stock” and authorized the issuance of up to 1,780. A Certificate of Designation was filed with the Secretary of State of the State of Nevada on December 4, 2017. Series G had various rights, privileges and preferences, including conversion into 100 shares of Common Stock (subject to adjustments) upon the filing of an amendment to the Company’s Articles of Incorporation incorporating a reverse stock split Series G rights are junior and subordinate to any shares of Preferred Stock issued prior to its issuance.

On September 13, 2018, 1,780 shares of the Series G were converted into 178,000 shares of the Company’s common stock. No shares of Series G were issued and outstanding as of December 31, 2019 and 2018, respectively.

Series H Convertible Preferred Stock

The Board of Directors of the Company authorized the designation of a new series of preferred stock, the Series H Convertible Preferred Stock (“Series H”), out of its available “blank check preferred stock” and authorized the issuance of up to 100 shares. A Certificate of Designation was filed with the Secretary of the State of Nevada on June 28, 2019. Series H had no dividend rights, no liquidation preference, was not convertible and had perpetual voting rights equivalent to 51% of the total number of votes that could be cast by all outstanding shares of capital stock of the Company. On December 23, 2019, the Company entered into a Preferred Stock Repurchase Agreement (“Repurchase Agreement”) with the Benchmarks Sellers in which the Company repurchased 100 shares of the Series H for an aggregate price of \$100, the 100 shares represented all of the issued and outstanding shares of Series H. No shares of Series H were issued and outstanding as of December 31, 2019.

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Series I Preferred Stock

The Board of Directors of the Company authorized the designation of a new series of preferred stock, the Series I Preferred Stock (“Series I”), out of its available “blank check preferred stock” and authorized the issuance of up to 2,000 shares of the Series I. A Certificate of Designation was filed with the Secretary of the State of Nevada on December 19, 2019. Series I has no voting rights, no conversion rights, is not entitled to dividends paid on Common Stock, in the event of liquidation the holders Series I Preferred Shares by reason of their ownership are eligible to receive \$100 per share after payment is made to Senior Securities but before any payment is made to holders of Common Stock. There were 2,000 shares of Series I shares issued during 2019 as part of the Rental Home Portfolio Asset Acquisition (See Note 4).

NOTE 20. STOCK-BASED AWARDS

Stock Options

Stock options are granted at exercise prices equal to the fair value of the Company's common stock at the date of grant. The options typically vest over a three-year period and each option, if not exercised or terminated, expires on the seventh anniversary of the grant date.

The Company estimates the grant date fair value of the stock options it grants using the Black-Scholes option pricing model. The Company's assumption for expected volatility is based on its historical volatility data related to market trading of its own common stock. The Company bases its assumptions for expected life of the new stock option grants on the life of the option granted, and if relevant, its analysis of the historical exercise patterns of its stock options. The dividend yield assumption is based on dividends expected to be paid over the expected life of the stock option. The risk-free interest rate assumption is determined by using the U.S. Treasury rates of the same period as the expected option term of each stock option.

The fair value of the options granted during the years ended December 31, 2019 and 2018 was determined using the following assumptions:

	For the year ended December 31,	
	2019*	2018
Stock option assumptions:		
Risk-free interest rate	—%	2.41%
Expected life (years)	—	10
Expected volatility	—%	328%
Expected dividends	0%	0%

*No options were issued during the year ended December 31, 2019.

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The following tables provide information about outstanding options for the years ended December 31, 2019 and 2018:

	Stock Options			
	Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life(In years)	Intrinsic Value (In thousands)
Outstanding as of December 31, 2017	94,666	16.55	9.57	64
Granted	250,000	15.84	—	—
Options exercised	—	—	—	—
Forfeited	(2,573)	8.75	—	—
Outstanding as of December 31, 2018	342,093	15.79	9.17	—
Granted	—	—	—	—
Options exercised	—	—	—	—
Forfeited	(1,705)	8.75	—	—
Outstanding as of December 31, 2019	340,388	15.82	8.17	—
Exercisable options as of December 31, 2019	188,816	\$ 15.96	8.12	—

Stock compensation expense related to the options totaled approximately \$1,162 and \$1,808 for the years ended December 31, 2019 and 2018, respectively.

At December 31, 2019 and 2018, the Company had unrecognized compensation expense related to stock options, of \$1,523 and \$2,692, respectively. This expense will be recognized over a weighted-average number of years of 1.1 years, based on the average remaining service periods for the awards.

The aggregate intrinsic values presented above represent the total pre-tax intrinsic values (the difference between the Company's closing stock price of \$-0- and \$2.34 on the last trading day of 2019 and 2018, respectively, and the exercise price, multiplied by the number of in-the-money options) that would have been received by the option holders had all option holders exercised their options on the last trading day during 2019 and 2018. The amount of aggregate intrinsic value will change based on the price of the Company's Common Stock.

The weighted average grant date fair value per share of Company's stock options granted during the years ended December 31, 2019 and 2018 was \$-0- and \$15.84, respectively. The total fair value of options vested during the years ended December 31, 2019 and 2018 was \$1,169 and \$1,276, respectively.

As of December 31, 2019, there were 2,659,612 common shares available for issuance under the 2017 Plan.

Warrants

The Company accounts for common stock warrants as either equity instruments or derivative liabilities depending on the specific terms of the warrant agreement. Stock warrants are accounted for as derivative liabilities if the warrants allow for cash settlement or provide for modification of the warrant exercise price in the event subsequent sales of common stock by the Company are at a lower price per share than the then-current warrant exercise price. The Company classifies derivative warrant liabilities on the balance sheet at fair value and changes in the fair value during the periods presented in the statement of operations, which is revalued at each balance sheet date subsequent to the initial issuance of the stock warrant.

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All warrants outstanding as of December 31, 2019 were exercisable. The following table shows exercise prices and expiration dates for warrants outstanding as of December 31, 2019:

Issued to	Amount	Issue Date	Expiration Date	Exercise Price
Investment Bank	97	10/31/2014	10/31/2021	\$ 5.00
Equity Investors	60	9/1/2016	9/1/2021	\$ 10.00
Equity Investors	6	3/29/2017	3/29/2022	\$ 10.00
	99	9/8/2016	9/8/2021	\$ 20.00
Equity Investors	97	9/29/2016	9/29/2021	\$ 20.00
Equity Investors	104	10/12/2016	10/12/2021	\$ 20.00
Term Note Lender (1)	94	9/30/2016	9/30/2021	\$ 20.00

Term Note Lender (1)	100	11/11/2016	11/11/2021	\$	10.00
Term Note Lender (1)	150	12/23/2016	12/23/2021	\$	10.00
Convertible Note Holder (1)	5	1/17/2017	1/17/2020	\$	62.50
Convertible Note Holder (1)	5	1/18/2017	1/18/2020	\$	62.50
Convertible Note Holder (1)	4	2/17/2017	2/17/2020	\$	62.50
Convertible Note Holder (5)	4	2/17/2017	2/17/2020	\$	62.50
Convertible Note Holder (1)	5	2/23/2017	2/23/2020	\$	62.50
Term Note Lender (1)	150	3/28/2017	3/28/2022	\$	10.00
Convertible Note Holder (1)	5	5/19/2017	5/19/2020	\$	62.50
Convertible Note Holder (1)	4	5/17/2017	5/17/2020	\$	62.50
Convertible Note Holder (1)	4	5/17/2017	5/17/2020	\$	62.50
Convertible Note Holder (1)	125	6/1/2017	6/30/2022	\$	25.00
Convertible Note Holder (1)	160	6/2/2017	6/30/2020	\$	62.50
Convertible Note Holder (1)	483	6/8/2017	6/30/2020	\$	62.50
Convertible Note Holder (1)	2	6/21/2017	6/21/2020	\$	62.50
Convertible Note Holder (1)	3	6/21/2017	6/21/2020	\$	62.50
Convertible Note Holder (1)	3	6/21/2017	6/21/2020	\$	62.50
Convertible Note Holder (1)	11	8/2/2017	8/2/2020	\$	62.50
Convertible Note Holder (1)	11	8/2/2017	8/2/2020	\$	62.50
Convertible Note Holder (1)	2	8/14/2017	8/14/2020	\$	62.50
Convertible Note Holder (1)	2	8/14/2017	8/14/2020	\$	62.50
Equity Investor	14	8/27/2017	8/27/2020	\$	16.50
Term Note Lender (1)	20	11/8/2017	11/8/2022	\$	10.00
Term Note Lender (1)	140	11/8/2017	11/8/2022	\$	10.00
Equity Investors	41	4/1/2018	4/1/2023	\$	15.00
Equity Investors	41	4/1/2018	4/1/2023	\$	15.00
Term Note Lender (1)	108	10/30/2018	10/30/2023	\$	6.00
Term Note Lender (1)	251	7/2/2019	7/2/2024		3.00
Term Note Lender (1)	251	7/2/2019	7/2/2024		3.00
Term Note Lender (1)	30	7/2/2019	7/2/2024		3.00
Term Note Lender (1)	30	7/2/2019	7/2/2024		3.00
Term Note Lender (1)	71	7/2/2019	7/2/2024		3.00
Term Note Lender (1)	70	7/2/2019	7/2/2024		3.00
Term Note Lender (1)	1,235	7/2/2019	7/2/2024		3.00
Term Note Lender (1)	1,235	7/2/2019	7/2/2024		3.00
Total Warrants	<u>5,332</u>				

(1) Warrant was determined to be a derivative subject to fair value accounting and is recorded as a warrant liability.

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A summary of the warrant activity the years ended December 31, 2019 and 2018 is as follows:

	Number of Warrants	Weighted Average Exercise Price	Weighted Average Remaining Life in Years
Outstanding, December 31, 2017	2,243	\$ 29.52	3.32
Issued	416	\$ 4.68	
Exercised	(445)	\$ 13.95	
Outstanding, December 31, 2018	2,214	\$ 28.93	2.59
Issued	3,174	\$ 3.00	
Exercised/Expired	(90)	\$ 6.00	
Price reset provision	34	\$ 25.00	
Outstanding, December 31, 2019	<u>5,332</u>	<u>\$ 13.86</u>	<u>3.3</u>

The Company has assessed its outstanding equity-linked financial statements issued with the term loans, see Note 13 and the convertible notes, see Note 11 and has concluded that the warrants are subject to derivative accounting as a result of certain anti-dilution provisions contained in the warrant agreements. The value of these warrants at issuance are classified as a fee and are being amortized over the life of the respective loan or convertible note. The fair value of these warrants is classified as a liability in the financial statements, with the change in fair value during the future periods being recorded in the statement of operations. See Note 15.

NOTE 21. UNAUDITED QUARTERLY DATA

(\$ in thousands, except per share data)	Three months ended			
	March 31, 2019 (unaudited)	June 30, 2019 (unaudited)	September 30, 2019 (unaudited)	December 31, 2019 (unaudited)
Revenue	\$ 3,123	\$ 1,827	\$ 1,657	\$ 911
Gross (loss) profit	\$ (6)	\$ (139)	\$ 174	\$ (51)
Operating loss	\$ (5,467)	\$ (5,145)	\$ (4,243)	\$ (10,208)
Net (loss) income from continuing operations	\$ (29,756)	\$ (10,209)	\$ (8,051)	\$ 18,322
Net (loss) income	\$ (25,484)	\$ (5,710)	\$ (2,727)	\$ 18,481
Preferred stock dividends	\$ (20)	\$ (20)	\$ (20)	\$ (20)
Net (loss) income applicable to common shares	\$ (25,504)	\$ (5,730)	\$ (2,747)	\$ 18,461
Continuing operations (loss) income per common share – basic	\$ (1.91)	\$ (0.55)	\$ (0.39)	\$ 0.87
Continuing operations (loss) income per common share – diluted	\$ (1.91)	\$ (0.55)	\$ (0.39)	\$ 0.60
Net (loss) income per common share – basic	\$ (1.63)	\$ (0.31)	\$ (0.13)	\$ 0.88
Net (loss) income per common share – diluted	\$ (1.63)	\$ (0.31)	\$ (0.13)	\$ 0.61

Weighted average number of common shares outstanding – basic	15,588,749	18,449,541	20,721,616	21,117,727
Weighted average number of common shares outstanding – basic	15,588,749	18,449,541	20,721,616	30,474,798

(\$ in thousands, except per share data)	Three months ended			
	March 31, 2018	June 30, 2018	September 30, 2018	December 31, 2018
	(unaudited)	(unaudited)	(unaudited)	(unaudited)
Revenue	\$ 3,510	\$ 3,249	\$ 5,670	\$ 2,674
Gross profit	\$ (233)	\$ 190	\$ 2,065	\$ (639)
Operating loss	\$ (5,075)	\$ (8,386)	\$ (20,916)	\$ (23,913)
Net (loss) income from continuing operations	\$ (5,444)	\$ 1,308	\$ (21,005)	\$ (40,411)
Net (loss) income	\$ (1,084)	\$ 7,498	\$ (12,987)	\$ (40,019)
Preferred stock dividends	\$ (20)	\$ (20)	\$ (20)	\$ (20)
Net (loss) income applicable to common shares	\$ (1,104)	\$ 7,478	\$ (13,007)	\$ (40,039)
Continuing operations (loss) income per common share – basic	\$ (0.93)	\$ 0.20	\$ (2.71)	\$ (3.82)
Continuing operations (loss) income per common share – diluted	\$ (0.93)	\$ 0.09	\$ (2.71)	\$ (3.82)
Net (loss) income per common share – basic	\$ (0.19)	\$ 1.14	\$ (1.68)	\$ (3.79)
Net (loss) income per common share – diluted	\$ (0.19)	\$ 0.50	\$ (1.68)	\$ (3.79)
Weighted average number of common shares outstanding – basic	5,851,288	6,601,865	7,745,537	10,577,376
Weighted average number of common shares outstanding – diluted	5,851,288	14,996,607	7,745,537	10,577,376

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Explanatory Note:

The Company is providing quarterly and year-to-date unaudited consolidated financial information for interim periods occurring within years ended December 31, 2019 and 2018 in order to comply with SEC requirements.

The quarterly balance sheets are as follows:

(\$ in thousands, except per share data)	As of		
	March 31, 2019	June 30, 2019	September 30, 2019
	(unaudited)	(unaudited)	(unaudited)
ASSETS			
Current Assets:			
Cash and cash equivalents	\$ 267	\$ 46	\$ 55
Accounts receivable, net	876	1,765	1,570
Other current assets	448	565	474
Assets of discontinued operation	149,516	151,369	127,771
Total current assets	151,107	153,745	129,870
Property and equipment, net	2,978	2,762	2,605
Right of use asset	2,097	1,294	1,168
Total assets	156,182	157,801	133,643
LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)			
Current Liabilities:			
Accounts payable	3,384	2,878	2,925
Accrued expenses and other current liabilities	5,807	7,898	7,289
Senior notes payable, current portion net of original discount and deferred financing costs	49,518	49,451	47,844
Convertible notes payable, net of original issue discount and deferred financing cost	3,282	4,305	5,046
Merchant credit agreements, net of original issue discount and deferred financing cost	2,599	1,613	815
Notes payable, current portion, net of original issue discount and deferred financing costs	7,964	8,876	10,134
Notes payable, Benchmark Sellers, current portion	13,771	13,994	41,608
Operating lease liabilities, current portion	776	596	613
Debt derivative liability	7,836	6,250	4,705
Warrant liability	2,163	1,744	5,631
Liabilities of discontinued operation	98,741	105,888	83,508
Total current liabilities	195,841	203,443	210,118
Notes payable and financing leases, non-current portion, net of original issue discount and deferred financing costs	1,002	504	436
Notes payable, Benchmark Sellers, non-current net of debt discount	29,838	30,528	—
Operating lease liabilities, non-current	1,577	842	685
Total liabilities	228,258	235,317	211,239
Commitments and contingencies			
Stockholders' Equity (Deficit):			
Preferred stock; \$0.01 par value, 5,000,000 shares authorized:	—	—	—
Series A convertible preferred stock, \$1,000 stated value, 4,500 shares designated and 500 shares issued and outstanding at March 31, June 30, and September 30, 2019, respectively	—	—	—
Series A-1 convertible preferred stock, \$1,000 stated value, 1,000 shares designated and 295 shares issued and outstanding at March 31, June 30, and September 30, 2019, respectively	—	—	—

Series H convertible preferred stock, \$0.001 stated value, 100 shares designated and -0-, -0- and 100 shares issued and outstanding at March 31, June 30, and September 30, 2019, respectively	—	—	—
Common stock, \$0.001 par value, 100,000,000 shares authorized and 18,449,541, 18,449,541 and 20,865,265 shares issued and outstanding at March 31, June 30, and September 30, 2019, respectively	18	18	21
Additional paid-in capital	126,743	127,013	130,937
Shares to be issued	1,280	1,280	—
Accumulated deficit	(200,117)	(205,827)	(208,554)
Total stockholders' deficit	<u>(72,076)</u>	<u>(77,516)</u>	<u>(77,596)</u>
Total liabilities and stockholders' deficit	<u>\$ 156,182</u>	<u>\$ 157,801</u>	<u>\$ 133,643</u>

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(\$ in thousands, except per share data)	As of		
	March 31, 2018 (unaudited)	June 30, 2018 (unaudited)	September 30, 2018 (unaudited)
ASSETS			
Current Assets:			
Cash and cash equivalents	\$ 579	\$ 1,106	\$ 776
Accounts receivable, net	1,933	2,069	1,789
Other current assets	6,059	4,697	2,721
Assets held for sale	145,647	143,445	141,348
Total current assets	<u>154,218</u>	<u>151,317</u>	<u>146,634</u>
Property and equipment, net	6,588	6,725	6,441
Total assets	<u>160,806</u>	<u>158,042</u>	<u>153,075</u>
LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)			
Current Liabilities:			
Accounts payable	3,805	3,065	2,862
Accrued expenses and other current liabilities	4,878	6,268	6,362
Senior notes payable, current portion net of original discount and deferred financing costs	25,807	28,210	30,858
Convertible notes payable, net of original issue discount and deferred financing cost	3,548	4,576	9,387
Merchant credit agreements, net of original issue discount and deferred financing cost	2,369	2,683	3,620
Notes payable, current portion, net of original issue discount and deferred financing costs	4,148	4,455	3,507
Notes payable, Benchmark Sellers, current portion	6,727	16,745	17,954
Debt derivative liability	22,077	8,416	11,885
Warrant liability	29,897	26,793	11,522
Liabilities held for sale	72,802	72,504	67,194
Total current liabilities	<u>176,058</u>	<u>173,715</u>	<u>165,151</u>
Notes payable, non-current portion	1,809	1,618	1,414
Notes payable, Benchmark Sellers, non-current net of debt discount	39,523	27,775	28,463
Total liabilities	<u>217,390</u>	<u>203,108</u>	<u>195,028</u>
Commitments and contingencies			
Stockholders' Equity (Deficit):			
Preferred stock; \$0.01 par value, 5,000,000 shares authorized:	—	—	—
Series A convertible preferred stock, \$1,000 stated value, 4,500 shares designated and 500 shares issued and outstanding at March 31, June 30, and September 30, 2018, respectively	—	—	—
Series A-1 convertible preferred stock, \$1,000 stated value, 1,000 shares designated and 295 shares issued and outstanding at March 31, June 30, and September 30, 2018, respectively	—	—	—
Series G convertible preferred stock, \$0.001 stated value, 1,780 shares designated and 1,780, 1,780 and 1,780 shares issued and outstanding at March 31, June 30, and September 30, 2018, respectively	—	—	—
Common stock, \$0.001 par value, 100,000,000 shares authorized and 6,136,059, 7,225,158 and 8,605,021 shares issued and outstanding at March 31, June 30, and September 30, 2018, respectively	6	7	8
Additional paid-in capital	66,228	76,553	92,652
Shares to be issued	6,306	—	—
Accumulated deficit	(129,124)	(121,626)	(134,613)
Total stockholders' deficit	<u>(56,584)</u>	<u>(45,066)</u>	<u>(41,953)</u>
Total liabilities and stockholders' deficit	<u>\$ 160,806</u>	<u>\$ 158,042</u>	<u>\$ 153,075</u>

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The Company's quarterly statement of operations are as follows:

(\$ in thousands, except per share data)	Three months ended,		
	June 30, 2019 (unaudited)	September 30, 2019 (unaudited)	December 31, 2019 (unaudited)

Revenues, net of discounts	\$1,827	\$1,657	\$911
Cost of revenues	1,966	1,483	962
Gross (loss) profit	(139)	174	(51)
Operating expenses			
Compensation expense	1,653	1,794	885
Selling, general and administrative expenses	4,071	2,621	4,447
Loss on sale of asset	(718)	2	1,116
Loss on lease termination	—	—	3,708
Total operating expenses	5,006	4,417	10,157
Operating loss	(5,145)	(4,243)	(10,208)
Other expenses			
Interest expense	(3,058)	(3,724)	(1,557)
Amortization of deferred financing costs and debt discount	(3,656)	(5,344)	(943)
Gain on debt derivative liability	435	1,990	(2,081)
Gain on warrant liability	418	(1,182)	(1,057)
Gain on trouble debt restructuring	554	4,362	2,659
Gain on senior lender foreclosure	—	—	31,538
Extinguishment gain	243	90	(29)
Total other expenses, net	(5,064)	(3,808)	28,530
Loss before provision for income taxes	(10,209)	(8,051)	18,322
Provision for income taxes	—	—	—
Net loss from continuing operations	(10,209)	(8,051)	18,322
Net income from discontinued operations	4,499	5,324	159
Net (loss) income	(5,710)	(2,727)	18,481
Preferred stock dividends	(20)	(20)	(20)
Net loss attributable to common shareholders	<u>\$ (5,730)</u>	<u>\$ (2,747)</u>	<u>\$ 18,461</u>
Continuing operations loss per common share:			
Basic	\$ (0.55)	\$ (0.39)	\$ 0.87
Diluted	(0.55)	(0.39)	0.60
Net (loss) income per common share:			
Basic	\$ (0.31)	\$ (0.13)	\$ 0.88
Diluted	(0.31)	(0.13)	0.61
Weighted average number of common shares outstanding			
Basic	18,449,541	20,721,616	21,117,727
Diluted	18,449,541	20,721,616	30,474,798

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(\$ in thousands, except per share data)	Three months ended,		
	June 30, 2018 (unaudited)	September 30, 2018 (unaudited)	December 31, 2018 (unaudited)
Revenues, net of discounts	\$ 3,249	\$ 5,670	\$ 2,674
Cost of revenues	3,059	3,605	3,313
Gross profit (loss)	190	2,065	(639)
Operating expenses			
Compensation expense -selling general and administrative	3,361	15,296	8,076
Selling, general and administrative expenses	5,262	7,685	15,198
Loss on sale of asset	(47)	—	—
Total operating expenses	8,576	22,981	23,274
Operating loss	(8,386)	(20,916)	(23,913)
Other expenses			
Interest expense	(2,960)	(2,214)	(2,858)
Amortization of deferred financing costs and debt discount	(7,144)	(8,377)	(24,601)
Gain on debt derivative liability	6,313	(2,627)	1,732
(Loss) gain on warrant liability	2,748	14,787	7,964
Other (expense) income, net	721	29	(93)
Loss on issuance of notes	(1,591)	(203)	(737)
Extinguishment gain	11,607	(1,484)	2,095
Total other expenses, net	9,694	(89)	(16,498)
Loss before provision for income taxes	1,308	(21,005)	(40,411)
Provision for income taxes	—	—	—
Net income (loss) from continuing operations	1,308	(21,005)	(40,411)
Net income from discontinued operations	6,190	8,018	392
Net income (loss)	7,498	(12,987)	(40,019)
Preferred stock dividends	(20)	(20)	(20)
Net income loss attributable to common shareholders	<u>\$ 7,478</u>	<u>\$ (13,007)</u>	<u>\$ (40,039)</u>
Continuing operations income (loss) per common share:			
Basic	\$ 0.20	\$ (2.71)	\$ (3.82)
Diluted	\$ 0.09	\$ (2.71)	\$ (3.82)

Net income (loss) per common share:						
Basic	\$	1.14	\$	(1.68)	\$	(3.79)
Diluted	\$	0.50	\$	(1.68)	\$	(3.79)
Weighted average number of common shares outstanding						
Basic		6,601,685		7,745,537		10,577,376
Diluted		14,996,607		7,745,537		10,577,376

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The Company's year-to-date statement of operations are as follows:

(\$ in thousands, except per share data)	Three months ended March 31, 2019		Six months ended June 30, 2019		Nine months ended September 30, 2019	
	(unaudited)		(unaudited)		(unaudited)	
Revenues, net of discounts	\$	3,123	\$	4,950	\$	6,607
Cost of revenues		3,129		5,095		6,578
Gross (loss) profit		(6)		(145)		29
Operating expenses						
Compensation expense -selling general and administrative		2,536		4,189		5,983
Selling, general and administrative expenses		2,925		6,996		9,617
Loss on sale of asset		—		(718)		(716)
Total operating expenses		5,461		10,467		14,884
Operating loss		(5,467)		(10,612)		(14,855)
Other expenses						
Interest expense		(2,016)		(5,074)		(8,798)
Amortization of deferred financing costs and debt discount		(17,230)		(20,886)		(26,230)
(Loss) gain on debt derivative liability		(1,945)		(1,510)		480
Gain on warrant liability		1,395		1,813		631
Other (expense) income, net		(287)		(287)		(287)
Loss on issuance of notes		(67)		(67)		(67)
Gain on trouble debt restructuring		(2,547)		(1,993)		2,369
Extinguishment (loss) gain		(1,591)		(1,348)		(1,258)
Total other expenses, net		(24,288)		(29,352)		(33,160)
Loss before provision for income taxes		(29,755)		(39,964)		(48,015)
Provision for income taxes		—		—		—
Net loss from continuing operations		(29,755)		(39,964)		(48,015)
Income (loss) from discontinued operations, net		4,270		8,769		14,093
Net loss		(25,485)		(31,195)		(33,922)
Preferred stock dividends		(20)		(40)		(60)
Net loss attributable to common shareholders	\$	(25,505)	\$	(31,235)	\$	(33,982)
Continuing operations loss per common share:						
Basic and diluted	\$	(1.91)	\$	(2.35)	\$	(2.63)
Net loss per common share:						
Basic and diluted		(1.63)		(1.83)		(1.86)
Weighted average number of common shares outstanding						
Basic and diluted		15,588,749		17,027,048		18,272,104

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The Company's year-to-date statement of operations are as follows:

(\$ in thousands, except per share data)	Three months ended March 31, 2018		Six months ended June 30, 2018		Nine months ended September 30, 2018	
	(unaudited)		(unaudited)		(unaudited)	
Revenues, net of discounts	\$	3,510	\$	6,759	\$	12,429
Cost of revenues		3,743		6,802		10,407
Gross profit (loss)		(233)		(43)		2,022
Operating expenses						
Compensation expense -selling general and administrative		1,851		5,212		20,508
Selling, general and administrative expenses		2,957		8,219		15,904
Loss (gain) on sale of asset		34		(13)		(13)
Total operating expenses		4,842		13,418		36,399
Operating loss		(5,075)		(13,461)		(34,377)
Other income (expenses)						
Interest expense		(1,035)		(3,995)		(6,209)
Amortization of deferred financing costs and debt discount		(8,127)		(15,271)		(23,648)

Gain on debt derivative liability	11,759	18,072	15,445
Gain on warrant liability	(13,821)	(11,073)	3,714
Other (expense) income, net	(786)	(65)	(36)
Loss on issuance of notes	(2,860)	(4,451)	(4,654)
Extinguishment gain	14,501	26,108	24,624
Total other income (expenses), net	(369)	9,325	9,236
Loss before provision for income taxes	(5,444)	(4,136)	(25,141)
Provision for income taxes	—	—	—
Net loss from continuing operations	(5,444)	(4,136)	(25,141)
Net income from discontinued operations	4,360	10,550	18,568
Net loss	(1,084)	6,414	(6,573)
Preferred stock dividends	(20)	(40)	(60)
Net loss attributable to common shareholders	<u>\$ (1,104)</u>	<u>\$ 6,374</u>	<u>\$ (6,633)</u>
Continuing operations loss per common share:			
Basic and diluted	\$ (0.93)	\$ (0.66)	\$ (3.73)
Net (loss) income per common share:			
Basic and diluted	\$ (0.19)	1.03	(0.98)
Weighted average number of common shares outstanding			
Basic and diluted	5,851,288	6,228,555	6,739,771

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The Company's statement of cash flows are as follows:

(dollars in thousands)	Period ended		
	March 31, 2019 (Unaudited)	June 30, 2019 (Unaudited)	September 30, 2019 (Unaudited)
Cash flows from operating activities:			
Net loss	\$ (25,485)	\$ (31,195)	\$ (33,922)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:			
Depreciation	485	905	1,238
Amortization of intangible assets	2,253	4,506	6,759
Amortization of debt discount and deferred financing costs	17,230	20,886	26,230
Loss (gain) on sale of asset	6	(718)	(716)
Payment in kind interest-debt on notes payable	280	819	859
Payment in kind interest on Benchmark Builders notes payable	401	811	1,723
Share-based compensation	512	802	1,095
Common shares issued for board of director fees	—	—	248
Prepayment and late fee penalties on convertible note payments	—	—	2,728
Loss on issuance of convertible debt	67	67	67
Loss on debt conversion and repayment	2,322	1,704	344
Gain on troubled debt restructuring, net	2,547	1,993	(2,369)
Gain on merchant credit settlements	(288)	(288)	(288)
Gain on warrant derivative liabilities	(1,395)	(1,813)	(631)
Loss (gain) on convertible derivative liabilities	1,945	1,510	(480)
Accrued dividends, preferred stock	(20)	(40)	(60)
Changes in operating assets and liabilities:			
Accounts receivable	(2,845)	(10,520)	16,179
Cost and estimated earnings in excess of billings on uncompleted contracts	9,488	19,652	6,210
Other current assets	1,231	1,558	421
Accounts payable and accrued liabilities	(22,670)	(22,989)	(31,143)
Net cash used in operating activities	(13,936)	(12,350)	(5,508)
Cash flows from investing activities :			
Purchase of property and equipment	(34)	(60)	(60)
Net cash (used in) provided by investing activities	(34)	(60)	(60)
Cash flows from financing activities :			
Proceeds from issuance of convertible notes	550	550	550
Payments on convertible notes	(695)	(952)	(952)
Proceeds from issuance of merchant credit agreements	2,755	2,755	2,755
Payments on merchant credit agreements	(11,191)	(12,623)	(13,861)
Proceeds from issuance of notes payable, net	4,835	4,835	4,835
Payments on notes payable	(552)	(1,153)	(3,573)
Proceeds from issuance of senior note payable, net	12,632	12,632	12,632
Proceeds from issuance of notes payable – Benchmark Builders	1,000	1,000	1,000
Payments on notes payable – Benchmark Builders	(11)	(11)	(16)
Payment of deferred financing costs	(1,301)	(1,869)	(1,889)
Net cash provided by (used in) financing activities	8,022	5,164	1,481
Net change in cash	(5,948)	(7,246)	(4,087)
Cash, beginning of period	12,170	12,170	12,170
Cash, end of period	<u>\$ 6,222</u>	<u>\$ 4,924</u>	<u>\$ 8,083</u>
Cash Reconciliation:			
Cash from continuing operations	\$ 267	\$ 46	\$ 55

Cash of discontinued operations	5,955	4,878	8,028
Total cash	<u>\$ 6,222</u>	<u>\$ 4,924</u>	<u>\$ 8,083</u>

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(dollars in thousands)	Period ended		
	March 31,	June 30,	September 30,
	2018	2018	2018
	(Unaudited)	(Unaudited)	(Unaudited)
Cash flows from operating activities:			
Net loss	\$ (1,084)	\$ 6,414	\$ (6,573)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:			
Depreciation	446	920	1,310
Amortization of intangible assets	2,253	4,506	6,759
Amortization of debt discount and deferred financing costs	8,127	15,014	23,277
Loss (gain) on sale of asset	34	(13)	(13)
Payment in kind interest-debt on notes payable	754	1,673	1,530
Payment in kind interest on Benchmark Builders notes payable	—	874	1,303
Share-based compensation	61	1,234	1,861
Common shares issued for board fees	429	430	533
Common shares issued for convertible notes modifications, amendments, redemption agreements and settlements	38	171	171
Common shares issued for consulting services	2,459	1,096	1,769
Common shares issued to employees	—	281	12,500
Loss on issuance of convertible debt	2,860	4,451	4,654
Prepayment and late fee penalties on convertible note	1,078	1,078	1,059
Gain on extinguishment of debt	(11,542)	(31,172)	(26,215)
Gain on extinguishment of Benchmark Builders debt	(555)	—	—
(Loss) gain on merchant credit and note payable settlement, net	—	—	(2,224)
Loss (gain) on warrant derivative liabilities	13,821	11,073	(3,714)
Loss on convertible derivative liabilities	(11,759)	(18,072)	(15,445)
Accrued dividends, preferred stock	(20)	(40)	(60)
Benefit from deferred income taxes	567	453	1,087
Changes in operating assets and liabilities:			
Accounts receivable	614	1,785	(3,934)
Cost and estimated earnings in excess of billings on uncompleted contracts	(8,587)	(3,222)	691
Other current assets	(2,520)	(1,117)	39
Accounts payable and accrued liabilities	48	(4,919)	(13,241)
Net cash provided by (used in) operating activities	<u>(2,478)</u>	<u>(7,102)</u>	<u>(12,876)</u>
Cash flows from investing activities:			
Purchase of property and equipment	—	(623)	(793)
Net cash (used in) provided by investing activities	<u>—</u>	<u>(623)</u>	<u>(793)</u>
Cash flows from financing activities :			
Proceeds from issuance of convertible notes	—	9,270	11,871
Payments on convertible notes	(891)	(1,281)	(1,281)
Proceeds from issuance of merchant credit agreements	2,481	2,481	9,089
Payments on merchant credit agreements	(10,194)	(8,786)	(18,792)
Payments on notes payable	(472)	(759)	(1,044)
Proceeds from issuance of senior note payable, net	23	935	935
Payments on notes payable – related parties	—	(2,650)	(3,276)
Proceeds from sale of common stock	5,638	5,976	6,476
Payment of deferred financing costs	(87)	(217)	(227)
Net cash provided by (used in) financing activities	<u>(3,502)</u>	<u>4,969</u>	<u>3,751</u>
Net change in cash	(5,980)	(2,756)	(9,918)
Cash, beginning of period	15,642	15,642	15,642
Cash, end of period	<u>\$ 9,662</u>	<u>\$ 12,886</u>	<u>\$ 5,724</u>
Cash Reconciliation:			
Cash from continuing operations	\$ 579	\$ 1,106	\$ 776
Cash of discontinued operations	9,083	11,780	4,948
Total cash	<u>\$ 9,662</u>	<u>\$ 12,886</u>	<u>\$ 5,724</u>

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The Company's statement of stockholders' equity (deficit) for the years ended December 31, 2019 and 2018 are as follows:

	Preferred stock		Common stock		Paid in Capital	Shares to be Issued	Accumulated Deficit	Total Equity (Deficit)
	Shares	Amount	Shares	Amount				
January 1, 2019	795	\$ —	12,286,847	\$ 12	\$ 113,881	\$ 1,280	\$ (174,632)	\$ (59,459)
Common shares issued to employees	—	—	62,839	—	218	—	—	218
Common shares issued to convert debt	—	—	3,123,548	3	6,783	—	—	6,786
Common shares issued to Senior Lender	—	—	1,698,580	2	2,920	—	—	2,922
Common shares issued to note guarantor	—	—	1,005,751	1	1,960	—	—	1,961
Common shares issued to lender	—	—	356,513	—	613	—	—	613
Common shares issued for convertible notes –inducement	—	—	35,056	—	94	—	—	94

Share-based compensation	—	—	—	—	294	—	—	294
Shares returned to outstanding	—	—	(119,593)	—	—	—	—	—
Accrued dividends -preferred stock	—	—	—	—	(20)	—	—	(20)
Net loss	—	—	—	—	—	—	(25,485)	(25,485)
March 31, 2019	795	—	18,449,541	18	126,743	1,280	(200,117)	(72,076)
Share-based compensation	—	—	—	—	290	—	—	290
Accrued dividends -preferred stock	—	—	—	—	(20)	—	—	(20)
Net loss	—	—	—	—	—	—	(5,710)	(5,710)
June 30, 2019	795	—	18,449,541	18	127,013	1,280	(205,827)	(77,516)
Common shares issued to investors	—	—	160,000	—	1,280	(1,280)	—	—
Common shares issued board fee	—	—	250,000	1	247	—	—	248
Common shares issued to Senior Lender	—	—	2,005,724	2	2,124	—	—	2,126
Issuance of Series H convertible preferred stock to Series A and B Noteholders	100	—	—	—	—	—	—	—
Share-based compensation	—	—	—	—	293	—	—	293
Accrued dividends -preferred stock	—	—	—	—	(20)	—	—	(20)
Net loss	—	—	—	—	—	—	(2,727)	(2,727)
September 30, 2019	895	—	20,865,265	21	130,937	—	(208,554)	(77,596)
Common shares issued for convertible notes –settlement	—	—	353,202	—	156	—	—	156
Common shares issued in acquisition	—	—	—	—	—	15,385	—	15,385
Redemption of Series H	(100)	—	—	—	—	—	—	—
Series I preferred shares issued in acquisition	—	—	—	—	—	117,926	—	117,926
Share-based compensation	—	—	—	—	293	—	—	293
Accrued dividends -preferred stock	—	—	—	—	(20)	—	—	(20)
Net income	—	—	—	—	—	—	18,482	18,482
December 31, 2019	795	\$ —	21,218,467	21	\$ 131,366	\$ 133,311	\$ (190,072)	\$ 74,626

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	Preferred stock		Common stock		Paid in Capital	Shares to be Issued	Accumulated Deficit	Total Equity (Deficit)
	Shares	Amount	Shares	Amount				
January 1, 2018	2,575	\$ —	5,620,281	\$ 6	\$ 56,979	\$ 250	\$ (128,040)	\$ (70,805)
Common shares issued to investors	—	—	26,667	—	200	—	—	200
Common shares issued to convert debt	—	—	284,334	—	5,755	—	—	5,755
Common shares issued to consultants	—	—	135,750	—	2,459	—	—	2,459
Common shares issued board fee	—	—	25,000	—	429	—	—	429
Common shares issued to settle legal matter	—	—	677	—	16	—	—	16
Common shares issued for convertible notes – inducement	—	—	31,100	—	514	—	—	514
Common shares issued for convertible notes –settlement	—	—	1,500	—	38	—	—	38
Warrants exercised	—	—	14,750	—	416	—	—	416
Share-based compensation	—	—	—	—	61	—	—	61
Shares to be issued	—	—	—	—	(619)	6,056	—	5,437
Shares returned to outstanding	—	—	(4,000)	—	—	—	—	—
Accrued dividends -preferred stock	—	—	—	—	(20)	—	—	(20)
Net loss	—	—	—	—	—	—	(1,084)	(1,084)
March 31, 2018	2,575	—	6,136,059	6	66,228	6,306	(129,124)	(56,584)
Common shares issued to investors	—	—	846,531	1	6,400	(6,306)	—	95
Common shares issued to employees	—	—	18,003	—	281	—	—	281
Common shares issued to convert debt	—	—	83,278	—	1,625	—	—	1,625
Common shares returned to outstanding from consultants	—	—	(77,794)	—	(1,362)	—	—	(1,362)
Common shares issued for convertible notes – inducement	—	—	50,538	—	820	—	—	820
Common shares issued to settle debt	—	—	40,000	—	919	—	—	919
Common shares issued for convertible notes –prepayment	—	—	8,260	—	133	—	—	133
Warrants exercised	—	—	185,767	—	356	—	—	356
Share-based compensation	—	—	—	—	1,173	—	—	1,173
Shares returned to outstanding	—	—	(65,484)	—	—	—	—	—
Accrued dividends -preferred stock	—	—	—	—	(20)	—	—	(20)
Net income	—	—	—	—	—	—	7,498	7,498
June 30, 2018	2,575	—	7,225,158	7	76,553	—	(121,626)	(45,066)
Common shares issued to investors	—	—	29,586	—	500	—	—	500
Common shares issued to employees	—	—	905,770	1	12,218	—	—	12,219
Common shares issued to convert debt	—	—	116,637	—	1,643	—	—	1,643
Common shares issued to consultants	—	—	60,650	—	673	—	—	673
Common shares issued board fee	—	—	8,000	—	104	—	—	104
Common shares issued for convertible notes – inducement	—	—	16,900	—	193	—	—	193
Warrants exercised	—	—	64,950	—	484	—	—	484
Exchange of Series G convertible preferred stock for common stock	(1,780)	—	178,000	—	—	—	—	—
Share-based compensation	—	—	—	—	303	—	—	303
Shares returned to outstanding	—	—	(630)	—	—	—	—	—
Accrued dividends -preferred stock	—	—	—	—	(20)	—	—	(20)
Net loss	—	—	—	—	—	—	(12,987)	(12,987)
September 30, 2018	795	—	8,605,021	8	92,652	—	(134,613)	(41,953)
Common shares issued to employees	—	—	404,890	—	4,106	—	—	4,106
Common shares issued to convert debt	—	—	1,417,271	2	7,313	—	—	7,315
Common shares issued to consultants	—	—	691,500	1	6,916	—	—	6,917
Common shares issued to Senior Lender	—	—	854,599	1	1,096	—	—	1,097
Common shares issued to settle legal matter	—	—	57,406	—	537	—	—	537
Common shares issued for convertible notes – inducement	—	—	100,841	—	629	—	—	629

Common shares issued for convertible notes –settlement	—	—	1,759	—	14	—	—	14
Warrants exercised	—	—	163,560	—	562	—	—	562
Share-based compensation	—	—	—	—	294	—	—	294
Shares to be issued	—	—	—	—	(142)	1,280	—	1,138
Shares returned to outstanding	—	—	(10,000)	—	(75)	—	—	(75)
Accrued dividends -preferred stock	—	—	—	—	(20)	—	—	(20)
Net loss	—	—	—	—	—	—	(40,019)	(40,019)
December 31, 2018	795	\$ —	12,286,847	12	\$ 113,881	\$ 1,280	\$ (174,632)	\$ (59,459)

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NOTE 22. SUBSEQUENT EVENTS

Suspension of Trading of Common Stock

During March 2019, the Company received a series of letters from the NYSE American concerning its failure to comply with various continued listing requirements under the NYSE American Company Guide. On December 17, 2019, the Company received a letter from the staff of NYSE Regulation (the “Staff”), on behalf of the Exchange, stating that it had determined to commence proceedings to delist the Company’s Common Stock from the Exchange because, according to the Exchange, the Company or its management had engaged in operations that, in the opinion of the Exchange, were contrary to the public interest. On December 17, 2019 at market close, the Company’s Common Stock was suspended from trading on the NYSE American Market. The Company appealed this determination to the NYSE Listing Qualifications Panel (the “Panel”) of the Exchange’s Committee for Review, and a hearing regarding the Company’s continued listing was held on February 13, 2020. On March 9, 2020, the NYSE Office of General Counsel notified the Company that the Panel had determined to affirm the Staff’s decision to delist the Company’s shares from NYSE.

On May 21, 2020, the Staff filed Form 25 with the SEC to remove the Company’s Common Stock from listing and registration on the NYSE. The delisting became effective 10 days following the date that the Form 25 was filed.

The Company is continuing to review its options to list on other exchanges and other available markets for the trading of the Company’s Common Stock.

Divestiture of CrossLayer, Inc.

On January 16, 2020, the Company entered into an asset purchase agreement (the “CrossLayer Purchase Agreement”) with CBFA Corporation, pursuant to which CBFA acquired the customer agreements which were of nominal value and largely cancelable without penalty, in exchange for agreeing to perform all of CrossLayer’s obligations under those agreements plus the assumption of approximately \$73 in accounts payable and approximately \$100 in long-term supplier contracts.

Appointment of Interim CFO

On May 5, 2020, the Board of Directors appointed Ernest J. Scheidemann as the Company’s Interim CFO and Principal Financial Officer. In connection with his appointment, Mr. Scheidemann and the Company intend to enter into an Interim CFO Services Agreement. Mr. Scheidemann is a Certified Public Accountant. He holds a Certified Global Management Accountant and Certified Financial Forensics designation issued from the American Institute of CPAs. Mr. Scheidemann received a BA in Accounting from William Paterson University and MBA in Finance and International Business from Seton Hall University.

Subsequent Debt and Equity Transactions

Convertible Notes Payable

On March 10, 2020, the Company entered into a securities purchase agreement with GS Capital Partners, LLC (“GS Capital”), to purchase an aggregate of \$1,800 principal amount of a 6% Convertible Redeemable Note (“Note”), with a \$125 original issue discount for a net purchase price of \$1,675. Additionally, the Company issued 185,000 shares of its common stock as debt commitment shares. Interest may be paid in cash or shares at the option of the Company and GS Capital at its option may convert any or all of the principal face amount of Note outstanding into shares of the Company’s common stock.

Between January 2020 and August 2020, the Company repaid \$5,390 of convertible note principal in cash. There were no conversions of outstanding convertible debt to shares of the Company’s common stock between January 2020 and August 2020.

Promissory Notes

On January 27, 2020, the Company issued two senior promissory notes to Benchmark, one in the principal amount of \$4,129 and the other in the principal amount of \$600 (collectively, the “Senior Notes”), each such note secured by all of the non-real estate assets pursuant to a security agreement executed on the same date. The \$4,129 note, which matures on December 1, 2020 and has an annual interest rate of 10%, obligates the Company to repay certain monies previously paid or transferred to the Company at the time of the Foreclosure Proposal, including (i) \$3,000 in cash; (ii) two Working Capital Cash Payments totaling \$600; and (iii) approximately \$529 in cash remaining in a Benchmark bank account, was issued in consideration of a \$6,000 reduction to the \$28,000 Remaining Indebtedness. The \$600 note, which has a maturity date of December 1, 2020 and an annual interest rate of 10%, was issued to evidence the loan advanced by Benchmark on January 10, 2020 in the principal amount of \$300 and an additional \$300 loan from Benchmark advanced on January 27, 2020.

On May 1, 2020, a second amendment to the Debt and Series H Agreement was entered into pursuant to which Messrs. Sacramone and McMahon agreed to release and forever discharge the Remaining Indebtedness on the date on which the NYSE American Exchange filed a Form 25 with the SEC, delisting the Company’s common stock provided that in no event would that date be any sooner than July 1, 2020 or any later than October 1, 2020. The NYSE American Exchange filed a Form 25 with the SEC delisting the Company’s common stock on May 21, 2020. Accordingly, the Remaining Indebtedness was released and discharged effective as of July 1, 2020. (See Note 12)

On January 27, 2020, the Company refinanced a promissory note with DLP Lending Fund LLC extending the maturity date through January 27, 2021.

Related Party Notes

On January 27, 2020, Alexander Szkaradek, loaned the Company, \$100 for working capital purposes pursuant to an unsecured demand note at 0% interest per annum. The note is due upon demand.

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On January 31, 2020, the Equity Sellers agreed to forbear until March 31, 2020 the payment of the two promissory notes and the forbearance date has been extended through January 1, 2021. The two promissory notes are included in the current liabilities section of the Company’s Consolidated Balance Sheets. (See Note 14).

On February 12, 2020, the Company issued a senior promissory note to Lateral SMA Agent, LLC in the principal amount of \$800, consisting of approximately \$550 in expenses and advances previously made by Lateral on behalf of the Company and an additional \$250 loan from Lateral. The \$800 note is secured by all of the Company’s non-

real estate assets pursuant to a security agreement of even date therewith and has a maturity date of November 15, 2020 and an annual interest rate of 10%. Lateral is controlled by Richard de Silva, a member of the Board.

On February 27, 2020, the Company issued a senior promissory note to Lateral SMA Agent, LLC in the principal amount of \$75 for working capital purposes. The note is secured by all of the Company's non-real estate assets pursuant to a security agreement of even date therewith and has a maturity date of November 15, 2020 and an annual interest rate of 10%. Lateral is controlled by Richard de Silva, a member of the Board.

On March 4, 2020, Cobblestone Ventures, Inc., an entity controlled by Michael Beys, the Company's interim CEO and a member the Board, loaned the Company \$100 for working capital purposes, pursuant to a demand note at 5% per annum. The note, together with accrued interest, was repaid on March 16, 2020.

On March 5, 2020, Mr. Ghishan, a member of the Board, loaned the Company \$30 for working capital purposes, pursuant to a demand note at 5% per annum. The note, together with accrued interest, was repaid on March 16, 2020.

On April 16, 2020, Cobblestone Ventures, Inc. an entity controlled by Michael Beys, the Company's interim CEO and a member the Board, loaned the Company loaned the Company \$100 for working capital purposes, pursuant to a demand note at 10% per annum. The note, together with accrued interest, was repaid on May 8, 2020.

On April 29, 2020, the Company issued a senior promissory note to Lateral SMA Agent, LLC in the principal amount of \$200 for working capital purposes. The note is secured by all of the Company's non-real estate assets pursuant to a security agreement and has a maturity date of November 15, 2020 and an annual interest rate of 10%. The note, together with accrued interest, was repaid on May 8, 2020. Lateral is controlled by Richard de Silva, a member of the Board.

On July 16, 2020, Cobblestone Ventures, Inc. an entity controlled by Michael Beys, the Company's interim CEO and a member the Board, loaned the Company loaned the Company \$70 for working capital purposes, pursuant to a demand note at 10% per annum. The note plus accrued interest is outstanding.

On July 22, 2020, the Company issued a senior promissory note to Lateral SMA Agent, LLC in the principal amount of \$100 for working capital purposes. The note is secured by all of the Company's non-real estate assets pursuant to a security agreement and has a maturity date of November 15, 2020 and an annual interest rate of 10%. Lateral is controlled by Richard de Silva, a member of the Board.

On July 31, 2020, Cobblestone Ventures, Inc. an entity controlled by Michael Beys, the Company's interim CEO and a member the Board, loaned the Company loaned the Company \$250 for working capital purposes, pursuant to a demand note at 10% per annum. The note plus accrued interest is outstanding.

On August 3, 2020, the Company issued a senior promissory note to Lateral SMA Agent, LLC in the principal amount of \$250 for working capital purposes. The note is secured by all of the Company's non-real estate assets pursuant to a security agreement and has a maturity date of November 15, 2020 and an annual interest rate of 10%. Lateral is controlled by Richard de Silva, a member of the Board.

On August 21, 2020, the Company issued a senior promissory note to Lateral SMA Agent, LLC in the principal amount of \$150 for working capital purposes. The note is secured by all the non-real estate assets pursuant to a security agreement of even date therewith and has a maturity date of November 15, 2020 and an annual interest rate of 10%. Lateral is controlled by Richard de Silva, a member of the Board.

On October 1, 2020, the Company issued a senior promissory note to Lateral Recovery, LLC in the principal amount of \$300 for working capital purposes. The note is secured by all of the Company's non-real estate assets pursuant to a security agreement and has a maturity date of November 15, 2020 and an annual interest rate of 10%. Lateral is controlled by Richard de Silva, a member of the Board.

Executive Employment Agreement of Chief Executive Officer of US Home Rentals LLC, the Company's wholly-owned subsidiary

On September 25, 2020, the Company entered into an executive employment agreement with Munish Bansal to serve as the Chief Executive Officer of the Company's wholly-owned subsidiary, US Home Rentals LLC, the Company's wholly-owned subsidiary ("US Home Rentals"), effective September 28, 2020 (the "Employment Agreement"). Pursuant to the Employment Agreement, Mr. Bansal will transition to the role of Chief Executive Officer of the Company following the resumption of trading of the Company's common stock on an over-the-counter market. Michael P. Beys will continue to serve as the Company's interim Chief Executive Officer until such time.

Notice of Default

On July 1, 2020, the Company received a written notice of default from Inmost Partners LLC in its capacity as Noteholder Agent to issuer noteholders who, collectively, hold approximately \$51,564,000 in secured notes that the Company assumed from the Rental Home Portfolio Sellers in connection with the Rental Home Portfolio Asset Purchase Agreement. Inmost asserted that certain events of default had occurred with respect to certain Note Issuance and Purchase Agreements each dated as of July 10, 2017 by and among, inter alia, certain Entities the Company acquired, Inmost, and issuer noteholders named therein (the "Note Purchase Agreements"). Specifically, Inmost claimed that the Company (i) failed to satisfy the loan-to-value test (the "LTV Test") as defined in the Note Purchase Agreements and (ii) failed to obtain consent from the Noteholder Agent before transferring the equity interests of certain Entities to US Home Rentals (the "Equity Interest Transfer") pursuant to the Rental Home Portfolio Asset Purchase Agreement. The Notice of Default also included certain demands by Inmost for additional capital contributions by the Company and Guarantors.

As of the date of this filing, the Company has cured the defaults associated with the LTV Test. Additionally, on November 3, 2020, Inmost granted its consent to the Equity Interest Transfer and rescinded the Default Notice in exchange for (i) a new guaranty agreement under which FTE Networks, Inc. and US Home Rentals LLC will jointly and severally guarantee the obligations of certain Entities under the Note Purchase Agreements, (ii) amendments to the Limited Liability Company Agreements for each of the subject Entities to provide for the appointment of a second manager of Noteholder Agent's choosing, and (iii) amendments to the Note Purchase Agreements.

DLP Financing

On August 26, 2020, certain wholly-owned subsidiaries (collectively, the "Borrowers") of US Home Rentals, LLC, a wholly-owned subsidiary of the Company, entered into seven separate loan agreements as part of a tranche of financing with DLP Lending Fund, LLC (the "Lender") (each a "Loan Agreement" and collectively, the Loan Agreements"), pursuant to which the Borrowers issued promissory notes in the aggregate principal amount of approximately \$23,453,699 (the "DLP Tranche"). Proceeds from the DLP Tranche were used to refinance certain of the Borrower's properties, pay outstanding property taxes, and other costs and expenses incurred in connection with the Loan Agreements. The Company did not receive any proceeds from the financing. The Borrowers' obligations to pay principal, interest and other amounts under the DLP Tranche are evidenced by certain promissory notes executed by the Borrowers as of August 26, 2020 (each a "Note" and collectively, the "Notes"). Each Note is secured by a first priority lien mortgage on certain of the Borrowers' properties (the "Mortgaged Properties") and confessions of judgment. Each Note will mature on August 31, 2021, subject to one-year extensions at Borrowers' option and other conditions. The Borrowers may prepay the outstanding loan amount in whole or in part by written notice of such prepayment to Lender, subject to certain conditions. The Company also executed certain Environmental Indemnity Agreements and certain Guaranty Agreements in connection with each Loan Agreement in favor of the Lenders pursuant to which the Company and certain affiliated individuals agreed to indemnify the Lenders for certain environmental risks and guaranty the Borrowers' obligations under the Loan Agreements.

Coronavirus Aid, Relief and Economic Security Act Loans

On May 8, 2020, JusCom, Inc. received a Paycheck Protection Program ("PPP") loan pursuant to the Coronavirus Aid, Relief and Economic Security Act (the "CARES" Act) in the amount of \$622. Additionally, on May 13, 2020, the Company received a PPP loan in the amount of \$357. In accordance with the CARES Act, the Company will use the

proceeds from the PPP loan primarily for payroll costs. The PPP loans are scheduled to mature on May 8, 2022 and May 13, 2022, respectively, and bear a fixed interest rate of 1%. The promissory note evidencing the PPP loans contains customary events of default relating to, among other things, payment defaults and provisions of the promissory note. The loans may be forgiven, in part or whole, if the proceeds are used to retain and pay employees and for other qualifying expenditures. The Company expects that the full proceeds of the PPP loans will be eligible for forgiveness.

On May 20, 2020, the Company received an Economic Injury Disaster Loan (“EIDL”) in the amount of \$150. The EIDL loan is scheduled to mature on May 20, 2050 and bear a fixed interest rate of 3.75%. The EIDL loan is secured by the non-real estate assets of the Company. The promissory note evidencing the EIDL loan contains customary events of default relating to, among other things, payment defaults and provisions of the promissory note.

Stock Issuances 2020

The Company issued 4,193,684 shares of common stock as part of the Note Exchange with TTP8, see Item 13 *Certain Relationship with Related Parties*.

The Company issued 185,000 shares of common stock with market value of \$278 to Convertible Note holder as debt commitment shares.

A former board member returned 25,000 shares of common stock on March 17, 2020.

Demand Promissory Note

\$70,000.00

July 16, 2020

FOR VALUE RECEIVED, FTE NETWORKS, INC. a Nevada corporation ("**Borrower**"), unconditionally promises to pay to the order of COBBLESTONE VENTURES, INC. ("**Lender**"), the principal sum of SEVENTY THOUSAND DOLLARS (\$70,000.00) (the "**Loan**") outstanding hereunder together with all accrued interest thereon, ON DEMAND, as provided in this Promissory Note (the "**Note**"). This Note has an effective date as noted above (the "**Effective Date**").

1. Due on Demand. Borrower promises to pay to the order of Lender the Loan, together with interest thereon as hereinafter provided, immediately ON DEMAND given by Lender to Borrower without the need for any advance notice of any kind.

2. Payments.

2.1 Manner of Payments. All payments of interest and principal shall be made in lawful money of the United States of America by wire transfer of immediately available funds to Lender's account at a bank specified by Lender in writing to Borrower from time to time.

3. Interest. Interest under this Note shall be as follows:

3.1 Interest Rate. The Loan shall bear interest on the initial principal sum borrowed commencing on and as of the date hereof, to and including the date the Loan is repaid in full, at a rate of ten percent (10%) per annum.

3.2 Interest Payable. Interest, at the rate described above, shall be payable ON DEMAND. Borrower may make whole or partial interest payments at any time prior to demand, without penalty and without affecting any other provisions of this Note.

4. Representations and Warranties. Borrower hereby represents and warrants as of the date of this Note, as follows:

4.1 Existence. Borrower is a corporation duly incorporated validly existing and in good standing under the laws of its state of organization.

4.2 Power and Authority. Borrower has the power and authority, and the legal right, to execute and deliver this Note and to perform its obligations hereunder.

4.3 Authorization, Execution and Delivery. The execution and delivery of this Note by Borrower and the performance of its obligations hereunder have been duly authorized by all necessary corporate action in accordance with all applicable laws. Borrower has duly executed and delivered this Note.

4.4 Enforceability. The Note is a valid, legal and binding obligation of Borrower, enforceable against Borrower in accordance with its terms except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

4.5 No Approvals. No consent or authorization of, filing with, notice to or other act by, or in respect of, any governmental authority or any other person is required in order for Borrower to execute, deliver, or perform any of its obligations under this Note.

4.6 No Violations. The execution and delivery of this Note and the consummation by Borrower of the transactions contemplated hereby do not and will not (a) violate any provision of Borrower's organizational documents; (b) violate any law or order applicable to Borrower or by which any of its properties or assets may be bound; or (c) constitute a default under any material agreement or contract by which Borrower may be bound.

5. Miscellaneous.

5.1 Notices. All notices, requests or other communications required or permitted to be delivered hereunder shall be delivered in writing at the addresses set forth in this Note or such other address as either Borrower or Lender may from time to time specify in writing. Notices mailed by certified or registered mail or sent by hand or overnight courier service shall be deemed to have been given when received. Notices sent by facsimile during the recipient's normal business hours shall be deemed to have been given when sent (and if sent after normal business hours shall be deemed to have been given at the opening of the recipient's business on the next business day). Notices sent by e-mail shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment).

5.2 Costs and Expenses. Borrower shall reimburse Lender for all reasonable and documented out-of-pocket costs, expenses and fees (including reasonable expenses and fees of its counsel incurred by Lender in connection with the transactions contemplated hereby including the negotiation, documentation and execution of this Note and the enforcement of Lender's rights hereunder).

5.3 Governing Law. This Note and any claim, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Note and the transactions contemplated hereby shall be governed by the laws of the State of New York.

5.4 Waiver of Jury Trial. BORROWER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY RELATING TO THIS NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY.

5.5 Counterparts, Integration, Effectiveness. This Note and any amendments, waivers, consents or supplements hereto may be executed in counterparts, each of which shall constitute an original, but all taken together shall constitute a single contract. This Note [and the Security Agreement] constitute the entire contract between the parties with respect to the subject matter hereof and supersede all previous agreements and understandings, oral or written, with respect thereto. Delivery of an executed counterpart of a signature page to this Note by facsimile or in electronic (i.e., “pdf” or “tif”) format shall be effective as delivery of a manually executed counterpart of this Note.

5.6 Amendment and Waiver. No term of this Note may be waived, modified or amended except by an instrument in writing signed by both of the parties hereto. Any waiver of the terms hereof shall be effective only in the specific instance and for the specific purpose given.

5.7 Headings. The headings of the various Sections and subsections herein are for reference only and shall not define, modify, expand or limit any of the terms or provisions hereof.

5.8 No Waiver: Cumulative Remedies. No failure to exercise and no delay in exercising on the part of Lender, of any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

5.9 Severability. If any term or provision of this Note is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Note or invalidate or render unenforceable such term or provision in any other jurisdiction.

[SIGNATURE PAGE FOLLOWS]

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

FTE NETWORKS, INC., as Borrower

By: /s/ Ernest Scheidemann

Name: Ernest Scheidemann

Title: Interim CFO

NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE CONVERTIBLE HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED UNLESS SOLD PURSUANT TO RULE 144, RULE 144A OR REGULATION S UNDER SAID ACT OR OTHERWISE IN A MANNER EXEMPT FROM REGISTRATION, AS MORE PARTICULARLY DISCUSSED IN SECTION 3(D).

SENIOR PROMISSORY NOTE

US \$100,000.00

July 22, 2020

NOW THEREFORE FOR VALUE RECEIVED, the undersigned, FTE Networks, Inc. a Nevada corporation (the "**Company**"), hereby promises to pay to the order of LATERAL SMA AGENT, LLC (the "**Holder**"), **One Hundred Thousand Dollars (\$100,000)** (the "**Principal**") in lawful money of the United States of America, which shall be legal tender, bearing interest and payable as provided herein. This Senior Promissory Note (this "**Note**" or "**Promissory Note**") has an effective date as noted above (the "**Effective Date**").

1. Interest ("**Interest**") shall accrue on the unpaid Principal amount of this Note at the rate of ten percent (10%) simple interest per annum (the "**Interest Rate**"). All Interest payable hereunder shall be calculated by multiplying the actual days elapsed in the period for which Interest is being calculated by a daily rate based on the Interest Rate and a 365-day year. The Company will pay the principal plus accrued interest on the Maturity Date.

2. The "**Maturity Date**" of this Note shall be November 15, 2020.

3. Conversion.

(a) **Conversion Right.** If, after the date of this Note and prior to the repayment or conversion of this Note, the Company consummates a registered primary offering of its securities (excluding an equity line or similar transaction) for capital raising purposes (a "**Primary Offering**"), then after six months following the consummation of the Primary Offering, the Holder shall have the right, in its discretion, to convert (each instance of conversion is referred to herein as a "**Conversion**") any outstanding Principal Amount and Interest under this Note into shares ("**Conversion Shares**") of fully paid and non-assessable common stock, \$0.001 par value per share ("**Common Stock**"), of Company as per the following conversion formula: the number of Conversion Shares equals the amount being converted divided by the Conversion Price (as defined below). The conversion right set forth in this Section 3(a) shall be subject to the provisions of Section 3(e).

(b) Conversion Price. The Conversion Price (the “**Conversion Price**”) for each Conversion shall be equal to a 20% discount to the average Trading Price of the Common Stock on the 20 Trading Days (as defined below) immediately preceding the applicable Conversion (subject to equitable adjustments by the Company relating to the Company’s securities or the securities of any subsidiary of the Company, combinations, recapitalization, reclassifications, extraordinary distributions and similar events). As used herein, the term “**Trading Price**” for any date means the closing bid price of the Common Stock on any tier of the NASDAQ Stock Market, the New York Stock Exchange, or the NYSE American exchange, if the Common Stock is then listed on any such exchange, or if the Common Stock is not then traded on a national securities exchange, then the closing bid price on the OTCQB, OTCQX, Pink Sheets electronic quotation system or applicable trading market (the “**OTC**”) as reported by a reliable reporting service designated by the Holder (i.e. Bloomberg) or, if the OTC is not the principal trading market for the Common Stock, the closing bid price of such security on the principal securities exchange or trading market where the Common Stock is listed or traded or, if no closing bid price of such security is available in any of the foregoing manners, the average of the closing bid prices of any market makers for the Common Stock that are listed in the “pink sheets,” in each case on such date. If the Trading Price is not available or otherwise cannot be calculated for such security on such date in the manner provided above, the Trading Price shall be the fair market value as reasonably determined by the Company. As used herein, the term “**Trading Day**” means any day that shares of Common Stock are traded on any of the trading markets described in the preceding sentence.

(c) Method of Conversion.

i. Mechanics of Conversion. This Note may be converted by the Holder in whole or in part, on any Trading Day, at any time on or after the Issue Date, by submitting to the Company a Notice of Conversion (by facsimile, e-mail or other reasonable means of communication dispatched on the Conversion Date prior to 6:00 p.m., New York, New York time). Any Notice of Conversion submitted after 6:00 p.m., New York, New York time, shall be deemed to have been delivered and received on the next Trading Day.

ii. Surrender of Note Upon Conversion. Notwithstanding anything to the contrary set forth herein, upon conversion of this Note in accordance with the terms hereof, the Holder shall not be required to physically surrender this Note to the Company unless the entire unpaid Principal Amount is so converted. The Holder and the Company shall maintain records showing the Principal Amount so converted and the dates of such conversions or shall use such other method, reasonably satisfactory to the Holder and the Company, so as not to require physical surrender of this Note upon each such conversion. In the event of any dispute or discrepancy, such records of the Company shall, prima facie, be controlling and determinative in the absence of manifest error. Notwithstanding the foregoing, if any portion of this Note is converted as aforesaid, the Holder may not transfer this Note unless the Holder first physically surrenders this Note to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Note of like tenor, registered as the Holder (upon payment by the Holder of any applicable transfer taxes) may request, representing in the aggregate the remaining unpaid Principal Amount of this Note. The Holder and any assignee, by acceptance of this Note, acknowledge and agree that, by reason of the provisions of this paragraph, following conversion of a portion of this Note, the unpaid and unconverted Principal Amount of this Note represented by this Note may be less than the amount stated on the face hereof.

iii. Delivery of Common Stock Upon Conversion. Upon receipt by the Company from the Holder of a facsimile transmission or e-mail (or other reasonable means of communication) of a Notice of Conversion meeting the requirements for conversion as provided in this Section 3(c) [Method of Conversion], the Company shall issue and deliver or cause to be issued and delivered to or upon the order of the Holder certificates or book entry statements of ownership for the Conversion Shares (or cause the electronic delivery of the Conversion Shares as contemplated by Section 3(c)(iv) [Delivery of Conversion Shares by Electronic Transfer] hereof) within two (2) Trading Days after such receipt.

iv. Delivery of Conversion Shares by Electronic Transfer. In lieu of delivering physical certificates representing the Conversion Shares issuable upon conversion hereof, provided the Conversion Shares are then legally able to be freely resold by the Holder without restriction under applicable securities laws and are not required to bear a legend as provided in Section 3(d), and provided that the Company is then participating in the Depository Trust Company (“**DTC**”) Fast Automated Securities Transfer or Deposit/Withdrawal at Custodian programs, upon request of the Holder and its compliance with the provisions contained in Section 3(a) [Conversion Right] and in this Section 3(c) [Method of Conversion], the Company shall use its best efforts to cause its transfer agent to electronically transmit the Conversion Shares issuable upon conversion hereof to the Holder by crediting the account of Holder’s Prime Broker with DTC through its Deposit Withdrawal Agent Commission system.

(d) Concerning the Shares. The Conversion Shares issuable upon conversion of this Note may not be sold or transferred unless (i) such shares are sold pursuant to an effective registration statement under the 1933 Act or (ii) the Company or its transfer agent shall have been furnished with an opinion of counsel (which opinion shall be the Legal Counsel Opinion (as defined in the Purchase Agreement)) to the effect that the shares to be sold or transferred may be sold or transferred pursuant to an exemption from such registration or (iii) such shares are sold or transferred pursuant to Rule 144, Rule 144A or Regulation S or (iv) such shares are transferred to an “affiliate” (as defined in Rule 144) of the Company who agrees to sell or otherwise transfer the shares only in accordance with this Section 3(d) [Concerning the Shares] and who is an Accredited Investor (as defined in the Purchase Agreement). Subject to the legend removal provisions set forth below, until such time as the Conversion Shares have been registered under the 1933 Act or otherwise may be sold pursuant to Rule 144, Rule 144A or Regulation S without any restriction as to the number of securities as of a particular date that can then be immediately sold, each certificate for the Conversion Shares that has not been so included in an effective registration statement or that has not been sold pursuant to an effective registration statement or an exemption that permits removal of the legend, shall bear a legend substantially in the following form, as appropriate:

“NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE EXERCISABLE HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL REASONABLY ACCEPTABLE TO THE COMPANY, IN A GENERALLY ACCEPTABLE FORM, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD PURSUANT TO RULE 144, RULE 144A OR REGULATION S UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT BY A FINANCIAL INSTITUTION SECURED BY THE SECURITIES.”

The legend set forth above shall be removed and the Company shall issue to the Holder a certificate for the applicable Conversion Shares without such legend upon which it is stamped or (as requested by the Holder) issue the applicable Conversion Shares by electronic delivery by crediting the account of such holder's broker with DTC, if, unless otherwise required by applicable state securities laws: (a) such Conversion Shares are registered for resale under an effective registration statement filed under the 1933 Act or otherwise may be sold pursuant to Rule 144, Rule 144A or Regulation S without any restriction as to the number of securities as of a particular date that can then be immediately sold, or (b) the Company or the Holder provides an opinion of counsel to the effect that a public sale or transfer of such Conversion Shares may be made without registration under the 1933 Act, which opinion is reasonably acceptable to the Company. The Company shall be responsible for the fees of its transfer agent and all DTC fees associated with any such issuance. The Holder agrees to sell all Conversion Shares, including those represented by a certificate(s) from which the legend has been removed, in compliance with applicable prospectus delivery requirements, if any.

(e) Stock Market Listing Requirements. The conversion rights set forth in this Section 3 shall be suspended if, and for so long as, the issuance of Conversion Shares by the Company would require the approval of the Company's stockholders pursuant to the listing requirements of the principal trading market for the Common Stock, unless such stockholder approval has been obtained.

4. Upon the occurrence of an Event of Default hereunder the Principal amount of this Note and any accrued Interest may be accelerated.

5. Following an Event of Default, the Company shall pay all Principal, Interest and any other amounts required to be paid under this Note, on a pari passu basis with other Senior Promissory Notes of like tenor (not exceeding an aggregate principal amount of \$6,745,000 as among all such Senior Promissory Notes) prior to the payment by the Company of any other promissory notes or other indebtedness of the Company.

6. This Note may be prepaid in whole or in part, at any time and from time to time, without premium or penalty.

7. If FTE and its subsidiaries shall, for three consecutive months during the term of this note, have positive cash flow (as determined in accordance with the accounting principles, policies and procedures) FTE applies to the preparation of its financial statements, in excess of \$100,000 or working capital in excess of \$2 Million, then the Company shall make at least monthly payments equal to at least 1/12 of the outstanding balance each month prior to the Maturity Date.

8. All payments made by Company under this Note will be applied: (i) first, to Interest that is due and payable under this Note, if any; and (ii) second, the remainder to Principal due and payable under this Note.

9. If any payment of Principal or Interest on this Note shall become due on a Saturday, Sunday or any other day on which national banks are not open for business, such payment shall be made on the next succeeding business day.

10. This Note shall be binding upon Company and inure to the benefit of Holder and Holder's respective successors and assigns. Each holder of this Note, by accepting the same, agrees to and shall be bound by all of the provisions of this Note.

11. No provision of this Note shall alter or impair the obligation of Company to pay the Principal of and Interest on this Note at the times, places and rates, and in the coin or currency, herein prescribed.

12. Company will do or cause to be done all things reasonably necessary to preserve and keep in full force and effect its corporate existence, rights and franchises and comply with all laws applicable to Company, except where the failure to comply could not reasonably be expected to have a material adverse effect on Company.

13. If, after the date of this Agreement, an Event of Default (as defined herein) occurs (unless all Events of Default have been cured or waived by Holder), Holder may, by written notice to Company, declare the Principal amount then outstanding of, and the accrued Interest and all other amounts payable on, this Note to be immediately due and payable and can take any and all other actions provided for under applicable law. The following events and/or any other Events of Default defined elsewhere in this Note are "**Events of Default**" under this Note:

(a) Company shall fail to pay, when and as due, the Principal, Interest or any other amount payable hereunder, and five (5) days shall have passed after due demand by Holder; or

(b) Company shall have breached in any material respect any covenant, term or condition of this Note and, with respect to breaches capable of being cured, such breach shall not have been cured within thirty (30) business days after written notice thereof has been provided by Holder to Company; or

(c) Company shall: (i) be adjudicated insolvent; (ii) make an assignment for the benefit of creditors, file a petition in bankruptcy, petition or apply to any tribunal for the appointment of a custodian, receiver or a trustee for it or a substantial portion of its assets; (iii) commence any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation or statute of any jurisdiction, whether now or hereafter in effect; (iv) have filed against it any such petition or application in which an order for relief is entered or which remains undismissed for a period of thirty (30) days or more; (v) indicate its consent to, approval of or acquiescence in any such petition, application, proceeding or order for relief or the appointment of a custodian, receiver or trustee for it or a substantial portion of its assets; (vi) suffer any such custodianship, receivership or trusteeship to continue undischarged for a period of thirty (30) days or more; or (vii) Company shall take any action authorizing, or in furtherance of, any of the foregoing.

In case any one or more Events of Default shall occur and be continuing, Holder may proceed to protect and enforce its rights by an action at law, suit in equity or other appropriate proceeding, whether for the specific performance of any agreement contained herein or for an injunction against a violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or thereby or by law or otherwise. In case of a default in the payment of any Principal of or premium, if any, or Interest on this Note, Company will pay to Holder such further amount as shall be sufficient to cover the reasonable cost and expenses of collection, including, without limitation, reasonable attorneys' fees, expenses and disbursements. No course of dealing and no delay on the part of Holder in exercising any right, power or remedy shall operate as a waiver thereof or otherwise prejudice Holder's rights, powers or remedies. No right, power or remedy conferred by this Note upon Holder shall be exclusive of any other right, power or remedy referred to herein or therein or now or hereafter available at law, in equity, by statute or otherwise.

14. Except as expressly provided otherwise in this Note, Company waives presentment, demand, notice, protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Note, and assent to any extension or postponement of the time of payment or any other indulgence, to any substitution, exchange or release of collateral available to Holder, if any, and to the addition or release of any other party or person primarily or secondarily liable.

15. If from any circumstance any holder of this Note shall ever receive Interest or any other charges constituting interest, or adjudicated as constituting interest, the amount, if any, which would exceed the Maximum Rate shall be applied to the reduction of the Principal amount owing on this Note, and not to the payment of interest; or if such excessive interest exceeds the unpaid balance of Principal hereof, the amount of such excessive interest that exceeds the unpaid balance of Principal hereof shall be refunded to Company. In determining whether or not the interest paid or payable exceeds the Maximum Rate, to the extent permitted by applicable law (i) any non-Principal payment shall be characterized as an expense, fee or premium rather than as Interest; and (ii) all Interest at any time contracted for, charged, received or preserved in connection herewith shall be amortized, prorated, allocated and spread in equal parts during the period of the full stated term of this Note. The term "**Maximum Rate**" shall mean the maximum rate of interest allowed by applicable federal or state law.

16. This Note may be executed in several counterparts, each of which is an original. It shall not be necessary in making proof of this Note or any counterpart hereof to produce or account for any of the other counterparts. A copy of this Note signed by one party and faxed or scanned and emailed to another party (as a PDF or similar image file) shall be deemed to have been executed and delivered by the signing party as though an original. A photocopy or PDF of this Note shall be effective as an original for all purposes.

17. It is the intention of the parties hereto that the terms and provisions of this Note are to be construed in accordance with and governed by the laws of the State of New York, except as such laws may be preempted by any federal law controlling the rate of Interest which may be charged on account of this Note. The parties hereby consent and agree that, in any actions predicated upon this Note, venue is properly laid in New York and that the courts of the State of New York or in the Federal courts sitting in the county or city of New York, shall have full subject matter and personal jurisdiction over the parties to determine all issues arising out of or in connection with the execution and enforcement of this Note.

18. The term "**Company**" as used herein in every instance shall include Company's successors, legal representatives and permitted assigns, including all subsequent grantees, either voluntarily by act of Company or involuntarily by operation of law and shall denote the singular and/or plural and the masculine and/or feminine and natural and/or artificial persons, whenever and wherever the contexts so requires or properly applies. The term "**Holder**" as used herein in every instance shall include Holder's successors, legal representatives and assigns, as well as all subsequent assignees and endorsees of this Note, either voluntarily by act of the parties or involuntarily by operation of law. Captions and paragraph headings in this Note are for convenience only and shall not affect its interpretation. As used herein, words in the singular shall be held to include the plural and vice versa, and words of one gender shall be held to include the other gender as the context requires.

19. Holder may not assign or pledge this Note and its rights hereunder without the prior written approval of Company which may be withheld in Company's sole discretion. Company may not assign its obligations hereunder, whether by operation of law or otherwise, without the prior written approval of Holder which may be withheld in Holder's sole discretion.

20. Anything else in this Note to the contrary notwithstanding, in any action arising out of this Agreement, the prevailing party shall be entitled to collect from the non-prevailing party all of its attorneys' fees. For the purposes of this Note, the party who receives or is awarded a substantial portion of the damages or claims sought in any proceeding shall be deemed the "**prevailing**" party and attorneys' fees shall mean the reasonable fees charged by an attorney or a law firm for legal services and the services of any legal assistants, and costs of litigation, including, but not limited to, fees and costs at trial and appellate levels.

21. If any term or other provision of this Note is invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other conditions and provisions of this Note shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Note so as to affect the original intent of the parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the extent possible.

22. No modification, amendment, addition to, or termination of this Note, nor waiver of any of its provisions, shall be valid or enforceable unless in writing and signed by all the parties hereto.

23. This Note constitutes the entire agreement of the parties regarding the matters contemplated herein, or related thereto, and supersede all prior and contemporaneous agreements and understandings of the parties in connection therewith. To the extent that any term of this Note is inconsistent with any term of the Settlement Agreement, the Settlement Agreement shall take precedence.

[Remainder of page left intentionally blank. Signature page follows.]

IN WITNESS WHEREOF, Company has duly executed this Senior Promissory Note as of Effective Date provided above.

“Company”

FTE Networks, Inc.

By: /s/ Michael P. Beys
Its: Interim CEO
Printed Name: Michael Beys
Date: 7/22/2020

Demand Promissory Note

\$250,000.00

July 31, 2020

FOR VALUE RECEIVED, FTE NETWORKS, INC. a Nevada corporation ("**Borrower**"), unconditionally promises to pay to the order of COBBLESTONE VENTURES, INC. ("**Lender**"), the principal sum of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) (the "**Loan**") outstanding hereunder together with all accrued interest thereon, ON DEMAND, as provided in this Promissory Note (the "**Note**"). This Note has an effective date as noted above (the "**Effective Date**").

1. Due on Demand. Borrower promises to pay to the order of Lender the Loan, together with interest thereon as hereinafter provided, immediately ON DEMAND given by Lender to Borrower without the need for any advance notice of any kind.

2. Payments.

2.1 Manner of Payments. All payments of interest and principal shall be made in lawful money of the United States of America by wire transfer of immediately available funds to Lender's account at a bank specified by Lender in writing to Borrower from time to time.

3. Interest. Interest under this Note shall be as follows:

3.1 Interest Rate. The Loan shall bear interest on the initial principal sum borrowed commencing on and as of the date hereof, to and including the date the Loan is repaid in full, at a rate of ten percent (10%) per annum.

3.2 Interest Payable. Interest, at the rate described above, shall be payable ON DEMAND. Borrower may make whole or partial interest payments at any time prior to demand, without penalty and without affecting any other provisions of this Note.

4. Representations and Warranties. Borrower hereby represents and warrants as of the date of this Note, as follows:

4.1 Existence. Borrower is a corporation duly incorporated validly existing and in good standing under the laws of its state of organization.

4.2 Power and Authority. Borrower has the power and authority, and the legal right, to execute and deliver this Note and to perform its obligations hereunder.

4.3 Authorization, Execution and Delivery. The execution and delivery of this Note by Borrower and the performance of its obligations hereunder have been duly authorized by all necessary corporate action in accordance with all applicable laws. Borrower has duly executed and delivered this Note.

4.4 Enforceability. The Note is a valid, legal and binding obligation of Borrower, enforceable against Borrower in accordance with its terms except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

4.5 No Approvals. No consent or authorization of, filing with, notice to or other act by, or in respect of, any governmental authority or any other person is required in order for Borrower to execute, deliver, or perform any of its obligations under this Note.

4.6 No Violations. The execution and delivery of this Note and the consummation by Borrower of the transactions contemplated hereby do not and will not (a) violate any provision of Borrower's organizational documents; (b) violate any law or order applicable to Borrower or by which any of its properties or assets may be bound; or (c) constitute a default under any material agreement or contract by which Borrower may be bound.

5. Miscellaneous.

5.1 Notices. All notices, requests or other communications required or permitted to be delivered hereunder shall be delivered in writing at the addresses set forth in this Note or such other address as either Borrower or Lender may from time to time specify in writing. Notices mailed by certified or registered mail or sent by hand or overnight courier service shall be deemed to have been given when received. Notices sent by facsimile during the recipient's normal business hours shall be deemed to have been given when sent (and if sent after normal business hours shall be deemed to have been given at the opening of the recipient's business on the next business day). Notices sent by e-mail shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment).

5.2 Costs and Expenses. Borrower shall reimburse Lender for all reasonable and documented out-of-pocket costs, expenses and fees (including reasonable expenses and fees of its counsel incurred by Lender in connection with the transactions contemplated hereby including the negotiation, documentation and execution of this Note and the enforcement of Lender's rights hereunder).

5.3 Governing Law. This Note and any claim, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Note and the transactions contemplated hereby shall be governed by the laws of the State of New York.

5.4 Waiver of Jury Trial. BORROWER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY RELATING TO THIS NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY.

5.5 Counterparts, Integration, Effectiveness. This Note and any amendments, waivers, consents or supplements hereto may be executed in counterparts, each of which shall constitute an original, but all taken together shall constitute a single contract. This Note [and the Security Agreement] constitute the entire contract between the parties with respect to the subject matter hereof and supersede all previous agreements and understandings, oral or written, with respect thereto. Delivery of an executed counterpart of a signature page to this Note by facsimile or in electronic (i.e., “pdf” or “tif”) format shall be effective as delivery of a manually executed counterpart of this Note.

5.6 Amendment and Waiver. No term of this Note may be waived, modified or amended except by an instrument in writing signed by both of the parties hereto. Any waiver of the terms hereof shall be effective only in the specific instance and for the specific purpose given.

5.7 Headings. The headings of the various Sections and subsections herein are for reference only and shall not define, modify, expand or limit any of the terms or provisions hereof.

5.8 No Waiver: Cumulative Remedies. No failure to exercise and no delay in exercising on the part of Lender, of any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

5.9 Severability. If any term or provision of this Note is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Note or invalidate or render unenforceable such term or provision in any other jurisdiction.

[SIGNATURE PAGE FOLLOWS]

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

FTE NETWORKS, INC., as Borrower

By: /s/ Ernest Scheidemann

Name: Ernest Scheidemann

Title: Interim CFO

NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE CONVERTIBLE HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED UNLESS SOLD PURSUANT TO RULE 144, RULE 144A OR REGULATION S UNDER SAID ACT OR OTHERWISE IN A MANNER EXEMPT FROM REGISTRATION, AS MORE PARTICULARLY DISCUSSED IN SECTION 3(D).

SENIOR PROMISSORY NOTE

US \$250,000.00

August 3, 2020

NOW THEREFORE FOR VALUE RECEIVED, the undersigned, FTE Networks, Inc. a Nevada corporation (the "**Company**"), hereby promises to pay to the order of LATERAL SMA AGENT, LLC (the "**Holder**"), **Two Hundred Fifty Thousand Dollars (\$250,000)** (the "**Principal**") in lawful money of the United States of America, which shall be legal tender, bearing interest and payable as provided herein. This Senior Promissory Note (this "**Note**" or "**Promissory Note**") has an effective date as noted above (the "**Effective Date**").

1. Interest ("**Interest**") shall accrue on the unpaid Principal amount of this Note at the rate of ten percent (10%) simple interest per annum (the "**Interest Rate**"). All Interest payable hereunder shall be calculated by multiplying the actual days elapsed in the period for which Interest is being calculated by a daily rate based on the Interest Rate and a 365-day year. The Company will pay the principal plus accrued interest on the Maturity Date.

2. The "**Maturity Date**" of this Note shall be November 15, 2020.

3. Conversion.

(a) **Conversion Right**. If, after the date of this Note and prior to the repayment or conversion of this Note, the Company consummates a registered primary offering of its securities (excluding an equity line or similar transaction) for capital raising purposes (a "**Primary Offering**"), then after six months following the consummation of the Primary Offering, the Holder shall have the right, in its discretion, to convert (each instance of conversion is referred to herein as a "**Conversion**") any outstanding Principal Amount and Interest under this Note into shares ("**Conversion Shares**") of fully paid and non-assessable common stock, \$0.001 par value per share ("**Common Stock**"), of Company as per the following conversion formula: the number of Conversion Shares equals the amount being converted divided by the Conversion Price (as defined below). The conversion right set forth in this Section 3(a) shall be subject to the provisions of Section 3(e).

(b) Conversion Price. The Conversion Price (the “**Conversion Price**”) for each Conversion shall be equal to a 20% discount to the average Trading Price of the Common Stock on the 20 Trading Days (as defined below) immediately preceding the applicable Conversion (subject to equitable adjustments by the Company relating to the Company’s securities or the securities of any subsidiary of the Company, combinations, recapitalization, reclassifications, extraordinary distributions and similar events). As used herein, the term “**Trading Price**” for any date means the closing bid price of the Common Stock on any tier of the NASDAQ Stock Market, the New York Stock Exchange, or the NYSE American exchange, if the Common Stock is then listed on any such exchange, or if the Common Stock is not then traded on a national securities exchange, then the closing bid price on the OTCQB, OTCQX, Pink Sheets electronic quotation system or applicable trading market (the “**OTC**”) as reported by a reliable reporting service designated by the Holder (i.e. Bloomberg) or, if the OTC is not the principal trading market for the Common Stock, the closing bid price of such security on the principal securities exchange or trading market where the Common Stock is listed or traded or, if no closing bid price of such security is available in any of the foregoing manners, the average of the closing bid prices of any market makers for the Common Stock that are listed in the “pink sheets,” in each case on such date. If the Trading Price is not available or otherwise cannot be calculated for such security on such date in the manner provided above, the Trading Price shall be the fair market value as reasonably determined by the Company. As used herein, the term “**Trading Day**” means any day that shares of Common Stock are traded on any of the trading markets described in the preceding sentence.

(c) Method of Conversion.

i. Mechanics of Conversion. This Note may be converted by the Holder in whole or in part, on any Trading Day, at any time on or after the Issue Date, by submitting to the Company a Notice of Conversion (by facsimile, e-mail or other reasonable means of communication dispatched on the Conversion Date prior to 6:00 p.m., New York, New York time). Any Notice of Conversion submitted after 6:00 p.m., New York, New York time, shall be deemed to have been delivered and received on the next Trading Day.

ii. Surrender of Note Upon Conversion. Notwithstanding anything to the contrary set forth herein, upon conversion of this Note in accordance with the terms hereof, the Holder shall not be required to physically surrender this Note to the Company unless the entire unpaid Principal Amount is so converted. The Holder and the Company shall maintain records showing the Principal Amount so converted and the dates of such conversions or shall use such other method, reasonably satisfactory to the Holder and the Company, so as not to require physical surrender of this Note upon each such conversion. In the event of any dispute or discrepancy, such records of the Company shall, prima facie, be controlling and determinative in the absence of manifest error. Notwithstanding the foregoing, if any portion of this Note is converted as aforesaid, the Holder may not transfer this Note unless the Holder first physically surrenders this Note to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Note of like tenor, registered as the Holder (upon payment by the Holder of any applicable transfer taxes) may request, representing in the aggregate the remaining unpaid Principal Amount of this Note. The Holder and any assignee, by acceptance of this Note, acknowledge and agree that, by reason of the provisions of this paragraph, following conversion of a portion of this Note, the unpaid and unconverted Principal Amount of this Note represented by this Note may be less than the amount stated on the face hereof.

iii. Delivery of Common Stock Upon Conversion. Upon receipt by the Company from the Holder of a facsimile transmission or e-mail (or other reasonable means of communication) of a Notice of Conversion meeting the requirements for conversion as provided in this Section 3(c) [Method of Conversion], the Company shall issue and deliver or cause to be issued and delivered to or upon the order of the Holder certificates or book entry statements of ownership for the Conversion Shares (or cause the electronic delivery of the Conversion Shares as contemplated by Section 3(c)(iv) [Delivery of Conversion Shares by Electronic Transfer] hereof) within two (2) Trading Days after such receipt.

iv. Delivery of Conversion Shares by Electronic Transfer. In lieu of delivering physical certificates representing the Conversion Shares issuable upon conversion hereof, provided the Conversion Shares are then legally able to be freely resold by the Holder without restriction under applicable securities laws and are not required to bear a legend as provided in Section 3(d), and provided that the Company is then participating in the Depository Trust Company (“**DTC**”) Fast Automated Securities Transfer or Deposit/Withdrawal at Custodian programs, upon request of the Holder and its compliance with the provisions contained in Section 3(a) [Conversion Right] and in this Section 3(c) [Method of Conversion], the Company shall use its best efforts to cause its transfer agent to electronically transmit the Conversion Shares issuable upon conversion hereof to the Holder by crediting the account of Holder’s Prime Broker with DTC through its Deposit Withdrawal Agent Commission system.

(d) Concerning the Shares. The Conversion Shares issuable upon conversion of this Note may not be sold or transferred unless (i) such shares are sold pursuant to an effective registration statement under the 1933 Act or (ii) the Company or its transfer agent shall have been furnished with an opinion of counsel (which opinion shall be the Legal Counsel Opinion (as defined in the Purchase Agreement)) to the effect that the shares to be sold or transferred may be sold or transferred pursuant to an exemption from such registration or (iii) such shares are sold or transferred pursuant to Rule 144, Rule 144A or Regulation S or (iv) such shares are transferred to an “affiliate” (as defined in Rule 144) of the Company who agrees to sell or otherwise transfer the shares only in accordance with this Section 3(d) [Concerning the Shares] and who is an Accredited Investor (as defined in the Purchase Agreement). Subject to the legend removal provisions set forth below, until such time as the Conversion Shares have been registered under the 1933 Act or otherwise may be sold pursuant to Rule 144, Rule 144A or Regulation S without any restriction as to the number of securities as of a particular date that can then be immediately sold, each certificate for the Conversion Shares that has not been so included in an effective registration statement or that has not been sold pursuant to an effective registration statement or an exemption that permits removal of the legend, shall bear a legend substantially in the following form, as appropriate:

“NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE EXERCISABLE HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL REASONABLY ACCEPTABLE TO THE COMPANY, IN A GENERALLY ACCEPTABLE FORM, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD PURSUANT TO RULE 144, RULE 144A OR REGULATION S UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT BY A FINANCIAL INSTITUTION SECURED BY THE SECURITIES.”

The legend set forth above shall be removed and the Company shall issue to the Holder a certificate for the applicable Conversion Shares without such legend upon which it is stamped or (as requested by the Holder) issue the applicable Conversion Shares by electronic delivery by crediting the account of such holder's broker with DTC, if, unless otherwise required by applicable state securities laws: (a) such Conversion Shares are registered for resale under an effective registration statement filed under the 1933 Act or otherwise may be sold pursuant to Rule 144, Rule 144A or Regulation S without any restriction as to the number of securities as of a particular date that can then be immediately sold, or (b) the Company or the Holder provides an opinion of counsel to the effect that a public sale or transfer of such Conversion Shares may be made without registration under the 1933 Act, which opinion is reasonably acceptable to the Company. The Company shall be responsible for the fees of its transfer agent and all DTC fees associated with any such issuance. The Holder agrees to sell all Conversion Shares, including those represented by a certificate(s) from which the legend has been removed, in compliance with applicable prospectus delivery requirements, if any.

(e) Stock Market Listing Requirements. The conversion rights set forth in this Section 3 shall be suspended if, and for so long as, the issuance of Conversion Shares by the Company would require the approval of the Company's stockholders pursuant to the listing requirements of the principal trading market for the Common Stock, unless such stockholder approval has been obtained.

4. Upon the occurrence of an Event of Default hereunder the Principal amount of this Note and any accrued Interest may be accelerated.

5. Following an Event of Default, the Company shall pay all Principal, Interest and any other amounts required to be paid under this Note, on a pari passu basis with other Senior Promissory Notes of like tenor (not exceeding an aggregate principal amount of \$6,745,000 as among all such Senior Promissory Notes) prior to the payment by the Company of any other promissory notes or other indebtedness of the Company.

6. This Note may be prepaid in whole or in part, at any time and from time to time, without premium or penalty.

7. If FTE and its subsidiaries shall, for three consecutive months during the term of this note, have positive cash flow (as determined in accordance with the accounting principles, policies and procedures) FTE applies to the preparation of its financial statements, in excess of \$100,000 or working capital in excess of \$2 Million, then the Company shall make at least monthly payments equal to at least 1/12 of the outstanding balance each month prior to the Maturity Date.

8. All payments made by Company under this Note will be applied: (i) first, to Interest that is due and payable under this Note, if any; and (ii) second, the remainder to Principal due and payable under this Note.

9. If any payment of Principal or Interest on this Note shall become due on a Saturday, Sunday or any other day on which national banks are not open for business, such payment shall be made on the next succeeding business day.

10. This Note shall be binding upon Company and inure to the benefit of Holder and Holder's respective successors and assigns. Each holder of this Note, by accepting the same, agrees to and shall be bound by all of the provisions of this Note.

11. No provision of this Note shall alter or impair the obligation of Company to pay the Principal of and Interest on this Note at the times, places and rates, and in the coin or currency, herein prescribed.

12. Company will do or cause to be done all things reasonably necessary to preserve and keep in full force and effect its corporate existence, rights and franchises and comply with all laws applicable to Company, except where the failure to comply could not reasonably be expected to have a material adverse effect on Company.

13. If, after the date of this Agreement, an Event of Default (as defined herein) occurs (unless all Events of Default have been cured or waived by Holder), Holder may, by written notice to Company, declare the Principal amount then outstanding of, and the accrued Interest and all other amounts payable on, this Note to be immediately due and payable and can take any and all other actions provided for under applicable law. The following events and/or any other Events of Default defined elsewhere in this Note are "**Events of Default**" under this Note:

(a) Company shall fail to pay, when and as due, the Principal, Interest or any other amount payable hereunder, and five (5) days shall have passed after due demand by Holder; or

(b) Company shall have breached in any material respect any covenant, term or condition of this Note and, with respect to breaches capable of being cured, such breach shall not have been cured within thirty (30) business days after written notice thereof has been provided by Holder to Company; or

(c) Company shall: (i) be adjudicated insolvent; (ii) make an assignment for the benefit of creditors, file a petition in bankruptcy, petition or apply to any tribunal for the appointment of a custodian, receiver or a trustee for it or a substantial portion of its assets; (iii) commence any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation or statute of any jurisdiction, whether now or hereafter in effect; (iv) have filed against it any such petition or application in which an order for relief is entered or which remains undismissed for a period of thirty (30) days or more; (v) indicate its consent to, approval of or acquiescence in any such petition, application, proceeding or order for relief or the appointment of a custodian, receiver or trustee for it or a substantial portion of its assets; (vi) suffer any such custodianship, receivership or trusteeship to continue undischarged for a period of thirty (30) days or more; or (vii) Company shall take any action authorizing, or in furtherance of, any of the foregoing.

In case any one or more Events of Default shall occur and be continuing, Holder may proceed to protect and enforce its rights by an action at law, suit in equity or other appropriate proceeding, whether for the specific performance of any agreement contained herein or for an injunction against a violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or thereby or by law or otherwise. In case of a default in the payment of any Principal of or premium, if any, or Interest on this Note, Company will pay to Holder such further amount as shall be sufficient to cover the reasonable cost and expenses of collection, including, without limitation, reasonable attorneys' fees, expenses and disbursements. No course of dealing and no delay on the part of Holder in exercising any right, power or remedy shall operate as a waiver thereof or otherwise prejudice Holder's rights, powers or remedies. No right, power or remedy conferred by this Note upon Holder shall be exclusive of any other right, power or remedy referred to herein or therein or now or hereafter available at law, in equity, by statute or otherwise.

14. Except as expressly provided otherwise in this Note, Company waives presentment, demand, notice, protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Note, and assent to any extension or postponement of the time of payment or any other indulgence, to any substitution, exchange or release of collateral available to Holder, if any, and to the addition or release of any other party or person primarily or secondarily liable.

15. If from any circumstance any holder of this Note shall ever receive Interest or any other charges constituting interest, or adjudicated as constituting interest, the amount, if any, which would exceed the Maximum Rate shall be applied to the reduction of the Principal amount owing on this Note, and not to the payment of interest; or if such excessive interest exceeds the unpaid balance of Principal hereof, the amount of such excessive interest that exceeds the unpaid balance of Principal hereof shall be refunded to Company. In determining whether or not the interest paid or payable exceeds the Maximum Rate, to the extent permitted by applicable law (i) any non-Principal payment shall be characterized as an expense, fee or premium rather than as Interest; and (ii) all Interest at any time contracted for, charged, received or preserved in connection herewith shall be amortized, prorated, allocated and spread in equal parts during the period of the full stated term of this Note. The term "**Maximum Rate**" shall mean the maximum rate of interest allowed by applicable federal or state law.

16. This Note may be executed in several counterparts, each of which is an original. It shall not be necessary in making proof of this Note or any counterpart hereof to produce or account for any of the other counterparts. A copy of this Note signed by one party and faxed or scanned and emailed to another party (as a PDF or similar image file) shall be deemed to have been executed and delivered by the signing party as though an original. A photocopy or PDF of this Note shall be effective as an original for all purposes.

17. It is the intention of the parties hereto that the terms and provisions of this Note are to be construed in accordance with and governed by the laws of the State of New York, except as such laws may be preempted by any federal law controlling the rate of Interest which may be charged on account of this Note. The parties hereby consent and agree that, in any actions predicated upon this Note, venue is properly laid in New York and that the courts of the State of New York or in the Federal courts sitting in the county or city of New York, shall have full subject matter and personal jurisdiction over the parties to determine all issues arising out of or in connection with the execution and enforcement of this Note.

18. The term "**Company**" as used herein in every instance shall include Company's successors, legal representatives and permitted assigns, including all subsequent grantees, either voluntarily by act of Company or involuntarily by operation of law and shall denote the singular and/or plural and the masculine and/or feminine and natural and/or artificial persons, whenever and wherever the contexts so requires or properly applies. The term "**Holder**" as used herein in every instance shall include Holder's successors, legal representatives and assigns, as well as all subsequent assignees and endorsees of this Note, either voluntarily by act of the parties or involuntarily by operation of law. Captions and paragraph headings in this Note are for convenience only and shall not affect its interpretation. As used herein, words in the singular shall be held to include the plural and vice versa, and words of one gender shall be held to include the other gender as the context requires.

19. Holder may not assign or pledge this Note and its rights hereunder without the prior written approval of Company which may be withheld in Company's sole discretion. Company may not assign its obligations hereunder, whether by operation of law or otherwise, without the prior written approval of Holder which may be withheld in Holder's sole discretion.

20. Anything else in this Note to the contrary notwithstanding, in any action arising out of this Agreement, the prevailing party shall be entitled to collect from the non-prevailing party all of its attorneys' fees. For the purposes of this Note, the party who receives or is awarded a substantial portion of the damages or claims sought in any proceeding shall be deemed the "**prevailing**" party and attorneys' fees shall mean the reasonable fees charged by an attorney or a law firm for legal services and the services of any legal assistants, and costs of litigation, including, but not limited to, fees and costs at trial and appellate levels.

21. If any term or other provision of this Note is invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other conditions and provisions of this Note shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Note so as to affect the original intent of the parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the extent possible.

22. No modification, amendment, addition to, or termination of this Note, nor waiver of any of its provisions, shall be valid or enforceable unless in writing and signed by all the parties hereto.

23. This Note constitutes the entire agreement of the parties regarding the matters contemplated herein, or related thereto, and supersede all prior and contemporaneous agreements and understandings of the parties in connection therewith. To the extent that any term of this Note is inconsistent with any term of the Settlement Agreement, the Settlement Agreement shall take precedence.

[Remainder of page left intentionally blank. Signature page follows.]

IN WITNESS WHEREOF, Company has duly executed this Senior Promissory Note as of Effective Date provided above.

“Company”

FTE Networks, Inc.

By: /s/ Michael P. Beys
Its: Interim CEO
Printed Name: Michael Beys
Date: August 3, 2020

NON-EMPLOYEE DIRECTOR COMPENSATION POLICY

Non-employee members of the board of directors (the “**Board**”) of FTE Networks, Inc. (the “**Company**”) shall be eligible to receive cash and equity compensation as set forth in this Non-Employee Director Compensation Policy (this “**Policy**”). Except as otherwise set forth herein, the cash and equity compensation described in this Policy shall be paid or be made, as applicable, automatically and without further action of the Board, to each member of the Board who is not an employee of the Company or any parent or subsidiary of the Company (each, a “**Non-Employee Director**”) who may be eligible to receive such cash or equity compensation, unless such Non-Employee Director declines the receipt of such cash or equity compensation by written notice to the Company. This Policy was adopted by the Board on January 13, 2020 (the “**Approval Date**”), with the terms and conditions herein effective as of October 1, 2019 (the “**Effective Date**”), and shall remain in effect until it is revised or rescinded by further action of the Board. This Policy may be amended, modified or terminated by the Board at any time in its sole discretion. The terms and conditions of this Policy shall supersede any prior cash and/or equity compensation arrangements for service as a member of the Board between the Company and any of its Non-Employee Directors.

(1) Cash Compensation.

(a) Annual Retainer. Each Non-Employee Director shall receive an annual retainer of \$120,000 for service on the Board.

(b) Additional Annual Retainers. In addition, a Non-Employee Director shall receive the following annual retainers:

(i) Audit Committee. A Non-Employee Director serving as Chairperson of the Audit Committee shall receive an additional annual retainer of \$60,000 for such service.

(ii) Compensation Committee. A Non-Employee Director serving as Chairperson of the Compensation Committee shall receive an additional annual retainer of \$60,000 for such service.

(c) Payment of Retainers.

(i) Timing. The annual retainers described in Sections 1(a) and 1(b) shall be earned on a monthly basis based on a calendar month and shall be paid by the Company in arrears not later than the fifteenth day following the end of each calendar month.

(ii) Form. The annual retainers shall be paid in the form of cash; provided that the Board may, in its discretion, permit a Non-Employee Director to elect to receive any portion of the annual retainer in the form of shares of common stock of the Company (“**Common Stock**”) in lieu of cash. If such an election is permitted by the Board and made by a Non-Employee Director, the number of shares of Common Stock to be paid shall be determined by dividing the portion of the annual retainer payable in the form of Common Stock by the Fair Market Value (as defined in the Company’s 2017 Omnibus Incentive Plan or any other applicable Company equity plan then maintained by the Company (such plan, as may be amended from time to time, the “**Equity Plan**”)) per share of Common Stock on the date the annual retainer is payable. Shares issued in lieu of cash shall be fully vested shares of Common Stock. Any election by a Non-Employee Director to receive a portion of the annual retainer in shares of Common Stock must be made prior to the applicable payment date for such portion of the annual retainer and pursuant to an election form to be provided by the Company. An election must comply with all rules established from time to time by the Board, including any insider trading policy or similar policy. A Non-Employee Director may not make an election pursuant to this Section 1(c)(ii) during a Company blackout period or when the Non-Employee Director is otherwise in possession of material non-public information.

(iii) Termination of Service. In the event a Non-Employee Director serves as a Non-Employee Director, or in one or more of the applicable positions described in Section 1(b), for a portion of, but less than an entire, calendar month, such Non-Employee Director shall receive a prorated portion of the retainer(s) otherwise payable to such Non-Employee Director for such calendar month pursuant to Section 1(a) or Section 1(b), as applicable, with such prorated portion determined by multiplying such otherwise payable retainer(s) by a fraction, the numerator of which is the number of days during which the Non-Employee Director serves as a Non-Employee Director or in one or more of the applicable positions described in Section 1(b) during the applicable calendar month, as applicable, and the denominator of which is the number of days in the applicable calendar month.

(2) **Equity Compensation**. Non-Employee Directors shall be granted the Awards (as defined in the Equity Plan) described below. The Awards described below shall be granted under and shall be subject to the terms and provisions of the Equity Plan and shall be granted subject to the execution and delivery of award agreements, including attached exhibits, in substantially the forms approved by the Board. The approval of this Policy by the Board is intended to be effective for all purposes, including for purposes of satisfying Rule 16b-3(d)(1) of the Securities Exchange Act of 1934, as amended, in respect of each Award issued hereunder.

(a) Initial Awards. On the Approval Date, each Non-Employee Director shall be automatically granted an Award of 75,000 Restricted Shares (as defined in the Equity Plan). The Awards described in this Section 2(a) shall be referred to as the “*Initial Awards*.”

(b) Vesting of Initial Awards. Each Initial Award shall be eligible to vest on the earlier of (i) the first anniversary of the Approval Date, and (ii) immediately prior to the occurrence of a Change in Control (as defined in the Equity Plan), in each case subject to the Non-Employee Director continuing in service through the applicable vesting date. In addition, a prorated portion of the Non-Employee Director’s Initial Award shall be eligible to vest in the event of a Non-Employee Director’s termination of service due to death or disability based on (A) the number of days elapsed between the Approval Date and the date of such termination of service, divided by (B) 365. Unless otherwise determined by the Board, no portion of an Initial Award that is unvested at the time of a Non-Employee Director’s termination of service on the Board (after taking into account any prorated vesting described in the preceding sentence) shall become vested thereafter.

(c) Additional Annual Awards. For each calendar year following the Effective Date, the Board may determine, in its sole discretion, the amount and form of Awards, if any, to grant to Non-Employee Directors serving as of such time. For the avoidance of doubt, nothing in this Section 2(c) shall obligate the Company to grant, or provide any Non-Employee Director rights with respect to, any Award in any calendar year following the Effective Date.

(3) **Reimbursement of Expenses**. The Company shall reimburse each Non-Employee Director for his or her reasonable business expenses incurred in connection with the performance of his or her duties on the Board, including reasonable travel and other expenses. Each Non-Employee Director shall provide to the Company such receipts and other records related to such reimbursable expenses as the Company may require.

LOAN AGREEMENT

Dated as of August 26, 2020

among

THE ENTITIES SET FORTH ON SCHEDULE 1 ATTACHED HERETO,

individually and collectively, as Borrower

and

DLP LENDING FUND LLC,

as Lender

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LOAN AGREEMENT

This LOAN AGREEMENT, dated as of August 26, 2020 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this “*Agreement*”), between DLP LENDING FUND LLC, a Delaware limited liability company (“*Lender*”), having an address at 95 Highland Avenue, St. Augustine, FL 32095, and THE ENTITIES SET FORTH ON SCHEDULE 1 ATTACHED HERETO, jointly and severally (individually and collectively, “*Borrower*”), having its principal place of business at 16 Berryhill Road, Suite 200 Columbia, SC 29210

WITNESSETH:

WHEREAS, Borrower desires to obtain a loan in the original principal amount of TWO MILLION FIVE HUNDRED EIGHTY ONE THOUSAND EIGHT HUNDRED FORTY and 00/100 Dollars (\$2,581,840.00) from Lender pursuant to this Agreement (the “*Loan*”); and

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

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

ARTICLE I

DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1 Definitions. For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

“*Accrued Interest*” shall mean all accrued and unpaid interest on the outstanding principal balance of the Loan from time to time.

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

“*Agreement*” shall mean this Loan Agreement, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“*Allocated Loan Amount*” shall mean, with respect to each Individual Property, the amount set forth on Schedule 1.1(a) hereof.

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

“*Approved Plans*” means complete plans, drawings, specifications and scope of work, that comply with applicable Legal Requirements and have been approved in writing by Lender, for the Project.

“*Assignment of Management Agreement*” shall mean individually and collectively as applicable, an Assignment of Management Agreement and Subordination of Management Fees, dated as of the date hereof or thereafter, as applicable, among Lender, Borrower and Manager, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

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

“Bankruptcy Action” shall mean with respect to any Person (a) such Person filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (b) the filing of an involuntary petition against such Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition against such Person; (c) such Person filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition from any Person; (d) such Person consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, assignee, sequestrator (or similar official), liquidator, or examiner for such Person or any portion of the Property; (e) the filing of a petition against a Person seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code or any other applicable law, (f) under the provisions of any other law for the relief or aid of debtors, an action taken by any court of competent jurisdiction that allows such court to assume custody or Control of a Person or of the whole or any substantial part of its property or assets or (g) such Person making an assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due.

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

“Basic Carrying Costs” shall mean, for any period, the sum of the following costs: (a) Taxes, (b) Other Charges and (c) Insurance Premiums.

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

“Business Day” shall mean any day other than a Saturday, Sunday or any other day on which any of the following institutions is not open for business: (i) banks and savings and loan institutions in New York or Pennsylvania, (ii) the financial institution that maintains any collection account for or on behalf of any Reserve Funds, (iii) the New York Stock Exchange or (iv) the Federal Reserve Bank of New York.

“Casualty” shall have the meaning set forth in Section 6.2 hereof.

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

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

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

“Collateral” shall have the meaning ascribed to such term in the Security Instrument.

“Completion” or **“Complete”** shall mean one hundred percent (100%) completion of construction, renovation, rehabilitation of a Project, as applicable, subject to usual and customary punch list items, in a good and workmanlike manner and in compliance with all Legal Requirements, and in a manner consistent and compliant in all material respects with the applicable Project Documents as approved by Lender, and free and clear of all liens, claims, encumbrances and rights of others, other than Permitted Encumbrances, as evidenced by the issuance of certificates of completion by Lender’s consultant or inspecting architect or engineer, if any, in each case in form and substance acceptable to Lender and, if available or required under applicable Legal Requirements, a final or partial certificate of occupancy and, as applicable, acceptance of completion by the applicable tenant.

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

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

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

“**Debt**” shall mean the Outstanding Principal Balance together with all interest accrued and unpaid thereon and all other sums due to Lender in respect of the Loan under the Note, this Agreement, the Security Instrument or any other Loan Document.

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

“**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 twenty-four percent (24%) per annum.

“**Distribution**” means (i) any dividend, distribution or other payment of any kind on any shares of capital stock or other securities or partnership, membership, economic or other interests, or (ii) any fee, payment, bonus or other remuneration of any kind, or (iii) any repayment of or debt service on loans or other indebtedness other than the Loan.

“**Dollars**” and the sign “\$” shall mean lawful money of the United States of America.

“**Embargoed Person**” shall mean any person, entity or government subject to trade restrictions under U.S. law, including, but not limited to, The USA Patriot Act (including the anti-terrorism provisions thereof), the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701, et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder including those related to Specially Designated Nationals and Specially Designated Global Terrorists, with the result that the investment in Borrower or any Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan made by Lender is in violation of law.

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

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

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

“**ERISA Affiliate**” shall mean each person (as defined in section 3(9) of ERISA) that together with Borrower would be deemed to be a “single employer” within the meaning of Section 414(b), (c), (m) or (o) of the Code.

“**Event of Default**” shall have the meaning set forth in Section 8.1.1(a) hereof.

“**Exchange Act**” shall mean the Securities Exchange Act of 1934, as the same may be amended, modified or replaced, from time to time.

“**Exchange Act Filing**” shall have the meaning set forth in Section 5.1.11(f) hereof.

“**Extended Maturity Date**” shall have the meaning set forth in Section 2.6.1 hereof.

“**Extension Notice**” shall have the meaning set forth in Section 2.6.1 hereof.

“**First Extension Option**” shall have the meaning set forth in Section 2.6.1 hereof.

“**First Payment Date**” shall have the meaning set forth in Section 2.3.2 hereof.

“**Fiscal Year**” shall mean each twelve (12) month period commencing on January 1 and ending on December 31 during each year of the term of the Loan.

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

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

“**Guarantor**” shall mean, jointly and severally, and, as the context requires, individually and collectively, Alexander Szkaradek, Antoni Szkaradek, Michael P. Beys each an individual; US Home Rentals, LLC, a Delaware limited liability company and FTE Networks, Inc., a Delaware corporation.

“**Guaranty**” shall mean that certain Guaranty dated as of the date hereof, from Guarantor in favor of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

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

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

“**In Balance**” means, with respect to each Project, no Deficiency then exists with respect to such Project.

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

“**Indemnified Parties**” shall mean Lender and any of its Affiliates and any of their officers, directors, members, partners, employees, representatives and consultants.

“**Indemnifying Person**” shall mean Borrower and each Guarantor, on a joint and several basis.

“**Individual Property**” shall mean all parcels of land, the Improvements thereon and all personal property owned by the Borrower and encumbered by a Security Instrument, together with all rights pertaining to such property and Improvements, as more particularly described in the granting clauses of each such Security Instrument and referred to therein as the “Property”.

“**Interest Period**” shall mean (i) initially, the period commencing on and including the date of the funding of the Loan and ending on and including the last day of the calendar month of the Closing Date, and (ii) thereafter, for any specified Payment Date including the Maturity Date, the period commencing on and including the first (1st) day of the calendar month prior to such Payment Date and ending on the last day of the calendar month in which such Payment Date occurs.

“**Interest Rate**” shall mean a fixed rate of Eleven and Ninety-Nine Hundredths percent (11.99%) per annum.

“**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 Property by or on behalf of Borrower, and (a) every modification, amendment or other agreement relating to such lease, sublease, subsublease, or other agreement entered into in connection with such lease, sublease, subsublease, or other agreement, and (b) every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto.

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

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

“**Lien**” shall mean any mortgage, deed of trust, deed to secure debt, indemnity deed of trust, lien (statutory or otherwise), pledge, hypothecation, easement, restrictive covenant, preference, assignment, security interest, or any other encumbrance, charge or transfer of, or any agreement to enter into or create any of the foregoing, on or affecting Borrower, the Property, or any portion thereof or any interest therein, or any direct or indirect 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 have the meaning set forth in the recitals hereof.

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

“**Management Agreement**” shall mean any property management agreement or similar agreement entered into by and between Borrower and Manager, pursuant to which Manager is to provide management and other services with respect to the Property, and any successor property management approved by Lender, in writing, in Lender’s sole discretion.

“**Manager**” shall mean, the individual or entity who provides management and other services with respect to the Property pursuant to a Management Agreement.

“**Material Adverse Change**” or “**Materially Adverse Effect**” shall mean that the business, operations, property, assets, liabilities or financial condition of any applicable Person and each of their subsidiaries, taken as a whole, or the ability of any such Person to perform its obligations under the Loan Documents, has changed in a manner which could materially impair the value of Lender’s security for the Loan or prevent timely repayment of the Loan or otherwise prevent the applicable person or entity from timely performing any of its material obligations under the Loan Documents or any Lease, as the case may be, as determined by Lender.

“**Material Agreements**” shall have the meaning set forth in Section 15.20 hereof.

“**Maturity Date**” shall mean the Stated Maturity Date, provided that (a) in the event of the exercise by Borrower of the First Extension Option pursuant to Section 2.6, the Maturity Date shall be the First Extended Maturity Date, and (b) in the event of the exercise by Borrower of the Second Extension Option pursuant to Section 2.6, the Maturity Date shall be the Second Extended Maturity Date, or such earlier date on which the final payment of principal of the Note becomes due and payable as herein or therein provided, whether at the Stated Maturity Date, by declaration of acceleration, or otherwise.

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

“**Multiemployer Plan**” shall mean a multiemployer plan, as defined in Section 4001(a)(3) of ERISA to which Borrower or any ERISA Affiliate is making or accruing an obligation to make contributions or has within any of the preceding three plan years made or accrued an obligation to make contributions.

“**Multiple Employer Plan**” shall mean an employee benefit plan, other than a Multiemployer Plan, to which Borrower or any ERISA Affiliate, and one or more employers other than Borrower or an ERISA Affiliate, is making or accruing an obligation to make contributions or, in the event that any such plan has been terminated, to which Borrower or an ERISA Affiliate made or accrued an obligation to make contributions during any of the five plan years preceding the date of termination of such plan.

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

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

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

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

“**Obligations**” shall mean, collectively, Borrower’s obligations for the payment of the Debt and the performance of the Other Obligations.

“**OFAC**” shall mean the Office of Foreign Asset Control of the Department of the Treasury of the United States of America.

“**Officer’s Certificate**” shall mean a certificate delivered to Lender by Borrower which is signed by an authorized officer of (i) Borrower, or (ii) any direct or indirect general partner or member of Borrower with authority to act on behalf of and bind Borrower.

“**Operations Agreements**” shall mean any covenants, restrictions, easements, declarations or agreements of record relating to the construction, operation or use of the Property, together with all amendments, modifications or supplements thereto.

“**Other Charges**” shall mean all ground rents, maintenance charges, impositions other than Taxes, any “common expenses” or expenses allocated to and required to be paid by Borrower under any Operations Agreements and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property, now or hereafter levied or assessed or imposed against the Property or any part thereof.

“**Other Obligations**” shall mean (a) the performance of all obligations of Borrower contained herein; (b) the performance of each obligation of Borrower or any Guarantor contained in any other Loan Document; (c) the payment of all costs, expenses, legal fees and liabilities incurred by Lender in connection with the enforcement of any of Lender’s rights or remedies under the Loan Documents, or any other instrument, agreement or document which evidences or secures any other Obligations or collateral therefor, whether now in effect or hereafter executed; and (d) the payment, performance, discharge and satisfaction of all other liabilities and obligations of Borrower and/or Guarantor to Lender, whether now existing or hereafter arising, direct or indirect, absolute or contingent, and including, without limitation, each liability and obligation of Borrower and each Guarantor under any one or more of the Loan Documents and any amendment, extension, modification, replacement or recasting of any one or more of the instruments, agreements and documents referred to herein or therein or executed in connection with the transactions contemplated hereby or thereby.

“**Outstanding Principal Balance**” shall mean, as of any date, the outstanding principal balance of the Loan. For the avoidance of doubt, the outstanding principal balance of the Loan shall include Project Reserve Funds and all other funds held by lender or escrow agent.

“**Payment Date**” shall mean, commencing with the First Payment Date, the first (1st) day of each calendar month during the term of the Loan until and including the Maturity Date or, for purposes of making payments hereunder, but not for purposes of calculating Interest Periods, if such day is not a Business Day, the immediately preceding Business Day.

“**Permitted Encumbrances**” shall mean, collectively (a) the Liens and security interests created by the Loan Documents, (b) all Liens, encumbrances and other matters disclosed in “Schedule B-I” of the Title Insurance Policy, (c) Liens, if any, for Taxes imposed by any Governmental Authority which are not yet due or delinquent, and (d) such other title and survey exceptions as Lender has approved or may approve in writing in Lender’s sole discretion, which Permitted Encumbrances in the aggregate do not materially adversely affect the value or use of the Property or Borrower’s ability to repay the Loan.

“**Permitted Transfer**” means any of the following: (a) any Transfer, directly as a result of the death of a natural person, of stock, membership interests, partnership interests or other ownership interests previously held by the decedent in question to the Person or Persons lawfully entitled thereto; (b) any Transfer, directly as a result of the legal incapacity of a natural person, of stock, membership interests, partnership interests or other ownership interests previously held by such natural person to the Person or Persons lawfully entitled thereto; and (c) any Transfer expressly permitted by and completed strictly in accordance with [Section 5.2.10](#).

“**Person**” shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any Governmental Authority, and any fiduciary acting in such capacity on behalf of any of the foregoing.

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

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

“**Prohibited Transaction**” shall mean any action or 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.

“**Project**” shall mean and refer to, individually and collectively as applicable, the rehabilitation improvements to each Individual Property more particularly described on Schedule 1.1(b) hereto, that will be funded, in whole or in part, with disbursements of Project Reserve Funds.

“**Project Budget**” shall mean a budget for construction of each Project approved by Lender in its sole discretion and any modifications thereof approved by Lender in writing in its sole and absolute discretion.

“**Project Contracts**” shall mean each contract or agreement to which Borrower or any agent of Borrower is a party, providing for the provision of construction services (including architect’s or engineering services), labor or material in connection with a Project.

“**Project Costs**” shall mean all costs and expenses of every kind and nature whatsoever to be incurred by Borrower in connection with the Completion of a Project, including such reserves and contingencies as Lender shall reasonably require.

“**Project Documents**” shall mean each of the following as approved by Lender with respect to each Project: the Approved Plans and the applicable Project Contracts.

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

“**Project Reserve Funds**” shall have the meaning set forth in Section 7.4.1 hereof.

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

“**Release Amount**” shall mean, for an Individual Property, the lesser of:

(a) the Debt; or

(b) an amount equal to the Allocated Loan Amount for such Individual Property set forth on Schedule 1.1(a) (as adjusted pursuant to Sections 2.4.1(c) and 2.4.2(a) if applicable) multiplied by one hundred and ten percent (110%).

“**Release Property**” shall have the meaning set forth in Section 2.7 hereof.

“**Rents**” shall mean all rents (including additional rents of any kind and percentage rents), rent equivalents, moneys payable as damages (including payments by reason of the rejection of a Lease in a Bankruptcy Action) or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other payments and consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower or any of their agents or employees from any and all sources arising from or attributable to the Property, and the Improvements, including charges for oil, gas, water, steam, heat, ventilation, air-conditioning, electricity, license fees, maintenance fees, charges for Taxes, operating expenses or other amounts payable to Borrower (or for the account of Borrower), revenues from telephone services, vending and all receivables, customer obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of the Property or rendering of services by Borrower, or any of its agents or employees and proceeds, if any, from business interruption or other loss of income insurance.

“**Reserve Accounts**” shall mean, collectively, the Project Reserve Account, the Net Proceeds Account, and any other escrow or reserve account established pursuant to the Loan Documents

“**Reserve Funds**” shall mean, collectively, the Project Reserve Funds and any other escrow or reserve funds established pursuant to the Loan Documents.

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

“**Retention Amount**” shall have the meaning set forth in Section 6.4(b)(iv) hereof.

“**Second Extension Option**” shall have the meaning set forth in Section 2.6.1 hereof.

“**Securities**” shall have the meaning set forth in Section 9.1 hereof.

“**Security Instrument**” shall mean those certain first priority Deeds of Trust, Security Agreements, Assignment of Leases and Fixture Filings of even date herewith, made by Borrower for the benefit of Lender as security for the Obligations and encumbering the Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Servicer**” shall have the meaning set forth in Section 9.3 hereof.

“**Servicing Agreement**” shall have the meaning set forth in Section 9.3 hereof.

“**Severed Loan Documents**” shall have the meaning set forth in Section 9.2 hereof.

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

“**Stated Maturity Date**” shall mean August 31, 2021.

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

“**Taxes**” shall mean all taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against (a) the Property or part thereof, together with all interest and penalties thereon and (b) against the rents, issues, income or profits thereof or upon the lien or estate hereby created, whether any or all of said taxes, assessments or charges be levied directly or indirectly or as excise taxes or ad valorem real estate or personal property taxes or as income taxes.

“**Tenant**” shall mean the lessee of all or any portion of the Property under a Lease.

“**Title Company**” shall mean the title insurance company which issued the Title Insurance Policy.

“**Title Insurance Policy**” shall mean an ALTA mortgagee title insurance policy in a form acceptable to Lender (or, if the State does not permit the issuance of such ALTA policy, such form as shall be permitted in the State and acceptable to Lender) with respect to the Property and insuring the Lien of any of the Security Instrument encumbering the Property.

“**Transfer**” shall mean means the sale, transfer, hypothecation, pledge, encumbrance, mortgage, conveyance, lease, alienation, assignment, disposition, divestment, or leasing with option to purchase, or assignment of the Property, or any portion thereof or interest therein or in Borrower (whether direct or indirect, legal or equitable including the issuance, sale, assignment, alienation, conveyance, divestment, transfer, disposition, hypothecation, pledge, mortgage or encumbrance of any ownership interest in Borrower or in any entity having an ownership interest in Borrower, whether direct or indirect); or entering into any agreement or contract to do any of the foregoing which is not conditioned on compliance with the terms of the Loan Documents with respect to Transfers, or undertaking, suffering or causing any of the foregoing to occur voluntarily, involuntarily or by operation of law.

“**UCC**” shall mean the Uniform Commercial Code as in effect in the State in which the Property is located, as the same may be amended from time to time *provided, however*, that if by reason of mandatory provisions of law, the perfection or the effect of perfection or non-perfection or priority of the security interest in any item or portion of the collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State in which the Property is located (“**Other UCC State**”), “**UCC**” means the Uniform Commercial Code as in effect in such Other UCC State, as the same may be amended from time to time, for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection or priority.

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

Section 1.2 Principles of Construction. All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All uses of the word “including” shall mean “including, without limitation” unless the context shall indicate otherwise. Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined.

ARTICLE II

GENERAL TERMS

Section 2.1 Loan Commitment; Disbursement to Borrower.

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

2.1.2 Single Disbursement to Borrower. Borrower may request and receive only one disbursement hereunder in respect of the Loan and any amount borrowed and repaid in respect of the Loan may not be re-borrowed. Borrower acknowledges and agrees that the Loan has been fully funded as of the Closing Date.

2.1.3 The Note, Security Instrument and Loan Documents. The Loan shall be evidenced by the Note and secured by the Security Instrument, and the other Loan Documents.

2.1.4 Use of Proceeds. Borrower shall use the proceeds of the Loan to (a) refinance the Property, (b) make deposits of Reserve Funds into the Reserve Accounts on the Closing Date in the amounts provided herein (Borrower hereby authorizing Lender to reserve a portion of the proceeds of the Loan in the amount of the Reserve Funds from disbursement of the proceeds of the Loan on the date hereof), (c) pay costs and expenses incurred in connection with the closing of the Loan, as approved by Lender, and (d) pay for Project Costs.

2.1.5 Upfront Payment. At Closing, Borrower shall pay to Lender an upfront fee (the "*Upfront Payment*") in an amount equal to Seventy-Five Thousand and No/100 Dollars (\$75,000.00), less any portion of the Upfront Fee paid to Lender prior to the Closing. The Upfront Payment is fully earned and non-refundable.

Section 2.2 Interest Rate.

2.2.1 Interest Rate. Subject to Section 2.2.4 hereof, interest on the Outstanding Principal Balance shall accrue from the date of the funding of the Loan to but excluding the Maturity Date at the Interest Rate.

2.2.2 Interest Calculation. With respect to any applicable period, interest on the Outstanding Principal Balance 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 the Interest Rate and a three hundred sixty (360) day year by (c) the average Outstanding Principal Balance in effect for the applicable period as calculated by Lender.

2.2.3 Default Rate. In the event that, and for so long as, any Event of Default shall have occurred and be continuing, the Outstanding Principal Balance and, to the extent permitted by law, all accrued and unpaid interest in respect thereof and any other amounts due pursuant to the Loan Documents, shall accrue interest at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained herein.

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

Section 2.3 Debt Service Payments.

2.3.1 Payments Generally. For purposes of making payments hereunder, but not for purposes of calculating Interest Periods, if the day on which such payment is due is not a Business Day, then amounts due on such date shall be due on the immediately succeeding Business Day. All amounts due pursuant to this Agreement and the other Loan Documents shall be payable without setoff, counterclaim, defense or any other deduction whatsoever.

2.3.2 Monthly Debt Service Payment. On the Closing Date, Borrower shall make a payment of interest only for the period commencing on and including the date of the funding of the Loan through and including September 30, 2020. Beginning on October 1, 2020 (the "*First Payment Date*") and each subsequent Payment Date up to and including the Maturity Date, Borrower shall make a payment to Lender of principal (if any) and interest in an amount equal to the Monthly Debt Service Payment Amount, which payments shall be applied to accrued and unpaid interest.

2.3.3 Payment on Maturity Date. Borrower shall pay to Lender not later than 3:00 P.M., Philadelphia city time, on the Maturity Date the Outstanding Principal Balance, all accrued and unpaid interest and all other amounts due hereunder and under the Note, the Security Instrument and the other Loan Documents.

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

2.3.5 Method and Place of Payment Except as otherwise specifically provided herein, all payments and prepayments under this Agreement and the Note shall be made to Lender not later than 2:00 P.M., Philadelphia city time, on the date when due and shall be made in Dollars in immediately available funds at Lender's office or as otherwise directed by Lender, 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. Any prepayments required to be made hereunder shall be deemed to have been timely made for purposes of this Section 2.3.5.

2.3.6 ACH Payment All payments due and owing under this Agreement or any other Loan Documents shall be made by wire transfer to an account designated by Lender to Borrower from time to time, or at Lender's election, shall be made through automated clearing house ("**ACH**") transfers from the Borrower directly to Lender. In this regard, if Lender elects to receive payments through ACH, shall execute and deliver to Lender an authorization agreement for direct payments whereby, among other things, Lender shall be irrevocably authorized to initiate ACH transfers from the a payment account designated by Borrower to Lender in the amounts required or permitted under this Agreement and all other Loan Documents. Lender's authorization for direct ACH transfers as hereby provided shall be irrevocable and such ACH transfers shall continue until all Obligations are paid in full. For so long as any Obligations remain outstanding, Borrower shall: (i) not revoke Lender's authority to initiate ACH transfers as hereby contemplated; (ii) not change, modify, close or otherwise affect the designated payment account; (iii) deposit all revenues of any nature or kind whatsoever relating to Borrower or its business only into the designated payment account; and (iv) be responsible for all costs, expenses or other fees and charges incurred by Lender as a result of any failed or returned ACH transfers, whether resulting from insufficient sums being available in the designated payment account, or otherwise. Borrower shall undertake any and all required actions, execute any required documents, instruments or agreements, or to otherwise do any other thing required or requested by Lender in order to effectuate the requirements of this Section 2.3.6.

Section 2.4 Prepayments.

2.4.1 Voluntary Prepayments.

(a) Except as otherwise provided in this Section 2.4, Borrower shall not have the right to prepay the Loan in whole or in part. Provided no Event of Default has occurred and is continuing, Borrower may prepay the Loan in whole upon the satisfaction of the following conditions:

(b) Borrower shall provide a written notice to Lender of such prepayment no less than thirty (30) days, and no more than sixty (60) days, prior to the date of such prepayment, specifying the Business Day on which a prepayment of the Debt (the "**Prepayment Date**") is to be made; and

(c) Borrower shall pay to Lender on the Prepayment Date, together with any portion of the Outstanding Principal Balance being repaid:

(i) all accrued and unpaid interest on the amount of the Outstanding Principal Balance being prepaid, which, for the avoidance of doubt, shall include interest on such amount calculated at the applicable Interest Rate through the end of the Interest Period in which such prepayment occurs; and

(ii) without duplication of any of the foregoing, all other sums, then due under the Note, this Agreement, the Security Instrument, and the other Loan Documents.

(d) If for any reason Borrower fails to prepay the Loan on the Prepayment Date (including if such notice is revoked), Borrower shall pay to Lender any actual out-of-pocket losses, costs, damages or expenses (including reasonable attorneys' fees and expenses) incurred by Lender in connection therewith.

(e) Upon receipt by Lender of a voluntary prepayment permitted pursuant to the terms of this Agreement, except for a prepayment made (i) in connection with a release of any Individual Property from the Lien of any of the Security Instruments or (ii) any Casualty/Condemnation Prepayment up to the Allocated Loan Amount of the applicable Individual Property, the Allocated Loan Amount for each Individual Property that is then subject to the Lien of any of the Security Instruments shall be reduced on a pro rata basis by such amount.

2.4.2 Mandatory Prepayments.

(a) 90-Day Principal Payments. On December 1, 2020, Borrower shall make a payment to Lender (the “**Initial 90-Day Principal Payment**”) in an amount equal to five percent (5%) of the Outstanding Principal Balance. Beginning on March 1, 2021 and on each third (3rd) Payment Date thereafter (i.e., on June 1, September 1, December 1 and March 1 of each calendar year), Borrower shall make a payment to Lender (each such payment, and together with the Initial 90-Day Principal Payment, collectively the “**90-Day Principal Payments**”) in an amount (but not less than zero) equal to (a) ten percent (10%) of the Outstanding Principal Balance, less (b) all Release Amounts paid to Lender pursuant to and in accordance with Section 2.7 hereof and applied to pay down the Outstanding Principal Balance but only to the extent such Release Amounts have not been applied to reduce any prior 90-Day Principal Payments. Provided no Event of Default exists, Lender shall apply the 90-Day Principal Payments to the Outstanding Principal Balance.

(b) Net Proceeds Payments. On the Payment Date immediately succeeding the date on which Lender actually receives any Net Proceeds, and if Lender is not required to make such Net Proceeds available to Borrower for a Restoration in accordance with the terms of this Agreement, Borrower shall prepay or authorize Lender to apply the Net Proceeds as a prepayment of the Outstanding Principal Balance in an amount equal to one hundred percent (100%) of such Net Proceeds provided that Borrower shall simultaneously therewith pay to Lender all accrued and unpaid interest on the principal amount being repaid (which, for the avoidance of doubt, shall include interest accruing on such amounts through the last day of the Interest Period in which such repayment occurs). Notwithstanding anything herein to the contrary, so long as no Event of Default has then occurred and is continuing, no or any other prepayment premium, penalty or fee shall be due in connection with any prepayment made pursuant to this Section 2.4.2.

2.4.3 Prepayments After Default. If, during the continuance of an Event of Default, payment of all or any part of the Debt is tendered by Borrower and accepted by Lender or is otherwise recovered by Lender (including through application of any Reserve Funds), such tender or recovery shall be deemed to be a voluntary prepayment by Borrower in violation of the prohibition against prepayment set forth in Section 2.4.1 hereof, and Borrower shall pay, as part of the Debt, all of the interest calculated at the Interest Rate on the amount of principal being prepaid through and including the end of the Interest Period in which such prepayment occurs.

Section 2.5 Release of Property. Except as set forth in Section 2.7 below, no repayment, prepayment 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 of the Security Instruments. Lender shall, upon the written request and at the expense of Borrower, upon payment in full of the Debt in accordance with the terms of this Agreement and the other Loan Documents, release the Lien of the Security Instruments.

Section 2.6 Extension Option(s).

2.6.1 Extension Option(s). Subject to the provisions of this Section 2.6.1, Borrower shall have the option (the “**First Extension Option**”), by irrevocable written notice (the “**First Extension Notice**”) delivered to Lender no later than thirty (30) days prior to the Stated Maturity Date, to extend the Maturity Date to August 31, 2022 (the “**First Extended Maturity Date**”). Borrower’s right to so extend the Maturity Date shall be subject to the satisfaction of the following conditions precedent prior to the effectiveness of any such extension:

(a) (i) no Event of Default shall have occurred and be continuing on the date Borrower delivers the First Extension Notice or the Second Extension Notice, as applicable, and (ii) no Default or Event of Default shall have occurred and be continuing on the Stated Maturity Date and the First Extended Maturity Date, as applicable;

(b) All amounts due and payable by Borrower and any other Person pursuant to this Agreement or the other Loan Documents as of the Stated Maturity Date or the First Maturity Date, as applicable, and all costs and expenses of Lender, including fees and expenses of Lender’s counsel, in connection with the Loan and/or the extension shall have been paid in full;

(c) Borrower shall deliver an Officer's Certificate to Lender (i) certifying that all representations and warranties set forth in this Agreement remain true, correct and complete in all material respects as of the commencement of the applicable Extension Option, and (ii) waiving any claims, counterclaims, rights of rescission, set-offs or defenses, known or unknown, against Lender as of the commencement of the applicable Extension Option.

If Borrower is unable to satisfy all of the foregoing conditions within the applicable time frames for each, Lender shall have no obligation to extend the Stated Maturity Date hereunder.

2.6.2 Extension Documentation. If requested by Lender, Borrower shall execute and deliver an agreement in form and substance reasonably acceptable to Lender commemorating the extension of the Maturity Date upon the exercise of an Extension Option and satisfaction of all applicable conditions to such extension as provided in Section 2.6.1; provided that no such agreement shall materially increase or alter the obligations of Borrower pursuant to the Loan Documents (it being acknowledged that a ratification by Borrower or any Guarantor of its respective obligations under the Loan Documents to which it is a party or a certification by Borrower and/or any Guarantor that its respective representations and warranties set forth in the Loan Documents to which it is a party remain true and correct in all material respects as of the first day of any extension term shall not constitute an increase in Borrower's obligations for such purpose).

2.7 Release of Individual Property. At any time Borrower may obtain the release of an Individual Property from the Lien of the applicable Security Instrument thereon and related Loan Documents (each such Individual Property, a "**Release Property**") and the release of Borrower's obligations under the Loan Documents with respect to such Release Property (other than those expressly stated to survive), upon the satisfaction of each of the following conditions:

(a) Not more than ninety (90) calendar days and not less than ten (10) calendar days prior to the date of the release, Borrower delivers a notice to Lender setting forth (i) the date of the proposed release and (ii) a description of the Release Property that will be subject to the release;

(b) no Event of Default shall be continuing on the date that the Release Property is released from the Lien of the Security Instrument thereon other than as expressly permitted below;

(c) Borrower shall have paid to Lender the applicable Release Amount;

(d) Borrower shall submit to Lender, not less than ten (10) days prior to the date of such release, a release of Lien (and related Loan Documents) for such Release Property for execution by Lender. Such release shall be in a form appropriate in each jurisdiction in which such Release Property is located and that would be reasonably satisfactory to a prudent lender. In addition, Borrower shall provide all documentation Lender reasonably requires to be delivered by Borrower in connection with such release, together with an Officer's Certificate certifying that such documentation (A) will effect such release in accordance with the terms of this Agreement, and (B) will not impair or otherwise adversely affect the Liens, security interests and other rights of Lender under the Loan Documents not being released (or as to the parties to the Loan Documents and Individual Properties subject to the Loan Documents not being released);

(e) Borrower shall have paid or reimbursed Lender for all reasonable out of pocket costs and expenses incurred by Lender (including, without limitation, reasonable attorneys' fees and disbursements) in connection with any release effectuated pursuant to this Section 2.7, and Borrower shall have paid all third-party fees, costs and expenses incurred in connection with any such release, including but not limited to, the payment of all recording charges, filing fees, taxes or other similar expenses incurred in the reasonable judgment of Lender in order to effectuate the release;

(f) [Intentionally omitted]

(g) At Lender's request, Borrower shall deliver to Lender (i) an endorsement to the Title Insurance Policy for the remaining Property (to the extent reasonably available in the State in which the remaining Property is located) insuring the Security Instrument, which endorsement (A) extends the effective date of such Title Insurance Policy for the remaining Property to the effective date of the release, (B) confirms no change in the priority of the Security Instrument on the balance of the Property (exclusive of the Release Parcel); and (C) lists any Permitted Encumbrances; and (ii) at Lender's request, a survey in form and substance reasonably acceptable to Lender of the remaining portion of the Property; and

(h) Notwithstanding the foregoing provisions of this Section 2.7, if the Loan is included in a REMIC Trust, as a condition to such release, Borrower shall have established to Lender's reasonable satisfaction that the loan-to-value ratio of the Loan (expressed as a percentage) based upon valuations obtained by Borrower at its sole cost and expense using (i) an existing appraisal (if such release occurs within twenty-four (24) months of the Closing Date), (ii) a new appraisal or (iii) a broker's price opinion or other written determination of value using a commercially reasonable valuation method (provided, in each case, that such appraisal, opinion or other determination constitutes a commercially reasonable method permitted to a REMIC Trust, and provided, further, that such valuation shall be based solely on the value of real property and shall exclude personal property and going-concern value) does not exceed 125% immediately after the release of the Release Property, no such release will be permitted unless the Borrower pays down the principal balance of the Loan by an amount not less than the greater of (A) the Release Amount or (B) the least of one of the following amounts: (i) if the Individual Property is sold, the net proceeds of an arm's-length sale of the Release Property to an unrelated Person, (ii) the fair market value of the Release Property at the time of the release, or (iii) an amount such that the loan-to-value ratio of the Loan as so determined by Lender after the release is not greater than the loan-to-value ratio of the Loan immediately prior to the release, unless the Lender receives an opinion of counsel that, if (B) is not followed, the Securitization will not fail to maintain its status as a REMIC Trust as a result of the release.

ARTICLE III

[**Intentionally Omitted**]

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

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

4.1.1 Organization. Borrower has been duly organized and is validly existing and in good standing with requisite power and authority to own its properties and to transact the business in which it is now engaged and as contemplated by this Agreement, including, without limitation, the power and authority to do business in the State. Borrower is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations. Borrower possesses all rights, licenses, permits and authorizations, governmental or otherwise, necessary to entitle it to own its properties and to transact the businesses in which it is now engaged. The sole business of Borrower is the ownership, management and operation of the Property. The ownership interests of Borrower are as set forth on the organizational chart attached hereto as Schedule 4.1.1. Borrower (a) has complied in all respects with its articles of organization or limited liability company agreement; (b) has maintained complete books and records and bank accounts separate from those of its Affiliates; and (c) has obeyed all formalities required to maintain its status as, and at all times has held itself out to the public as, a legal entity separate and distinct from any other entity (including, but not limited to, any Affiliate thereof). The signatory hereto has all necessary power, authority and legal right to execute this Agreement, the Note and the other Loan Documents on Borrower's behalf to which Borrower is a party. Guarantor has the necessary power, authority and legal right to execute, deliver and perform its obligations under the Guaranty.

4.1.2 Proceedings. Borrower has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents. This Agreement and the other Loan Documents to which it is a party have been duly executed and delivered by or on behalf of Borrower and constitute the legal, valid and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

4.1.3 No Conflicts. The execution, delivery and performance of this Agreement and the other Loan Documents by Borrower and/or Guarantor, as applicable, will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any Lien, charge or encumbrance (other than pursuant to the Loan Documents) upon any of the property or assets of Borrower pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, partnership agreement, management agreement or other agreement or instrument to which Borrower is a party or by which any of Borrower's property or assets is subject, nor will such action result in any violation of the provisions of any Legal Requirements of any Governmental Authority having jurisdiction over Borrower or any of Borrower's properties or assets, and any consent, approval, authorization, order, registration or qualification of or with any court or any such Governmental Authority required for the execution, delivery and performance by Borrower and/or any Guarantor, as applicable, of this Agreement or any other Loan Documents has been obtained and is in full force and effect.

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

4.1.5 Agreements. Borrower is not a party to any agreement or instrument or subject to any restriction which might materially and adversely affect Borrower or the Property, or Borrower's business, properties or assets, operations or condition, financial or otherwise. Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party or by which Borrower or the Property are bound. Borrower has no material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower is a party or by which Borrower or the Property is otherwise bound, other than as permitted by this Agreement.

4.1.6 Title. Borrower has good, marketable and insurable fee simple title to the real property comprising part of the Property and good title to the balance of the Property, free and clear of all Liens whatsoever except the Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. The Security Instrument, when properly recorded in the appropriate records, together with any UCC-1 financing statements required to be filed in connection therewith, will create (a) a valid, perfected first priority lien on the Property, subject only to Permitted Encumbrances and the Liens created by the Loan Documents, and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty, solely to the extent such security interests can be perfected by the filing of a UCC-1 financing statement, all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. There are no claims for payment for work, labor or materials affecting the Property which are or may become a Lien prior to, or of equal priority with, the Liens created by the Loan Documents.

4.1.7 Solvency. Borrower has (a) not entered into the transaction contemplated by this Agreement or executed the Note, this Agreement or any other Loan Documents with the actual intent to hinder, delay or defraud any creditor and (b) received reasonably equivalent value in exchange for its obligations under such Loan Documents. After 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 liabilities (including contingent liabilities, if any), 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 incur debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debts 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 the obligations of Borrower). No Bankruptcy Action exists against Borrower and Borrower has never been a debtor party in a Bankruptcy Action. No Bankruptcy Action exists against any Guarantor, and neither Borrower nor has any Guarantor has ever been a debtor party in a Bankruptcy Action. Neither Borrower nor any Guarantor is contemplating either a Bankruptcy Action or the liquidation of all or a major portion of Borrower's or Guarantor's respective assets or properties, and Borrower has no knowledge of any Person contemplating the filing of any petition against Borrower or any Guarantor.

4.1.8 Full and Accurate Disclosure. No statement of fact made by or on behalf of Borrower in this Agreement or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no material information that has not been disclosed to Lender which adversely affects, nor as far as Borrower can reasonably foresee, might materially adversely affect, the Property or the business, operations or condition (financial or otherwise) of Borrower or any Guarantor.

4.1.9 No Plan Assets. Borrower is not an “employee benefit plan,” as defined in Section 3(3) of ERISA, subject to Title I of ERISA or Section 4975 of the Code, and none of the assets of Borrower constitutes or will constitute “plan assets” of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101. Compliance by Borrower and each Guarantor with the provisions hereof will not involve any Prohibited Transaction. Neither Guarantor nor Borrower has any pension, profit sharing, stock option, insurance or other arrangement or plan for employees covered by Title IV of ERISA, and no “Reportable Event” as defined in ERISA has occurred and is now continuing with respect to any such plan. The performance by Borrower of its obligations under the Loan Documents and Borrower’s conducting of its operations do not violate any provisions of ERISA. In addition, (a) Borrower is not a “governmental plan” within the meaning of Section 3(32) of ERISA, (b) transactions by or with Borrower are not subject to any state statute or regulation regulating investments of, or fiduciary obligations with respect to, governmental plans within the meaning of Section 2(32) of ERISA which is similar to the provisions of Section 406 of ERISA or Section 4975 of the Code currently in effect, which prohibit or otherwise restrict the transactions contemplated by this Agreement, and (c) none of Borrower, Guarantor or ERISA Affiliate is at the date hereof, or has been at any time within the two years preceding the date hereof, an employer required to contribute to any Multiemployer Plan or Multiple Employer Plan, or a “contributing sponsor” (as such term is defined in Section 4001 of ERISA) in any Multiemployer Plan or Multiple Employer Plan; and none of Borrower, Guarantor or any ERISA Affiliate has any contingent liability with respect to any post-retirement “welfare benefit plan” (as such term is defined in ERISA) except as disclosed to Lender in writing.

4.1.10 Compliance. Borrower and the Property (including the use thereof) comply in all material respects with all applicable Legal Requirements, including, without limitation, building and zoning ordinances and codes. Borrower is not in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority, including, without limitation, any order of a bankruptcy court or plan approved thereby. There has not been committed by Borrower (or any other Person), any act or omission affording any Governmental Authority the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower’s obligations under any of the Loan Documents. Neither the Improvements, if any, as constructed, nor the use of the Property or any contemplated accessory uses, will violate (a) any Legal Requirements (including subdivision, zoning, building, environmental protection and wetland protection Legal Requirements), or (b) any building permits, restrictions or records, or agreements affecting the Property or any part thereof. Neither the zoning authorizations, approvals or variances nor any other right to construct or to use the Property is to any extent dependent upon or related to any real estate other than the Property.

4.1.11 Financial Information. All financial data with respect to the Property and Guarantor, including, without limitation, the statements of cash flow and income and operating expense, that have been delivered to Lender in connection with the Loan (a) are true, complete and correct in all material respects, (b) fairly and accurately represent the financial condition of the Property and each Guarantor as of the date of such reports, and (c) to the extent prepared or audited by an independent certified public accounting firm, have been prepared in accordance with GAAP (or such other accounting basis acceptable to Lender) throughout the periods covered, except as disclosed therein. Except for Permitted Encumbrances, Borrower does not have any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and reasonably likely to have a Materially Adverse Effect on the Property or the Project. Since the date of such financial statements, there has been no Material Adverse Change (or any other material change) in the financial condition, operation or business of Borrower or any Guarantor from that set forth in said financial statements.

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

4.1.13 Federal Reserve Regulations. No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulation U or any other Regulations of such Board of Governors, or for any purposes prohibited by any Legal Requirements or by the terms and conditions of this Agreement or the other Loan Documents.

4.1.14 Public Access. The Property has rights of access to public ways and, upon construction thereon, will be served by water, sewer, sanitary sewer and storm drain facilities adequate to service the Property for its intended uses. All public utilities necessary or convenient to the full use and enjoyment of the Property are located either in the public right-of-way abutting the Property (which will be connected so as to serve the Property without passing over other property) or in recorded easements serving the Property and such easements are set forth in and insured by the Title Insurance Policy. All roads necessary for the use of the Property for its current purpose have been completed and dedicated to public use and accepted by all Governmental Authorities. There is no on-site sewage disposal system and, upon construction thereon, the Property will be served by a sewer system maintained by a Governmental Authority or property owners association.

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

4.1.16 Separate Lots. The Property is comprised of multiple parcels more particularly described on Schedule 1.1(a) which each constitute(s) a separate tax lot or lots and does not constitute a portion of any other tax lot not a part of the Property.

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

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

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

4.1.20 Insurance. Borrower has obtained and has delivered to Lender evidence of all Policies, with all premiums paid thereunder, reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. No claims have been made or are currently pending, outstanding or otherwise remain unsatisfied under any such Policies, and neither Borrower nor any other Person, has done, by act or omission, anything which would impair the coverage of any such Policies.

4.1.21 Flood Zone. None of the Improvements on the Property are located in an area as identified by the Federal Emergency Management Agency as an area having special flood hazards or, if so located, the flood insurance required pursuant to Section 6.1(a)(i) hereof is in full force and effect with respect to the Property.

4.1.22 Leases. Any and all Leases at the Property (a) provide for rental rates comparable to existing local market rates, contain reasonable market rate terms and do not contain any terms which would materially adversely affect Lender's rights under the Loan Documents, (b) are for a lease term not exceeding one year, including all extensions, (c) are with individual, residential, non-commercial tenants, and (d) have been entered into by Borrower in its ordinary course of business. No Person has any possessory interest in the Property or right to occupy the same other than tenants pursuant to the express terms of the Leases.

4.1.23 Survey. Each Survey for the Property delivered to Lender is accurate.

4.1.24 Principal Place of Business; State of Organization. Borrower's principal place of business as of the date hereof is the address set forth in the introductory paragraph of this Agreement. Borrower is organized under the laws of the State of Delaware and is qualified to do business in the all states in which Borrower is required to be qualified.

4.1.25 Filing and Recording Taxes. All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the transfer of the Property to Borrower have been paid. All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Security Instrument, have been paid or are being paid simultaneously with the disbursement of the proceeds of the Loan to Borrower.

4.1.26 [Intentionally omitted].

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

4.1.28 No Change in Facts or Circumstances; Disclosure. All information submitted by Borrower and any Guarantor to Lender including, but not limited to, all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan or in satisfaction of the terms thereof and all statements of fact made by Borrower and each Guarantor in this Agreement or in any other Loan Document, are accurate, complete and correct in all material respects. There has been no Material Adverse Change in any condition, fact, circumstance or event that would make any such information inaccurate, incomplete or otherwise misleading in any material respect or that otherwise materially and adversely affects or might materially and adversely affect the use, operation or value of the Property or the business operations and/or the financial condition of Borrower or any Guarantor. Borrower and each Guarantor have disclosed to Lender all material facts and have not failed to disclose any material fact that could cause any information provided to Lender or representation or warranty made herein to be materially misleading.

4.1.29 Investment Company Act. Borrower is not (a) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; (b) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 2005, as amended; or (c) subject to any other Federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

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

4.1.31 Filing of Returns. Borrower and each Guarantor have filed all Federal income tax returns and all other material tax returns, domestic and foreign, or extensions, as the case may be, required to be filed by it and have paid all material taxes and assessments payable by it that have become due, other than those not yet delinquent and except for those being contested in good faith. Borrower and each Guarantor have each established on its books such charges, accruals and reserves in respect of taxes, assessments, fees and other governmental charges for all fiscal periods as are required by sound accounting principles consistently applied. Neither Borrower, nor any Guarantor knows of any proposed assessment for additional Federal, foreign or state taxes for any period, or of any basis therefor, that, individually or in the aggregate, taking into account such charges, accruals and reserves in respect thereof as such Person has made, could reasonably be expected to cause a Material Adverse Change with respect to Borrower, Guarantor or the Property.

4.1.32 Operations Agreements. Each Operations Agreement is in full force and effect and neither Borrower nor, to the best of Borrower's knowledge, any other party to any such Operations Agreement, 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.

Section 4.2 Survival of Representations. Borrower agrees that all of the representations and warranties of Borrower set forth in Section 4.1 and elsewhere in this Agreement and in the other Loan Documents shall survive for so long as any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

ARTICLE V

BORROWER COVENANTS

Section 5.1 Affirmative Covenants. From the date hereof and until payment and performance in full of all Obligations, Borrower hereby covenants and agrees with Lender that:

5.1.1 Existence; Compliance with Legal Requirements. Borrower shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, licenses, permits and franchises and comply with all Legal Requirements applicable to Borrower and the Property. There shall never be committed by Borrower, and Borrower shall not permit any other Person in occupancy of or involved with the operation or use of the Property to commit, any act or omission affording any Governmental Authority the right of forfeiture against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. Borrower shall not commit, permit or suffer to exist any act or omission affording such right of forfeiture. Borrower shall at all times maintain, preserve and protect all franchises and trade names, preserve all the remainder of its property used or useful in the conduct of its business, and shall keep the Property in good working order and repair, and from time to time make, or cause to be made, all reasonably necessary repairs, renewals, replacements, betterments and improvements thereto, all as more fully provided in the Security Instrument. Borrower shall keep the Property insured at all times by financially sound and reputable insurers, to such extent and against such risks, and maintain liability and such other insurance, as is more fully provided in this Agreement. After prior notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding promptly initiated and conducted in good faith and with due diligence, the validity of any Legal Requirement, the applicability of any Legal Requirement to Borrower or the Property or any alleged violation of any Legal Requirement, provided, that: (a) no Default or Event of Default has occurred and is continuing; (b) such proceeding shall be permitted under, and be conducted in accordance with, the provisions of any instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances; (c) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (d) Borrower shall, upon final determination thereof, promptly comply with any such Legal Requirement determined to be valid or applicable or cure any violation of any Legal Requirement; (e) such proceeding shall suspend the enforcement of the contested Legal Requirement against Borrower and the Property; and (f) Borrower shall furnish such security as may be required in the proceeding, or as may be requested by Lender, to insure compliance with such Legal Requirement, together with all interest and penalties payable in connection therewith. Lender may apply any such security, as necessary to cause compliance with such Legal Requirement at any time when, in the judgment of Lender, the validity, applicability or violation of such Legal Requirement is finally established or the Property (or any part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost.

5.1.2 Taxes and Other Charges. Borrower shall pay, all Taxes and Other Charges now or hereafter levied or assessed or imposed against the Property, or any part thereof, as the same become due and payable. Borrower will deliver or cause to be delivered to Lender receipts for payment or other evidence satisfactory to Lender that the Taxes and Other Charges have been so paid or are not then delinquent no later than ten (10) days prior to the date on which the Taxes and/or Other Charges would otherwise be delinquent if not paid. Borrower shall not suffer and shall promptly pay or cause to be paid and discharged any Lien or charge whatsoever which may be or become a Lien or charge against the Property, and shall promptly pay or cause to be paid all utility services provided to the Property. After prior notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Taxes or Other Charges, provided that (a) no Default or Event of Default has occurred and remains uncured; (b) such proceeding shall be permitted under, and be conducted in accordance with, the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances; (c) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (d) Borrower shall promptly upon final determination thereof pay or cause to be paid the amount of any such Taxes or Other Charges, together with all costs, interest and penalties which may be payable in connection therewith; (e) such proceeding shall suspend the collection of such contested Taxes or Other Charges from the Property (except that if such Taxes or Other Charges must be paid sooner in order to avoid being delinquent, then Borrower shall pay or cause the same to be paid prior to delinquency, and upon making such payment or causing such payment to be made prior to delinquency Borrower may continue such contest); and (f) Borrower shall furnish such security as may be required in the proceeding, or as may be requested by Lender, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon. Lender may pay over any such cash deposit or part thereof held by Lender to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established or the Property (or part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost or there shall be any danger of the Lien of the Security Instrument being primed by any related Lien.

5.1.3 Litigation. Borrower shall give prompt notice to Lender of any litigation or proceedings by any Governmental Authority pending or threatened against Borrower and/or any Guarantor which might have a Materially Adverse Effect on Borrower's or any Guarantor's condition (financial or otherwise) or business or the Property.

5.1.4 Access to Property. Borrower shall permit agents, representatives and employees of Lender to inspect the Property or any part thereof at reasonable hours upon reasonable advance notice (which may be given verbally).

5.1.5 Notice of Default. Borrower shall promptly advise Lender of any Material Adverse Change in Borrower's or any Guarantor's condition, financial or otherwise, or of the occurrence of any Default or Event of Default of which Borrower has knowledge.

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

5.1.7 Perform Loan Documents. Borrower shall observe, perform and satisfy all the terms, provisions, covenants and conditions of, and shall pay when due all costs, fees and expenses to the extent required under the Loan Documents. Payment of the costs and expenses associated with any of the foregoing shall be in accordance with the terms and provisions of this Agreement, including, without limitation, the provisions of Section 10.13 hereof.

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

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

(a) furnish to Lender all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements, and each and every other document, certificate, agreement and instrument required to be furnished by Borrower pursuant to the terms of the Loan Documents or which are reasonably requested by Lender in connection therewith;

(b) authorize the filing or recording of or execute and deliver to Lender such documents, instruments, certificates, assignments, financing statements 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 under the Loan Documents, as Lender may reasonably require; and

(c) 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. In furtherance hereof, Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of protecting, perfecting, preserving and realizing upon the interests granted pursuant to this Agreement and to effect the intent hereof, all as fully and effectually as Borrower might or could do; and Borrower hereby ratifies all that Lender shall lawfully do or cause to be done by virtue hereof. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other applicable Loan Document, and in the case of the Note, receipt of an indemnity from Lender, Borrower will issue, in lieu thereof, a replacement Note or other applicable Loan Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Loan Document in the same principal amount thereof and otherwise of like tenor. Borrower hereby authorizes Lender to file an "all assets" financing statement with respect to the Collateral.

5.1.10 Mortgage Taxes. Borrower shall simultaneously with the disbursement of the proceeds of the Loan pay all state, county and municipal recording and all other taxes imposed upon the execution and recordation of the Security Instrument.

5.1.11 Financial Reporting.

(a) Borrower will keep and maintain or will cause to be kept and maintained on a Fiscal Year basis in accordance with GAAP (or such other accounting basis selected by Borrower and reasonably acceptable to Lender), proper and accurate books, records and accounts reflecting all of the financial affairs of Borrower and all items of income and expense in connection with the operation of the Property. Lender shall have the right from time to time at all times during normal business hours upon reasonable notice (which may be verbal) to examine such books, records and accounts at the office of Borrower or any other Person maintaining such books, records and accounts and to make such copies or extracts thereof as Lender shall desire. After the occurrence of an Event of Default, Borrower shall pay any costs and expenses incurred by Lender to examine Borrower's accounting records with respect to the Property, as Lender shall reasonably determine to be necessary or appropriate in the protection of Lender's interest. Upon Lender's request, Borrower shall furnish to Lender such other information reasonably necessary and sufficient to fairly represent the financial condition of Borrower and the Property.

(b) Borrower will furnish to Lender annually, within one hundred twenty (120) days following the end of each Fiscal Year of Borrower, and within thirty (30) days of the end of each calendar quarter, a complete copy of Borrower's and each Guarantor's annual (or quarterly, as applicable) financial statements certified as true and correct by the party providing such statements (and, for the annual of statements of Borrower prepared by an independent certified public accountant acceptable to Lender) in accordance with GAAP (or such other accounting basis acceptable to Lender, consistently applied) covering the Property for such Fiscal Year (or calendar quarter) and containing statements of profit and loss for Borrower, Guarantor and the Property and a balance sheet for Borrower and each Guarantor. Such statements of Borrower shall set forth the financial condition and the results of operations for the Property for such Fiscal Year (or calendar quarter), and an Officer's Certificate certifying that each annual financial statement of Borrower fairly presents the financial condition and the results of operations of Borrower and the Property subject to such reporting, and that such financial statements have been prepared in accordance with GAAP and as of the date thereof whether 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. Guarantor's annual financial statements shall be accompanied by a certificate executed and delivered by Guarantor (if such Guarantor is a natural person) or an officer or other duly authorized representative of Guarantor (if such Guarantor is an entity) certifying that each annual financial statement presents fairly the financial condition and the results of operations of Guarantor being reported upon and that such financial statements have been prepared in accordance with GAAP (or such other accounting basis acceptable to Lender, and, for Guarantors, Lender hereby approves sound and prudent cash based financial statements consistently applied) and as of the date thereof whether there exists an event or circumstance which constitutes a Default or Event of Default by Guarantor under the Loan Documents, and if such Default or an 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 shall also provide such monthly reports and statements as are reasonably required by Lender within twenty (20) days after the end of each calendar month.

(d) Borrower shall furnish to Lender, within twenty (20) days after request (or as soon thereafter as may be reasonably possible), such further detailed information with respect to the operation of the Property and the financial affairs of Borrower as may be reasonably requested by Lender.

(e) Any reports, statements or other information required to be delivered under this Agreement shall be delivered in electronic form (or such other form as required by Lender) and Borrower agrees that Lender may disclose information regarding the Property and Borrower that is provided to Lender pursuant to this Section 5.1.11 in connection with any Lender Assignment to such parties requesting such information in connection with such Lender Assignment.

(f) Without limitation on other requirements of this Agreement, Lender may require, at Borrower's cost and expense, quarterly valuations of the Loan and Borrower shall cooperate in connection therewith; provided, however, so long as no Event of Default exists, Borrower shall not be required to reimburse Lender more than \$2,500 for the cost of any such quarterly valuation.

5.1.12 Business and Operations. Borrower will continue to engage in the businesses presently conducted by it as and to the extent the same are necessary for the ownership, maintenance, management and operation of the 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, maintenance, management and operation of the Property or ownership and management of an interest in Borrower (as applicable).

5.1.13 Title to the Property. Borrower will warrant and defend (a) the title to the Property and every part thereof, subject only to Permitted Encumbrances, and (b) the validity and priority of the Lien of each of the Security Instruments, subject only to Permitted Encumbrances, in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any losses, costs, damages or expenses (including attorneys' fees and expenses, and court costs) incurred by Lender if an interest in the Property, other than as permitted hereunder, is claimed by another Person.

5.1.14 Costs of Enforcement. In the event (a) that the Security Instrument is foreclosed in whole or in part or that the Security Instrument is put into the hands of an attorney for collection, suit, action or foreclosure, (b) of the foreclosure of any mortgage prior to or subsequent to the Security Instrument in which proceeding Lender is made a party, or (c) of a Bankruptcy Action related to Borrower or an assignment by Borrower for the benefit of its creditors, Borrower, on behalf of itself and its successors and assigns, agrees that it/they shall be chargeable with and shall pay all costs of collection and defense, including attorneys' fees and expenses, and court costs, incurred by Lender or Borrower in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, together with all required service or use taxes.

5.1.15 Estoppel Statement.

(a) After request by Lender, Borrower shall within ten (10) days furnish Lender with a statement, duly acknowledged and certified, setting forth (i) the original principal amount of the Loan, (ii) the Outstanding Principal Balance, (iii) the Interest Rate of the Loan, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the performance of the Obligations, if any, and (vi) that the Note, this Agreement, the Security Instrument and the other Loan Documents are valid, legal and binding obligations of Borrower and have not been modified or if modified, giving particulars of such modification.

(b) Borrower shall use commercially reasonable efforts to deliver to Lender upon request, tenant estoppel certificates from each commercial Tenant, if any, in form and substance reasonably satisfactory to Lender provided that Borrower shall not be required to deliver such certificates more frequently than once in any calendar year.

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

5.1.17 Performance by Borrower. Borrower shall in a timely manner observe, perform and fulfill each and every covenant, term and provision of each Loan Document executed and delivered by, or applicable to, Borrower and shall not enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Loan Document without the prior written consent of Lender.

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

5.1.19 Leasing Matters. Any Lease executed after the date hereof (and any amendment or termination thereof) shall require the prior written consent of Lender, which consent shall be in Lender's sole and absolute discretion. Borrower shall furnish Lender with true, correct and complete executed copies of all Leases, amendments thereof and any related agreements. Without limitation, and as applicable, Lender shall be deemed to have approved all renewals of Leases and all proposed Leases so long as the same (a) provide for rental rates comparable to existing local market rates, contain reasonable market rate terms and do not contain any terms which would materially adversely affect Lender's rights under the Loan Documents, (b) are for a lease term not exceeding one year, including all extensions, (c) are with individual, residential, non-commercial tenants, and (d) have been entered into by Borrower in its ordinary course of business. All Leases executed after the date hereof shall provide that they are subordinate to the Security Instrument and the Liens created thereby and that the Tenant thereunder agrees to attorn to Lender or any other purchaser of the Property at a sale by foreclosure (or deed in lieu thereof) or power of sale. Borrower (a) shall observe and perform the obligations imposed upon the lessor under the Leases in a commercially reasonable manner; (b) shall enforce the terms, covenants and conditions contained in the Leases upon the part of the Tenant thereunder to be observed or performed in a commercially reasonable manner and in a manner which does not impair the value of the Property involved, provided that in no event shall Borrower terminate or accept the surrender of any Lease by a Tenant unless by reason of a Tenant default and then only in a commercially reasonable manner to preserve and protect the Property; *provided, however*, that no such termination or surrender of any Lease will be permitted without the prior written consent of Lender or unless such termination or surrender is specifically provided for in the Lease; (c) shall not collect any of the Rents more than one (1) month in advance (other than security deposits required pursuant to such Lease); (d) shall not execute any other assignment of the lessor's interest in the Leases or the Rents (except to Lender pursuant to the Loan Documents); (e) shall not alter, modify or change the terms of the Leases; and (f) shall execute and deliver at the request of Lender all such further assurances, confirmations and assignments in connection with the Leases as Lender shall from time to time reasonably require. Lender shall have the right to require each new Tenant to execute and deliver to Lender a subordination, non-disturbance of possession and attornment agreement in form, content and manner of execution reasonably acceptable to Lender.

5.1.20 Operation of Property.

(a) Borrower shall: (i) promptly perform and/or observe in all material respects all of the covenants and agreements required to be performed and observed by it under any of the Operations Agreements and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Lender of any material default under any Operations Agreement of which it is aware; and (iii) enforce the performance and observance of all of the covenants and agreements required to be performed and/or observed by any party (other than Borrower) under the Operations Agreements, in a commercially reasonable manner.

(b) All Material Agreements shall be subject to the prior review and approval, not to be unreasonably withheld, of Lender. As used herein, “**Material Agreements**” shall mean each contract and agreement relating to the ownership, management, development, use, operation, leasing, maintenance, repair or improvement of the Property, as to which either (a) there is an obligation of Borrower to pay more than \$50,000 in the aggregate, or (b) the term thereof extends beyond one year (unless cancelable on thirty (30) days or less notice without requiring the payment of termination fees or payments of any kind).

5.1.21 Changes in the Legal Requirements Regarding Taxation. If any Legal Requirement or other law, order, requirement or regulation of any Governmental Authority is enacted or adopted or amended after the date the Loan is funded which imposes a tax, either directly or indirectly, on the Obligations or Lender’s interest in the Property, Borrower must pay or cause to be paid such tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of such tax or interest and penalties by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then in any such event, Lender may, by written notice to Borrower of not less than ninety (90) days, declare the Obligations immediately due and payable.

5.1.22 No Credits on Account of the Obligations. Borrower will not claim or demand or be entitled to any credit or credits on account of the Obligations for any payment of Taxes assessed against the Property and no deduction shall otherwise be made or claimed from the assessed value of the Property for real estate tax purposes because of the Loan Documents or the Obligations. If Legal Requirements or other laws, orders, requirements or regulations require such claim, credit or deduction, Lender may, by written notice to Borrower of not less than ninety (90) days, declare the Obligations immediately due and payable.

5.1.23 Personal Property. Borrower shall cause all of its personal property, fixtures, attachments and equipment delivered upon, attached to or used in connection with the operation of the Property to always be located at the Property and shall be kept free and clear of all Liens, encumbrances and security interests, except Permitted Encumbrances.

5.1.24 Rehabilitation Project.

(a) Project Documents. Borrower shall diligently and continuously undertake to Complete each Project in conformance with the applicable Project Documents. Borrower will perform its obligations under the Project Documents and will enforce the terms of the Project Documents.

(b) Permits. Borrower shall pay for and obtain or cause to be paid for and obtained all permits, licenses and approvals required by applicable Legal Requirements with regard to each Project.

(c) Lender Consultants. At Borrower’s expense, Lender shall have the right to employ an inspecting architect, engineer or consultant with respect to a Project. Borrower shall pay immediately upon demand the fees and expenses of any architect, engineer or consultant employed by Lender for the purpose of reviewing plans or otherwise engaged by Lender with respect to any Project.

(d) Performance by Lender. Upon the occurrence of an Event of Default, Lender shall have the right, without limitation of Lender’s other remedies under the Loan Documents, upon written notice to Borrower, either before or after accelerating the Debt or commencing foreclosure, either directly or through Lender’s agents and contractors to (i) enter onto the Property, (ii) complete the Project, (iii) modify the Project as Lender deems necessary, (iv) hire or replace any contractor or vendor retained by Borrower in connection with the Project as Lender deems necessary, (v) expend such sums as Lender determines necessary to Complete such Project and (vi) purchase any insurance coverage deemed appropriate by Lender in its sole discretion relating to the Project or Lender’s exercise of its rights under this Section 5.1.24(d). Borrower hereby waives any right to contest any such costs or expenses incurred by Lender in the exercise of Lender’s rights under this Section 5.1.24(d), and such costs and expenses (a) shall be added to the Debt, (b) shall be secured by the Security Instrument, (c) shall accrue interest at the Default Rate, and (d) shall be payable to Lender upon demand. Borrower hereby agrees to indemnify and hold harmless Lender for any such costs or expenses. Borrower hereby grants Lender an irrevocable power of attorney, coupled with an interest, to exercise Lender’s rights under this Section 5.1.24(d). Lender does not have and shall not have any obligation to complete any Project.

Section 5.2 Negative Covenants. From the date hereof until payment and performance in full of the Obligations, Borrower covenants and agrees with Lender that it will not do, directly or indirectly, any of the following:

5.2.1 Operation of Property. Borrower shall not, without Lender's prior consent (which consent shall be in Lender's sole and absolute discretion): enter into, amend, surrender, terminate, waive any rights under or cancel any Management Agreement.

5.2.3 Liens. Borrower shall not create, incur, assume, permit or suffer to exist any Lien on any portion of the Property or permit any such action to be taken, except for Permitted Encumbrances.

5.2.4 Dissolution. Borrower shall not (a) engage in any dissolution, liquidation, consolidation or merger with or into any other business entity, (b) engage in any business activity not related to the ownership and operation of the Property, (c) transfer, lease or sell, in one transaction or any combination of transactions, the assets or all or substantially all of the properties or assets of Borrower except to the extent permitted by the Loan Documents, or (d) modify, amend, waive or terminate its organizational documents or its qualification and good standing in any jurisdiction.

5.2.5 Change in Business. Borrower shall not enter into any line of business other than the ownership and operation of the Property, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business.

5.2.6 Debt Cancellation. Borrower shall not cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to Borrower by any Person, except for adequate consideration and in the ordinary course of Borrower's business.

5.2.7 Zoning. Borrower shall not initiate or consent to any zoning reclassification of any portion of the Property or seek any variance under any existing zoning ordinance, or use or permit the use of any portion of the 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, in each case, without the prior written consent of Lender.

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

5.2.9 Principal Place of Business and Organization. Borrower shall not change its principal place of business set forth in the introductory paragraph of this Agreement without first giving Lender at least thirty (30) days prior notice. Borrower shall not change the place of its organization as set forth in Section 4.1.24 without the consent of Lender, which consent shall not be unreasonably withheld. Upon Lender's request, Borrower shall execute and deliver additional financing statements, security agreements and other instruments which may be necessary to effectively evidence or perfect Lender's security interest in the Property as a result of such change of principal place of business or place of organization.

5.2.10 ERISA.

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

(b) Borrower further covenants and agrees to 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 (1) Borrower is not an “employee benefit plan” as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a “governmental plan” within the meaning of Section 3(32) of ERISA; (2) Borrower is not subject to any state statute regulating investments of, or fiduciary obligations with respect to, governmental plans; and (3) one or more of the following circumstances is true: (i) Equity interests in Borrower are publicly offered securities, within the meaning of 29 C.F.R. §2510.3-101(b)(2); (ii) Less than twenty-five percent (25%) of each outstanding class of equity interests in Borrower is held by “benefit plan investors” within the meaning of 29 C.F.R. §2510.3-101(f)(2); (iii) Borrower qualifies as an “operating company” or a “real estate operating company” within the meaning of 29 C.F.R. §2510.3-101(c) or (e); or (iv) The Loan meets the requirements of PTE 95-60, 90-1, 84-14 or similar exemption.

5.2.11 Transfers; Assumptions.

(a) Without the prior written consent of Lender and except to the extent otherwise set forth in this Section 5.2.10, no Transfer may occur without the prior written consent of Lender in its sole and absolute discretion.

(b) Notwithstanding the provisions of this Section 5.2.10, Lender’s consent shall not be required in connection with a Permitted Transfer; *provided, however*, that all of the following conditions are satisfied with respect to any such Transfers: (1) Borrower shall provide Lender thirty (30) days’ prior written notice thereof (other than a Permitted Transfer for which notice shall occur within thirty (30) days’ after such Transfer), (2) such Transfer shall not result in a change in the day-to-day management and operations of the Property, (3) [intentionally omitted], and (4) such Transfer shall not result in a breach of Section 5.2.9 or 5.2.13. Notwithstanding anything set forth herein, and without limiting any restrictions on any Transfer set forth herein, if any proposed transfer of any direct or indirect interests in Borrower would otherwise be a Permitted Transfer or not require Lender’s consent but shall result in any Person owning more than twenty percent (20%) of the direct or indirect legal, beneficial or economic interest in Borrower (other than Persons currently owning more than twenty percent (20%) of the direct or indirect legal, beneficial or economic interest in Borrower), approval of such transferee is required so that Lender can confirm the transfer and transferee complies with all legal and regulatory requirements and Lender policies relating to such transfer and transferee, including, without limitation, the Patriot Act and federal regulations issued with respect thereto and to ensure compliance with the representations in Section 4.1.30 hereof.

(c) Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon a Transfer without Lender’s consent. This provision shall apply to every Transfer regardless of whether voluntary or not, or whether or not Lender has consented to any previous Transfer.

5.2.12 Operations Agreements. Borrower shall not, without the prior written consent of Lender, modify any of the Operations Agreements.

5.2.13 [Intentionally omitted].

5.2.14 Embargoed Person; OFAC. As of the date hereof and at all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower and any Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person; (b) no Embargoed Person has any interest of any nature whatsoever in Borrower or any Guarantor, as applicable, with the result that the investment in Borrower or any Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of Borrower or any Guarantor, as applicable, have been derived from any unlawful activity with the result that the investment in Borrower or any Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law. Neither Borrower nor any Guarantor is (or will be) a Person with whom Lender is restricted from doing business under OFAC regulations (including those persons named on OFAC’s Specially Designated and Blocked Persons list) or under any statute, executive order (including the September 24, 2001 #13224 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and shall not engage in any dealings or transactions or otherwise be associated with such Persons. In addition, to help the US Government fight the funding of terrorism and money laundering activities, The USA Patriot Act (and the regulations thereunder) requires Lender to obtain, verify and record information that identifies its customers. Borrower shall provide Lender with any additional information that Lender deems necessary from time to time in order to ensure compliance with The USA Patriot Act and any other applicable Legal Requirements concerning money laundering and similar activities.

5.2.15 Distributions. Borrower shall not make or permit any Distribution.

5.2.16 Affiliate Agreements. Borrower shall not enter into any agreement with an Affiliate without Lender's prior written consent, in its sole and absolute discretion.

ARTICLE VI

INSURANCE; CASUALTY; CONDEMNATION

Section 6.1 Insurance.

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

(i) comprehensive "All Risk" or "Special Form" insurance on the Improvements and the Personal Property (A) in an amount equal to one hundred percent (100%) of the "**Full Replacement Cost**," which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations) with no depreciation; (B) containing an agreed amount endorsement with respect to the Improvements and Personal Property waiving all co-insurance provisions, or confirmation that co-insurance does not apply; and (C) providing for no deductible in excess of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) for all such insurance coverage. In addition, Borrower shall obtain: (x) if any portion of the Improvements is currently, or at any time in the future, located in a Federally designated "special flood hazard area", flood hazard insurance in an amount equal to the Outstanding Principal Balance or such other amount as Lender shall require; (y) earthquake insurance in amounts and in form and substance satisfactory to Lender in the event the Property is located in an area with a high degree of seismic activity; and (z) windstorm insurance in amounts and in form and substance satisfactory to Lender in the event such windstorm coverage is excluded under the Special Form Coverage, provided that the insurance pursuant to clauses (x), (y) and (z) hereof shall be on terms consistent with the comprehensive "All Risk" or "Special Form" insurance policy required under this subsection (i);

(ii) commercial general liability insurance, including a broad form comprehensive general liability endorsement and coverage against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, such insurance (A) to be on the so-called "occurrence" form with a combined limit of not less than Two Million and No/100 Dollars (\$2,000,000.00) in the aggregate and One Million and No/100 Dollars (\$1,000,000.00) per occurrence (and, if on a blanket policy, containing an "Aggregate Per Location" endorsement); (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 insured contracts; and (5) contractual liability covering the indemnities contained in Article VIII of the Security Instrument to the extent the same is available;

(iii) if there are tenants of the Property, rental loss insurance (A) with loss payable to Lender; (B) covering all risks required to be covered by the insurance provided for in subsection (i) above; and (C) for loss of Rents in an amount equal to one hundred percent (100%) of the projected rents from ` for a period of twelve (12) months from the date of such Casualty (assuming such Casualty had not occurred) and notwithstanding that the policy may expire prior to or at the end of such period. The amount of such loss of Rents or business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on Borrower's reasonable estimate of income to be derived from the Property for the succeeding twelve (12) month period. Notwithstanding anything to the contrary set forth herein, all proceeds payable to Lender pursuant to this subsection shall be held by Lender and shall be applied at Lender's sole discretion to (I) the Debt, or (II) operating expenses for the Property approved by Lender in its sole discretion; *provided, however*, that nothing herein contained shall be deemed to relieve Borrower of its obligations to pay the Debt, 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 forms do not otherwise apply, (A) owner's and contractor's 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 Property, and (4) with an agreed amount endorsement waiving co-insurance provision, or confirmation that co-insurance does not apply;

(v) if Borrower ever has any direct employees, worker's compensation insurance with respect to any employees of Borrower, as required by any Governmental Authority or Legal Requirement;

(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) if Borrower ever has any direct employees or owns any motor vehicles, motor vehicle liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence of not less than One Million and No/100 Dollars (\$1,000,000.00);

(viii) umbrella or excess liability insurance in an amount not less than Five Million and No/100 Dollars (\$5,000,000.00) per occurrence on terms consistent with the commercial general liability insurance policy required under subsection (ii) above;

(ix) if the Property is or becomes a legal "non-conforming" use or structure, ordinance or law coverage to compensate for the value of the undamaged portion of the Property, the cost of demolition and increased cost of construction in amounts as requested by Lender;

(x) if applicable, the commercial property, business income, general liability and umbrella or excess liability insurance required under Sections 6.1(a)(i), (ii), (iii) and (viii) above shall cover perils of terrorism and acts of terrorism and Borrower shall maintain commercial property and business income insurance for loss resulting from perils and acts of terrorism on terms (including amounts) consistent with those required under Sections 6.1(a)(i), (ii), (iii) and (viii) above at all times during the term of the Loan so long as Lender determines that either (I) prudent owners of real estate comparable to the Property are maintaining same or (II) prudent institutional lenders (including, without limitation, investment banks) to such owners are requiring that such owners maintain such insurance; and

(xi) upon sixty (60) days' notice, such other insurance and in such amounts as Lender from time to time may request against such other insurable hazards which at the time are commonly insured against for properties similar to the Property located in or around the region in which the Property is located.

(b) All insurance provided for in Section 6.1(a) shall be obtained under valid and enforceable policies (collectively, the "**Policies**" or in the singular, the "**Policy**"), and shall be subject to the approval of Lender as to insurance companies, amounts, deductibles, loss payees and insureds. The Policies shall be issued by financially sound and responsible insurance companies authorized to do business in the State and having a claims paying ability rating of "A-" or better by S&P or "A-X" or better by AM Best or "A3" or better by Moody's Investor Service, Inc.. Prior to the expiration dates of the Policies theretofore furnished to Lender, certificates of insurance evidencing the renewal or successor Policies accompanied by evidence satisfactory to Lender of payment of the premiums due thereunder (the "**Insurance Premiums**"), shall be delivered by Borrower to Lender. Borrower shall supply an original or certified copy of the original policy within ten (10) days of request by Lender, provided that the policy is available.

(c) Any blanket insurance Policy shall specifically allocate to the 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 Property in compliance with the provisions of Section 6.1(a).

(d) All Policies provided for or contemplated by Section 6.1(a), except for the Policy referenced in Section 6.1(a)(v), shall name Borrower as the insured and Lender (and its successors and assigns) as Mortgagee, Loss Payee and Additional Insured, as its interests may appear, and in the case of property damage, boiler and machinery, flood and earthquake insurance, shall contain a standard non-contributing mortgagee clause in favor of Lender providing that the loss thereunder shall be payable to Lender.

(e) All Policies provided for in this Section 6.1 shall contain clauses or endorsements to the effect that: (i) no act or negligence of Borrower, or anyone acting for Borrower, or of any tenant or other occupant, or failure to comply with the provisions of any Policy, which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Lender is concerned; (ii) the Policies on which Lender is listed as a Mortgagee shall not be canceled without at least thirty (30) days' notice to Lender; (iii) Lender shall not be liable for any Insurance Premiums thereon or subject to any assessments thereunder; and (iv) shall contain a waiver of subrogation in favor of Lender.

(f) If at any time Lender is not in receipt of written evidence that all Policies are in full force and effect, Lender shall have the right, without notice to Borrower, to take such action as Lender deems necessary to protect its interest in the Property, including, without limitation, the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate. 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 Security Instrument and shall bear interest at the Default Rate. Provided no Event of Default exists, Lender shall promptly provide Borrower with notice of any such premiums incurred.

(g) Without limitation, Borrower shall continue to maintain all insurance that is in effect as of the date hereof.

Section 6.2 Casualty. If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (a "**Casualty**"), Borrower shall (a) give prompt notice of such damage to Lender, and (b) promptly commence and diligently prosecute the completion of Restoration so that the Property resembles, as nearly as possible, the condition the Property was in immediately prior to such Casualty, with such alterations as may be reasonably approved by Lender and otherwise in accordance with Section 6.4. Borrower shall pay all costs of such Restoration whether or not such costs are covered by insurance. Lender may, but shall not be obligated to make proof of loss if not made promptly by Borrower. In addition, Lender may participate in (and have approval rights over) any settlement discussions with any insurance companies with respect to any Casualty in which the Net Proceeds or the costs of completing Restoration are equal to or greater than five percent (5%) of the applicable Allocated Loan Amount for the affected Individual Property and Borrower shall deliver to Lender all instruments required by Lender to permit such participation.

Section 6.3 Condemnation. Borrower shall promptly give Lender notice of the actual or threatened commencement of any proceeding in respect of Condemnation, and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings, and Borrower shall from time to time deliver to Lender all instruments requested by 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 taking by any public or quasi-public authority through Condemnation or otherwise (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to perform the Obligations at the time and in the manner provided in this Agreement and the other Loan Documents and the Outstanding Principal Balance shall not be reduced until any Award shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Obligations. Lender shall not be limited to the interest paid on the Award by the applicable 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 Property or any portion thereof is taken by a Governmental Authority, Borrower shall promptly commence and diligently prosecute Restoration and otherwise comply with the provisions of Section 6.4. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the Award, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the Award, or a portion thereof sufficient to pay the Debt.

Section 6.4 Restoration. If there are any Improvements on the Property, the following provisions shall apply:

(a) If the Net Proceeds and the costs of completing Restoration shall each be less than five percent (5%) of the applicable Allocated Loan Amount for the affected Individual Property, then the Net Proceeds will be disbursed by Lender to Borrower upon receipt, provided that all of the conditions set forth in Section 6.4(b)(i) are met and Borrower delivers to Lender a written undertaking to expeditiously commence and to satisfactorily complete with due diligence Restoration in accordance with the terms of this Agreement.

(b) If the Net Proceeds are equal to or greater than five percent (5%) of the applicable Allocated Loan Amount for the affected Individual Property, but less than twenty percent (20%) of the applicable Allocated Loan Amount for the affected Individual Property, or the costs of completing Restoration are equal to or greater than five percent (5%) of the applicable Allocated Loan Amount for the affected Individual Property, but less than twenty percent (20%) of the applicable Allocated Loan Amount for the affected Individual Property, then, in either case, the Net Proceeds will be held by Lender and Lender shall make the Net Proceeds available for Restoration in accordance with the provisions of this Section 6.4. The term "**Net Proceeds**" for purposes of this Section 6.4 shall mean: (i) the net amount of all insurance proceeds received by Lender pursuant to Section 6.1 (a)(i), (iv), (vi), (ix) and (x) as a result of such damage or destruction, after deduction of Lender's reasonable costs and expenses (including, but not limited to, reasonable counsel costs and fees), if any, in collecting same ("**Insurance Proceeds**"), or (ii) the net amount of the Award, after deduction of Lender's reasonable costs and expenses (including, but not limited to, reasonable counsel costs and fees), if any, in collecting same ("**Condemnation Proceeds**"), whichever the case may be.

(i) The Net Proceeds shall be made available to Borrower for Restoration upon the determination of Lender in its sole discretion that the following conditions are met:

(A) no Event of Default shall have occurred and be continuing;

(B) in the event the Net Proceeds are Condemnation Proceeds, 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 Property, and no portion of the Improvements is located on such land;

(C) if applicable, Leases demising in the aggregate a percentage amount equal to or greater than ninety percent (90%) of the total rentable space in the affected Individual Property which has been demised under executed and delivered Leases in effect as of the date of the occurrence of such Casualty or Condemnation, whichever the case may be, shall remain in full force and effect during and after the completion of Restoration, notwithstanding the occurrence of any such Casualty or Condemnation, whichever the case may be, and will make all necessary repairs and restorations thereto at their sole cost and expense;

(D) Borrower shall commence Restoration as soon as reasonably practicable (but in no event later than sixty (60) days after such Casualty or Condemnation, whichever the case may be, occurs) and shall diligently pursue the same to satisfactory completion;

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

(F) Lender shall be satisfied that Restoration will be completed on or before the earliest to occur of (1) four (4) months prior to the Maturity Date, (2) the earliest date required for such completion under the terms of any Leases, (3) such time as may be required under all applicable Legal Requirements in order to repair and restore the affected Individual Property to the condition it was in immediately prior to such Casualty or to as nearly as possible the condition it was in immediately prior to such Condemnation, as applicable, or (4) the expiration of the insurance coverage referred to in Section 6.1(a)(iii);

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

applicable Legal Requirements; (H) Restoration shall be done and completed by Borrower in an expeditious and diligent fashion and in compliance with all

related Improvements; (I) such Casualty or Condemnation, as applicable, does not result in the loss of access to the affected Individual Property or the

architect or engineer stating the entire cost of completing Restoration, which budget shall be acceptable to Lender; and (J) Borrower shall deliver, or cause to be delivered, to Lender a signed detailed budget approved in writing by Borrower's

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

(ii) The Net Proceeds shall be paid directly to Lender for deposit in an interest-bearing account (the "*Net Proceeds Account*") and, until disbursed in accordance with the provisions of this Section 6.4(b), shall constitute additional security for the Debt and the Other Obligations. The Net Proceeds shall be disbursed by Lender to, or as directed by, Borrower from time to time during the course of Restoration, upon receipt of evidence satisfactory to Lender that (A) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with Restoration have been paid for in full, and (B) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Property which have not either been fully bonded to the satisfaction of Lender and discharged of record or in the alternative fully insured to the satisfaction of Lender by the Title Company.

(iii) All plans and specifications required in connection with Restoration shall be subject to prior review and acceptance in all respects by Lender in its discretion and by an independent consulting engineer selected by Lender (the "*Casualty Consultant*"). Lender shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with Restoration. The identity of the contractor engaged in Restoration, as well as the contracts under which it has been engaged, shall be subject to prior review and acceptance by Lender in its discretion and the Casualty Consultant. All costs and expenses incurred by Lender in connection with making the Net Proceeds available for Restoration including, without limitation, reasonable counsel fees and disbursements and the Casualty Consultant's fees, shall be paid by Borrower.

(iv) In no event shall 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 Restoration, as certified by the Casualty Consultant, minus the Retention Amount. The term "*Retention Amount*" shall mean, as to each contractor, subcontractor or materialman engaged in Restoration, an amount equal to ten percent (10%) of the costs actually incurred for work in place as part of Restoration, as certified by the Casualty Consultant, until Restoration has been completed. The Retention Amount shall in no event, and notwithstanding anything to the contrary set forth above in this Section 6.4(b), be less than the amount actually held back by Borrower from contractors, subcontractors and materialmen engaged in Restoration. The Retention Amount shall not be released until the Casualty Consultant certifies to Lender that Restoration has been completed in accordance with the provisions of this Section 6.4(b) and that all approvals necessary for the re-occupancy and use of the Property have been obtained from all appropriate Governmental Authorities, and Lender receives evidence satisfactory to Lender that the costs of Restoration have been paid in full or will be paid in full out of the Retention Amount; *provided, however*, that Lender will release the portion of the Retention Amount being held with respect to any contractor, subcontractor or materialman engaged in 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 Security Instrument and evidence of payment of any premium payable for such endorsement. If required by Lender, the release of any such portion of the Retention Amount shall be approved by the surety company, if any, which has issued a payment or performance bond with respect to the contractor, subcontractor or materialman.

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

(vi) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the 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 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 Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this Section 6.4(b) shall constitute additional security for the Debt and the Other Obligations.

(vii) The excess, if any, of the Net Proceeds and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Lender after the Casualty Consultant certifies to Lender that Restoration has been completed in accordance with the provisions of this Section 6.4(b), and the receipt by Lender of evidence satisfactory to Lender that all costs incurred in connection with Restoration have been paid in full, shall be remitted by Lender to Borrower, provided no Event of Default shall have occurred and shall be continuing.

(c) If Net Proceeds are (i) equal to or greater than twenty percent (20%) of the applicable Allocated Loan Amount for the affected Individual Property, (ii) not required to be made available for Restoration (due to Borrower's inability to satisfy the conditions set forth in Section 6.4(b)(i) or otherwise), or (iii) not to be returned to Borrower as excess Net Proceeds pursuant to Section 6.4(b)(vii), then in any such event all Net Proceeds may be retained and applied by Lender in accordance with Section 2.4.2 hereof toward reduction of the Outstanding Principal Balance whether or not then due and payable in such order, priority and proportions as Lender in its sole discretion shall deem proper, or, in the sole discretion of Lender, the same may be paid, either in whole or in part, to Borrower for such purposes as Lender shall approve, in its sole discretion. No prepayment charge shall be payable by Borrower by reason of a Casualty or Condemnation.

(d) In the event of foreclosure of the Security Instrument, or other transfer of title to the Property in extinguishment in whole or in part of the Debt all right, title and interest of Borrower in and to the Policies that are not blanket Policies then in force concerning the Property and all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure or Lender or other transferee in the event of such other transfer of title.

ARTICLE VII

RESERVE FUNDS

Section 7.1 [Intentionally Omitted]

Section 7.2 [Intentionally Omitted]

Section 7.3 Reserve Funds, Generally.

(a) Borrower (i) hereby grants to Lender a first priority security interest in all of the Reserve Funds and any and all monies now or hereafter deposited in each Reserve Account as additional security for payment and performance of the Obligations and (ii) will take all actions necessary to maintain in favor of Lender a perfected first priority security interest in the Reserve Funds, including, without limitation, filing or authorizing Lender to file UCC-1 financing statements and continuations thereof. Until expended or applied in accordance herewith, the Reserve Funds shall constitute additional security for the Obligations.

(b) Upon the occurrence of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in any or all of the Reserve Funds to the reduction of the Outstanding Principal Balance or the payment of any other amounts then due and owing under this Agreement or any of the other Loan Documents in any order in its sole discretion.

(c) Borrower shall not further pledge, assign or grant any security interest in any Reserve Fund or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 financing statements, except those naming Lender as the secured party, to be filed with respect thereto.

(d) The Reserve Funds shall not constitute trust funds and may be commingled with other monies held by Lender. No earnings or interest on the Reserve Funds shall be payable to Borrower. Lender shall not have any obligation to keep or maintain such Reserve Funds or any funds deposited therein in interest bearing accounts.

(e) Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys' fees and expenses) (collectively, "**Claims**") arising from or in any way connected with the Reserve Funds or the performance of the obligations for which the Reserve Funds were established; provided, however, Borrower shall not be obligated to indemnify Lender for any such Claims to the extent arising from Lender's gross negligence or willful misconduct. Borrower shall assign to Lender all rights and claims Borrower may have against all Persons supplying labor, materials or other services which are to be paid from or secured by the Reserve Funds; *provided, however*, that Lender may not pursue any such right or claim unless an Event of Default has occurred and remains uncured.

(f) Upon payment in full of the Debt in accordance with the terms of this Agreement and the other Loan Documents, Lender shall return any remaining Reserve Funds to Borrower.

Section 7.4 Project Reserve Funds.

7.4.1 Deposits of Project Reserve Funds. Borrower shall deposit with Lender (which amount may be net funded by Lender but deemed disbursed) an amount equal to \$70,000.00 on the Closing Date for the purpose of funding Project Costs, which amounts shall be deposited into a Reserve Account (the "**Project Reserve Account**"). Amounts deposited from time to time into the Project Reserve Account pursuant to this Section 7.4.1 are referred to herein as the "**Project Reserve Funds**". The allocated amount of Project Reserve Funds with respect to each Individual Property, are set forth on Schedule 1.1(a) hereof.

7.4.2 Disbursement of Project Reserve Funds.

(a) Disbursements Upon Completion of Project at Individual Property. Each disbursement of Project Reserve Funds shall be released subject to satisfaction of the following conditions, any of which may be waived by Lender in Lender's sole discretion:

(i) Any request for a disbursement of Project Reserve Funds shall be submitted to Lender on Lender's form of request, not less than ten (10) Business Days prior to the anticipated date for the disbursement of Project Reserve Funds, and shall be accompanied by all evidence required to be approved by Lender as a condition to such disbursement, including an Officer's Certificate stating that said conditions are then satisfied;

(ii) Disbursement of Project Reserve Funds shall only be used for the portion of the Project at the Individual Property to which the request for disbursement of Project Reserve Funds relates shall not exceed the amount of the Project Reserve Funds allocated to the applicable Individual Property;

(iii) Borrower shall be in compliance with the terms and conditions of Section 5.1.24;

(iv) The relevant portion of the Project at an Individual Property to which the requested disbursement of Project Reserve Funds relates shall be Complete;

(v) At Lender's election, Lender shall have received certificates of Lender's consultant, any Architect and the General Contractor that the such portion of the Project is Complete;

(vi) Evidence reasonably acceptable to Lender, together with all other appropriate certificates and other documentation that Lender may require from, and as are customarily issued by, applicable Governmental Authorities, evidencing (i) compliance with all applicable Legal Requirements, including final certificates of occupancy and all consents or approvals required from third parties or any Governmental Authority have been obtained, and (ii) that no petitions, actions or proceedings are pending or threatened which could reasonably be expected to materially alter or declare invalid any approvals, consents, permits or certificates for or relating to the Project, or any part thereof;

(vii) Final unconditional waivers of lien (and evidence of payment) from all other contractors, subcontractors and materialmen as required by Lender or the Title Company; and

(viii) Lender shall have received notices of title continuation showing that since the date of the last disbursement of Project Reserve Funds there has been no adverse change in the state of title to the applicable Individual Property not approved by Lender, and, to the extent that any new improvements have been constructed at the applicable Individual Property outside their footprint on the date of the most recent survey, no adverse survey exceptions with respect to the Property not theretofore approved by Lender, and Lender may, in its discretion, require an endorsement to the Title Insurance Policy, in form and content satisfactory to Lender, insuring, in effect, that such disbursement has the same priority as the initial disbursement of the Loan and that there has been no Material Adverse Change in the condition of title to the Property since the issuance of the Title Insurance Policy;

(ix) No actions, suits or proceedings shall then be pending nor have any been threatened against or which affect Borrower, any Guarantor or the Property which could have a Material Adverse Change on Borrower, Guarantor or the Property;

(x) No Default or Event of Default shall have occurred and be continuing and all representations and warranties set forth in this Agreement and in any other Loan Document shall be materially true and correct as of the date of Borrower's request for the disbursement, the date the disbursement is made, and immediately following the making of the disbursement;

(xi) No substantial unrepaired damage to any portion of the Property by fire or other casualty which is not in Lender's judgment adequately covered by collectible proceeds of insurance; and

(xii) Borrower shall have paid all of the costs and expenses incurred by Lender, including reasonable attorneys' fees and expenses, all title premiums and other title and survey charges in connection with the proposed disbursement and a nonrefundable rehabilitation management in the amount of Two Hundred Ninety-Five and No/100 Dollars (\$295.00) payable to Lender with respect to each disbursement of Project Reserve Funds.

(b) Disbursement by Wire Transfer. Disbursement of Project Reserve Funds shall be made at Lender's election by wire transfer, at Borrower's cost and expense, or by check. Lender may, in its election, make payments of the Project Reserve Funds directly to the contractor, subcontractor, or material supplier. Lender may also require, at Lender's election, in its sole discretion, at Borrower's sole cost and expense, that disbursements of Project Reserve Funds be made through (a) the Title Company pursuant to a construction loan disbursement escrow agreement or (b) a vending control company. Any such arrangement with the Title Company or a vending control company shall be in Lender's sole discretion

(c) Waiver of Conditions. Lender may from time to time, in its sole discretion, waive any condition or conditions to any disbursement of Project Reserve Funds without such waiver or series of waivers constituting a course of dealing or any amendment to this Agreement or a prohibition against subsequent imposition of such condition or conditions or a waiver of a default.

ARTICLE VIII

DEFAULTS

Section 8.1 Event of Default

8.1.1 Generally

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

(i) if any portion of the Debt is not paid when due (including, without limitation, the failure of Borrower to repay the entire outstanding principal balance of the Note in full on the Maturity Date);

(ii) if any of the Taxes or Other Charges are not paid when the same are due and payable without payment of a penalty;

(iii) if the Policies are not kept in full force and effect, or if copies of the certificates evidencing the Policies (or certified copies of the Policies if requested by Lender) are not delivered to Lender within thirty (30) days after written request therefor;

(iv) the occurrence of any Transfer (except a Permitted Transfer) or other encumbrance with respect to any portion of the Property or the Collateral in violation of the provisions of this Agreement or Article 6 of the Security Instrument, or the occurrence of any Transfer in violation of the provisions of Section 5.2.10 hereof;

(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 or deemed remade;

(vi) if Borrower or any Guarantor shall (i) make an assignment for the benefit of creditors or (ii) generally not be paying its debts as they become due;

(vii) if a receiver, liquidator or trustee shall be appointed for Borrower, or if Borrower shall be adjudicated bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to Federal bankruptcy law, or any similar Federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower, or if any proceeding for the dissolution or liquidation of Borrower shall be instituted; *provided, however*, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, upon the same not being discharged, stayed or dismissed within ninety (90) days;

(viii) if a receiver, liquidator or trustee shall be appointed for any Guarantor or if any 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 Guarantor, or if any proceeding for the dissolution or liquidation of any Guarantor shall be instituted; *provided, however*, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by the applicable Guarantor, upon the same not being discharged, stayed or dismissed within ninety (90) days; provided, further, however, it shall be at Lender’s option to determine whether any of the foregoing shall be an Event of Default;

(ix) 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;

(x) if Borrower breaches any representation, warranty or covenant contained in Section 4.1.26 or any of its respective negative covenants contained in Section 5.2;

(xi) with respect to any term, covenant or provision set forth herein which specifically contains a notice requirement or grace period, if Borrower shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

(xii) Borrower breaches any covenant contained in Section 5.1.11 and such breach continues for ten (10) days after notice from Lender;

(xiii) 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 (xi) 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 thirty (30) day period and provided further that Borrower shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed ninety (90) days; or

(xiv) if there shall be a Default under any of the other Loan Documents beyond any applicable cure periods contained in such documents, whether as to Borrower, Guarantor or the Property.

(b) Upon the occurrence of an Event of Default (other than an Event of Default described in clauses (vi), (vii) or (viii) above) and at any time thereafter, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, Lender may take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, without limitation, declaring the Obligations to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents against Borrower and the Property, including, without limitation, all rights or remedies available at law or in equity; 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.

8.1.2 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 (including, without limitation, Lender may accelerate the Loan and declare the Outstanding Principal Balance and all other amounts under the Loan Documents due and payable and institute foreclosure proceedings), 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. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by 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. To the fullest extent permitted by law or equity, without limiting the generality of the foregoing, Borrower agrees that if an Event of Default is continuing (i) Lender shall not be 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 Property and the Security Instrument has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Debt or the Obligations have been paid in full.

(b) With respect to Borrower and the Property, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to the Property for the satisfaction of any of the Debt in any preference or priority, and Lender may seek satisfaction out of the 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 Security Instrument in any manner and for any amounts secured by the Security Instrument then due and payable as determined by Lender in its sole discretion, including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose the Security Instrument to recover such delinquent payments or (ii) in the event Lender elects to accelerate less than the entire Outstanding Principal Balance, Lender may foreclose the Security Instrument to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by the Security Instrument as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to the Security Instrument to secure payment of sums secured by the Security Instrument and not previously recovered.

(c) Lender shall have the right from time to time to partially foreclose the Security Instrument in any manner and for any amounts secured by the Security Instrument then due and payable as determined by Lender in its sole discretion, including the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and/or interest, Lender may foreclose the Security Instrument to recover such delinquent payments, or (ii) in the event Lender elects to accelerate less than the entire Outstanding Principal Balance, Lender may foreclose the Security Instrument to recover so much of the Debt as Lender may accelerate and such other sums secured by the Security Instrument as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to the Security Instrument to secure payment of sums secured by the Security Instrument and not previously recovered.

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

(e) If an Event of Default exists, Lender may (directly or by its agents, employees, contractors, engineers, architects, nominees, attorneys or other representatives), but without any obligation to do so and without notice to Borrower and without releasing Borrower from any obligation hereunder, cure the Event of Default in such manner and to such extent as Lender may deem necessary to protect the security hereof. Subject to Tenants' rights under the Leases, Lender (and its agents, employees, contractors, engineers, architects, nominees, attorneys or other representatives) are authorized to enter upon the Property to cure such Event of Default, and Lender is authorized to appear in, defend, or bring any action or proceeding reasonably necessary to maintain, secure or otherwise protect the Property or the priority of the Lien granted by the Security Instrument.

(f) Lender may appear in and defend any action or proceeding brought with respect to the Property and may bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its sole discretion, decides should be brought to protect its interest in the Property. Lender shall, at its option, be subrogated to the Lien of any mortgage or other security instrument discharged in whole or in part by the Obligations, and any such subrogation rights shall constitute additional security for the payment of the Obligations.

(g) As used in this Section 8.1.2, a "foreclosure" shall include, without limitation, a power of sale.

8.1.3 Remedies Cumulative; Waivers. The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or to impair any remedy, right or power consequent thereon.

8.1.4 **CONFESSION OF JUDGMENT.** THE FOLLOWING PARAGRAPH SETS FORTH A WARRANT OF AUTHORITY FOR ANY ATTORNEY TO CONFESS JUDGMENT AGAINST THE BORROWER. IN GRANTING THIS WARRANT OF ATTORNEY TO CONFESS JUDGMENT AGAINST THE BORROWER, BORROWER, FOLLOWING CONSULTATION WITH (OR DECISION NOT TO CONSULT) COUNSEL FOR BORROWER AND WITH KNOWLEDGE OF THE LEGAL EFFECT HEREOF, HEREBY KNOWINGLY, INTENTIONALLY, VOLUNTARILY AND UNCONDITIONALLY WAIVES ANY AND ALL RIGHTS BORROWER HAS OR MAY HAVE TO PRIOR NOTICE AND AN OPPORTUNITY OF REHEARING UNDER THE RESPECTIVE CONSTITUTIONS AND LAWS OF THE UNITED STATES OF AMERICA, THE COMMONWEALTH OF PENNSYLVANIA, OR ELSEWHERE. IT IS SPECIFICALLY ACKNOWLEDGED BY BORROWER THAT LENDER HAS RELIED ON THIS WARRANT OF ATTORNEY AS AN INDUCEMENT TO GRANT FINANCIAL ACCOMMODATIONS TO BORROWER. UPON AND FOLLOWING THE OCCURRENCE OF AN UNCURED EVENT OF DEFAULT, BORROWER HEREBY AUTHORIZES AND EMPOWERS ANY ATTORNEY OF ANY COURT OF RECORD OR THE PROTHONOTARY OR CLERK OF ANY COUNTY IN THE COMMONWEALTH OF PENNSYLVANIA, OR IN ANY JURISDICTION WHERE PERMITTED BY LAW OR THE CLERK OF ANY UNITED STATES DISTRICT COURT, TO APPEAR FOR BORROWER IN ANY AND ALL ACTIONS WHICH MAY BE BROUGHT HEREUNDER AND ENTER AND CONFESS JUDGMENT AGAINST BORROWER OR ANY OF THEM IN FAVOR OF LENDER FOR SUCH SUMS AS ARE DUE OR MAY BECOME DUE HEREUNDER OR UNDER ANY OTHER LOAN DOCUMENT, TOGETHER WITH COSTS OF SUIT AND ACTUAL COLLECTION COSTS INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES EQUAL TO FIVE PERCENT (5%) OF THE LIABILITIES THEN DUE AND OWING BUT IN NO EVENT LESS THAN \$5,000, WITH OR WITHOUT DECLARATION, WITHOUT PRIOR NOTICE, WITHOUT STAY OF EXECUTION AND WITH RELEASE OF ALL PROCEDURAL ERRORS AND THE RIGHT TO ISSUE EXECUTIONS FORTHWITH. IF A COPY OF THIS NOTE VERIFIED BY AFFIDAVIT OF ANY OFFICER OF LENDER SHALL HAVE BEEN FILED IN SUCH ACTION, IT SHALL NOT BE NECESSARY TO FILE THE ORIGINAL THEREOF AS A WARRANT OF ATTORNEY, ANY PRACTICE OR USAGE TO THE CONTRARY NOTWITHSTANDING. THE AUTHORITY HEREIN GRANTED TO CONFESS JUDGMENT SHALL NOT BE EXHAUSTED BY ANY SINGLE EXERCISE THEREOF, BUT SHALL CONTINUE AND MAY BE EXERCISED FROM TIME TO TIME AS OFTEN AS LENDER SHALL FIND IT NECESSARY AND DESIRABLE AND AT ALL TIMES UNTIL FULL PAYMENT OF ALL AMOUNTS DUE HEREUNDER AND UNDER THE OTHER LOAN DOCUMENTS. LENDER MAY CONFESS ONE OR MORE JUDGMENTS IN THE SAME OR DIFFERENT JURISDICTIONS FOR ALL OR ANY PART OF BORROWER'S OBLIGATIONS ARISING HEREUNDER OR UNDER ANY OTHER LOAN DOCUMENT TO WHICH BORROWER IS A PARTY, WITHOUT REGARD TO WHETHER JUDGMENT HAS THERETOFORE BEEN CONFESSED ON MORE THAN ONE OCCASION FOR THE SAME OBLIGATIONS. IN THE EVENT THAT ANY JUDGMENT CONFESSED AGAINST BORROWER IS STRICKEN OR OPENED UPON APPLICATION BY OR ON BEHALF OF BORROWER FOR ANY REASONS, LENDER IS HEREBY AUTHORIZED AND EMPOWERED TO AGAIN APPEAR FOR AND CONFESS JUDGMENT AGAINST BORROWER FOR ANY PART OR ALL OF THE LIABILITIES DUE AND OWING UNDER THIS NOTE AND THE OTHER LOAN DOCUMENTS, AS HEREIN PROVIDED.

ARTICLE IX

SPECIAL PROVISIONS

Section 9.1 Transfer of Loan. Lender may, at any time, sell, transfer or assign this Agreement, the Note, the Security Instrument and the other Loan Documents, and any or all servicing rights with respect thereto, or grant participations therein or issue mortgage pass-through certificates or other securities (the "*Securities*") evidencing a beneficial interest in a rated or unrated public offering or private placement (such sales, participation, offering and/or placement, collectively, a "*Lender Assignment*"). Lender may forward to each purchaser, transferee, assignee, servicer, participant or investor in such participations or Securities (collectively, the "*Investor*"), each prospective Investor, and any organization maintaining databases on the underwriting and performance of commercial mortgage loans, all documents and information which Lender now has or may hereafter acquire relating to the Loan or to Borrower, any Guarantor or the Property, whether furnished by Borrower, any Guarantor or otherwise, as Lender determines necessary or desirable, including, without limitation, financial statements relating to Borrower, Guarantor, the Property and any Tenant at the Property. Borrower irrevocably waives any and all rights it may have under law or in equity to prohibit such disclosure, including but not limited to any right of privacy.

Section 9.2 Severed Loan Documents. 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 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 (and cause other parties who executed any of the Loan Documents to execute and deliver) to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender may reasonably request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender and Borrower. 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 the parties thereto only as of the Closing Date.

Section 9.3 Servicer. At the option of Lender, the Loan may be serviced by a master servicer, primary servicer, special servicer and/or trustee (any such master servicer, primary servicer, special servicer, and trustee, together with its agents, nominees or designees, are collectively referred to as “**Servicer**”) selected by Lender and Lender may delegate all or any portion of its responsibilities under this Agreement and the other Loan Documents to Servicer pursuant to a pooling and servicing agreement, servicing agreement, special servicing agreement or other agreement providing for the servicing of one or more mortgage loans (collectively, the “**Servicing Agreement**”) between Lender and Servicer. Without limitation, Borrower shall promptly reimburse Lender on demand for (a) interest payable on advances made by Servicer with respect to delinquent debt service payments (to the extent interest at the Default Rate actually paid by Borrower in respect of such payments are insufficient to pay the same) or expenses paid by Servicer or trustee in respect of the protection and preservation of the Property (including, without limitation, on account of Basic Carrying Costs), (b) all costs and expenses, liquidation fees, workout fees, special servicing fees, operating advisor fees or any other similar fees payable by Lender to Servicer which may be due and payable under the Servicing Agreement (whether on a periodic or a continuing basis) as a result of an Event of Default under the Loan, the Loan becoming specially serviced, the commencement or continuance of any enforcement action of any kind with respect to the Loan or any of the Loan Documents, a refinancing or a restructuring of the credit arrangements provided under this Agreement in the nature of a “work-out” of the Loan Documents, or any Bankruptcy Action involving Borrower, Principal, Guarantor or any of their respective principals or Affiliates, (c) all costs and expenses of any Property inspections and/or appraisals (or any updates to any existing inspection or appraisal) that Servicer or the trustee may be required to obtain (but not more than one appraisal in any twelve months unless an Event of Default exists), and (d) all costs and expenses relating to or arising from any special requests made by Borrower or Guarantor during the term of the Loan including, without limitation, in connection with a prepayment, defeasance, assumption or modification of the Loan.

Section 9.4 Cooperation. Borrower and Guarantor agree to reasonably cooperate with Lender (and agree to cause their respective officers and representatives to cooperate) in connection with any Lender Assignment or potential Lender Assignment.

ARTICLE X

MISCELLANEOUS

Section 10.1 Survival. This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Obligations are outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the legal representatives, successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Lender.

Section 10.2 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 and absolute discretion of Lender and shall be final and conclusive.

Section 10.3 Governing Law. THIS AGREEMENT WAS NEGOTIATED IN THE COMMONWEALTH OF PENNSYLVANIA, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE COMMONWEALTH OF PENNSYLVANIA, AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE COMMONWEALTH OF PENNSYLVANIA, 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 COMMONWEALTH OF PENNSYLVANIA APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT TO THE SECURITY INSTRUMENT AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE COMMONWEALTH OF PENNSYLVANIA SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND/OR THE OTHER LOAN DOCUMENTS, AND THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA.

(a) EXCEPTIONS, NOTWITHSTANDING THE FOREGOING CHOICE OF LAW:

(i) THE PROCEDURES GOVERNING THE ENFORCEMENT BY LENDER OF ITS FORECLOSURE AND OTHER REMEDIES AGAINST BORROWER AND GUARANTOR UNDER THE SECURITY INSTRUMENT AND UNDER THE OTHER LOAN DOCUMENTS WITH RESPECT TO THE REAL PROPERTY ASSETS OF BORROWER, INCLUDING BY WAY OF ILLUSTRATION, BUT NOT IN LIMITATION, ACTIONS FOR FORECLOSURE, FOR INJUNCTIVE RELIEF OR FOR THE APPOINTMENT OF A RECEIVER SHALL BE GOVERNED BY THE LAWS OF THE STATE WHERE SUCH PROPERTY OR OTHER ASSETS ARE LOCATED;

(ii) LENDER SHALL COMPLY WITH APPLICABLE LAW IN THE STATE WHERE THE PROPERTY OR OTHER ASSETS ARE LOCATED TO THE EXTENT REQUIRED BY THE LAW OF SUCH JURISDICTION IN CONNECTION WITH THE FORECLOSURE OF THE SECURITY INTERESTS AND LIENS CREATED UNDER THE SECURITY INSTRUMENT;

(iii) PROVISIONS OF FEDERAL LAW AND THE LAW OF THE STATE WHERE THE PROPERTY IS LOCATED SHALL APPLY IN DEFINING THE TERMS HAZARDOUS SUBSTANCES, ENVIRONMENTAL STATUTES, AND LEGAL REQUIREMENTS AS SUCH TERMS ARE USED IN THIS LOAN AGREEMENT, AND THE OTHER LOAN DOCUMENTS, WITH RESPECT TO THE PROPERTY, BORROWER AND GUARANTOR; AND

(iv) MATTERS OF REAL ESTATE, LANDLORD-TENANT AND PROPERTY LAW SHALL BE GOVERNED BY THE LAWS OF THE STATE WHERE THE PROPERTY IS SITUATED.

(b) **AGENT FOR SERVICE OF PROCESS.** ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY AT LENDER'S SOLE OPTION BE INSTITUTED IN ANY FEDERAL DISTRICT COURT OR STATE COURT IN THE COMMONWEALTH OF PENNSYLVANIA, COUNTY OF NORTHAMPTON, PURSUANT TO PENNSYLVANIA LAW, AND BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY OBJECTIONS WHICH BORROWER MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

FTE Networks, Inc.
237 West 35th Street, Suite 806
New York, NY 10001
Attn: CEO
Phone: 646-755-3605
Email: mbeys@blmlp.com

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON BORROWER'S 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 THE COMMONWEALTH OF PENNSYLVANIA, AND BORROWER 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 CONCLUSIVELY BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE COMMONWEALTH OF PENNSYLVANIA. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN THE COMMONWEALTH OF PENNSYLVANIA (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN THE COMMONWEALTH OF PENNSYLVANIA OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR. NOTHING CONTAINED HEREIN SHALL AFFECT THE RIGHT OF AGENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST BORROWER IN ANY OTHER JURISDICTION.

Section 10.4 Modification, Waiver in Writing. No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Note, or of any other Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances.

Section 10.5 Delay Not a Waiver. Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

Section 10.6 Notices. All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested, (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, or (c) facsimile (with answer back acknowledged) or as a PDF or similar attachment to an e-mail, provided that such facsimile or email attachment shall be followed within one (1) business day by delivery of such notice pursuant to clause (a) or (b) above, in each case addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a notice to the other parties hereto in the manner provided for in this Section 10.6):

If to Lender:	DLP Lending Fund LLC 95 Highland Avenue, Suite 300 Bethlehem, PA 28017 Attention: Barry W. DeGroot, Esq. E-Mail: barry@dlpre.com
with a copy to:	Pircher, Nichols & Meeks LLP 1901 Avenue of the Stars, Suite 1200 Los Angeles, California 90067 Attention: Real Estate Notices (WBT: 6004.2) Facsimile No.: (310) 201-8922 E-Mail: realestatenotices@pircher.com
If to Borrower:	c/o FTE Networks, Inc. 237 West 35 th Street, Suite 806 New York, NY 10001 Attn: CEO Phone: 646-755-3605 Email: mbey@blmlp.com
with a copy to:	FTE Legal 237 West 35 th Street, Suite 806 New York, NY 10001 Attn: Corporate Counsel Phone: (239) 315-3161 Email: legal@fnet.com

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; in the case of expedited prepaid delivery, upon the first attempted delivery on a Business Day; or in the case of facsimile or PDF or similar attachment to an e-mail, upon sender's receipt of a machine-generated confirmation of successful transmission after advice by telephone to recipient that a facsimile or e-mail notice is forthcoming. Any failure to deliver a notice by reason of a change of address not given in accordance with this Section 10.6, or any refusal to accept a notice, shall be deemed to have been given when delivery was attempted. Any notice required or permitted to be given by any party hereunder or under any other Loan Document may be given by its respective counsel.

Section 10.7 Waiver of Trial by Jury. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER.

Section 10.8 Headings. The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 10.9 Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Section 10.10 Preferences. 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 Debt. 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 10.11 Waiver of Notice. Borrower hereby expressly waives, and 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.

Section 10.12 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, Borrower agrees that neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment. The parties hereto agree that any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment. Further, it is agreed Lender shall not be in default under this Agreement, or under any other Loan Document, unless a written notice specifically setting forth the claim of Borrower shall have been given to Lender within thirty (30) days after Borrower first had knowledge of the occurrence of the event which Borrower alleges gave rise to such claim and Lender does not remedy or cure the default, if any there be, promptly thereafter. Failure to give such notice shall constitute a waiver of such claim.

Section 10.13 Expenses; Indemnity.

(a) Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender upon receipt of notice from Lender for all costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Lender in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including without limitation any opinions requested by Lender as to any legal matters arising under this Agreement or the other Loan Documents with respect to the Property); (ii) Borrower's ongoing performance of and compliance with Borrower's respective agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date, including, without limitation, confirming compliance with environmental and insurance requirements; (iii) Lender's ongoing performance and compliance with all agreements and conditions contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date; (iv) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters requested by Lender; (v) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement; (vi) the filing and recording fees and expenses, title insurance and 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; (vii) enforcing or preserving any rights, either in response to third party claims or in prosecuting or defending any action or proceeding or other litigation, in each case against, under or affecting Borrower, this Agreement, the other Loan Documents, the Property, or any other security given for the Loan; and (viii) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the 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 or any other amounts required under Section 9.3; *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 cost and expenses due and payable to Lender may be paid by Lender from any Reserve Account.

(b) Borrower shall indemnify, defend and hold harmless the Indemnified Parties from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for Lender in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not Lender shall be designated a party thereto), that may be imposed on, incurred by, or asserted against any Indemnified Party in any manner relating to or arising out of (i) any breach by Borrower of its Obligations under, or any 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 (the liabilities, losses, costs, expenses and other matters described in this subparagraph (b), collectively, the “**Indemnified Liabilities**”); *provided, however*, that Borrower shall not have any obligation to an Indemnified Party hereunder to the extent that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of such Indemnified Party. To the extent that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall pay the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by the Indemnified Parties.

Section 10.14 Exhibits and Schedules Incorporated. Any Exhibits and Schedules annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

Section 10.15 Offsets, Counterclaims and Defenses. Any assignee of Lender’s interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses solely to the extent such offsets, counterclaims or defenses are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

Section 10.16 No Joint Venture or Partnership; No Third Party Beneficiaries.

(a) Borrower 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 Property other than that of mortgagee, beneficiary or lender.

(b) This Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the Obligations contained herein or therein. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender’s sole discretion, Lender deems it advisable or desirable to do so.

Section 10.17 Publicity. All news releases, publicity or advertising by Borrower or its Affiliates through any media intended to reach the general public which refers to the Loan Documents or the financing evidenced by the Loan Documents, to Lender or any of its Affiliates shall be subject to the prior approval of Lender.

Section 10.18 Waiver of Marshalling of Assets; Homestead Waiver. 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 Property, or to a sale in inverse order of alienation in the event of foreclosure of the Security Instrument, 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 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 Property in preference to every other claimant whatsoever. To the extent permitted by applicable law, Borrower hereby waives any Homestead protections that may be available to Borrower under the law of the state in which the Property is located.

Section 10.19 Waiver of Counterclaim. Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents.

Section 10.20 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 its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any 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 10.21 Brokers and Financial Advisors. Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement other than Direct Lending Partners LLC, which arranged the Loan. Borrower hereby agrees to 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 10.21 shall survive the expiration and termination of this Agreement and the payment of the Debt.

Section 10.22 Prior Agreements. This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, including, without limitation, the Term Sheet dated April 13, 2020 between Borrower (or an agent or representative of Borrower) and Lender, are superseded by the terms of this Agreement and the other Loan Documents.

Section 10.23 Cumulative Rights. All of the rights of Lender under this Agreement hereunder and under each of the other Loan Documents and any other agreement now or hereafter executed in connection herewith or therewith, shall be cumulative and may be exercised singly, together, or in such combination as Lender may determine in its sole judgment.

Section 10.24 Counterparts; Electronic Delivery. This Agreement and all of the other Loan Documents may be executed in several counterparts, each of which when executed and delivered is an original, but all of which together shall constitute one instrument. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart which is executed by the party against whom enforcement of this Agreement is sought. The delivery of an executed counterpart of this Agreement or any other Loan Document (other than Note) by facsimile or as a PDF or similar attachment to an email shall constitute effective delivery of such counterpart for all purposes with the same force and effect as the delivery of an original, executed counterpart.

Section 10.25 Time is of the Essence. Time is of the essence of each provision of this Agreement and the other Loan Documents.

Section 10.26 Consent of Holder. Wherever this Agreement refers to Lender's consent or discretion or other rights, such references to Lender shall be deemed to refer to any holder of the Loan. The holder of the Loan may from time to time appoint a trustee or servicer, and Borrower shall be entitled to rely upon written instructions executed by a purported officer of the holder of the Loan as to the extent of authority delegated to any such trustee or from time to time and determinations made by such trustee or servicer to the extent identified as within the delegated authority of such trustee or servicer, unless and until such instructions are superseded by further written instructions from the holder of the Loan.

Section 10.27 Successor Laws. Any reference in this Agreement to any statute or regulation shall be deemed to include any successor statute or regulation.

Section 10.28 Reliance on Third Parties. Lender may perform any of its responsibilities hereunder through one or more agents, attorneys or independent contractors. In addition, Lender may conclusively rely upon the advice or determinations of any such agents, attorneys or independent contractors in performing any discretionary function under the terms of this Agreement.

Section 10.29 Joint Borrower. The representations, covenants, warranties and obligations of Borrower shall be joint and several. Each entity that constitutes Borrower acknowledges and agrees that it shall be jointly and severally liable for the Loan and all other Obligations arising under this Agreement and/or any of the other Loan Documents. In furtherance thereof, each Borrower acknowledges and agrees as follows:

(a) For the purpose of implementing the joint borrower provisions of the Loan Documents, each Borrower hereby irrevocably appoints each other Borrower as its agent and attorney-in-fact for all purposes of the Loan Documents, including the giving and receiving of notices and other communications.

(b) To induce Lender to make the Loan, and in consideration thereof, each Borrower hereby agrees to indemnify Lender against, and hold Lender harmless from, any and all liabilities, expenses, losses, damages and/or claims of damage or injury asserted against Lender by any Borrower or by any other Person arising from or incurred by reason of (i) reliance by Lender on any requests or instructions from any Borrower, or (ii) any other action taken by Lender in good faith with respect to this Agreement or the other Loan Documents.

(c) Each Borrower acknowledges that the liens and security interests created or granted herein and by the other Loan Documents will secure the Obligations of all Borrowers under the Loan Documents and, in full recognition of that fact, each Borrower consents and agrees that Lender may, at any time and from time to time, without notice or demand, and without affecting the enforceability or security hereof or of any other Loan Document:

(i) agree with any Borrower to supplement, modify, amend, extend, renew, accelerate, or otherwise change the time for payment or the terms of the Obligations or any part thereof, including any increase or decrease of the rate(s) of interest thereon;

(ii) agree with any Borrower to supplement, modify, amend or waive, or enter into or give any agreement, approval or consent with respect to, the Obligations or any part thereof or any of the Loan Documents or any additional security or guaranties, or any condition, covenant, default, remedy, right, representation or term thereof or thereunder;

(iii) accept new or additional instruments, documents or agreements in exchange for or relative to any of the Loan Documents or the Obligations or any part thereof;

(iv) accept partial payments on the Obligations;

(v) receive and hold additional security or guaranties for the Obligations or any part thereof;

(vi) release, reconvey, terminate, waive, abandon, subordinate, exchange, substitute, transfer and enforce any security for or guaranties of the Obligations, and apply any security and direct the order or manner of sale thereof as Lender, in its sole and absolute discretion may determine;

(vii) release any Person or any guarantor from any personal liability with respect to the Obligations or any part thereof; or

(viii) settle, release on terms satisfactory to Lender or by operation of applicable laws or otherwise liquidate or enforce any Obligations and any security therefor or guaranty thereof in any manner, consent to the transfer of any such security and bid and purchase at any sale; and consent to the merger, change or any other restructuring or termination of the corporate existence of any Borrower or any other Person, and correspondingly restructure the obligations of such Borrower or other Person, and any such merger, change, restructuring or termination shall not affect the liability of any Borrower or the continuing existence of any lien or security interest hereunder, under any other Loan Document to which any Borrower is a party or the enforceability hereof or thereof with respect to all or any part of the Obligations.

(d) Upon the occurrence of and during the continuance of any Event of Default, Lender may enforce this Agreement and the other Loan Documents independently as to each Borrower and independently of any other remedy or security Lender at any time may have or hold in connection with the Obligations, and in collecting on the Loan it shall not be necessary for Lender to marshal assets in favor of any Borrower or any other Person or to proceed upon or against and/or exhaust any other security or remedy before proceeding to enforce this Agreement and the other Loan Documents. Each Borrower expressly waives any right to require Lender, in connection with Lender's efforts to obtain repayment of the Loan and Other Obligations, to marshal assets in favor of any Borrower or any other Person or to proceed against any other Person or any collateral provided by any other Person, and agrees that Lender may proceed against any Persons and/or collateral in such order as it shall determine in its sole and absolute discretion in connection with Lender's efforts to obtain repayment of the Loan and other Obligations. Lender may file a separate action or actions against each Borrower to enforce the Obligations, whether action is brought or prosecuted with respect to any other security or against any other Person, or whether any other Person is joined in any such action or actions. Each Borrower agrees that Lender, each Borrower and/or any other Person may deal with each other in connection with the Obligations or otherwise, or alter any contracts or agreements now or hereafter existing between any of them, in any manner whatsoever, all without in any way altering or affecting the security of this Agreement or the other Loan Documents. The rights of Lender hereunder and under the other Loan Documents shall be reinstated and revived, and the enforceability of this Agreement and the other Loan Documents shall continue, with respect to any amount at any time paid on account of the Obligations which thereafter shall be required to be restored or returned by Lender as a result of the bankruptcy, insolvency or reorganization of any Borrower or any other Person, or otherwise, all as though such amount had not been paid. The enforceability of this Agreement and the other Loan Documents at all times shall remain effective even though any or all Obligations, or any other security or guaranty therefor, may be or hereafter may become invalid or otherwise unenforceable as against any Borrower or any other Person and whether or not any Borrower or any other Person shall have any personal liability with respect thereto. Each Borrower expressly waives any and all defenses to the enforcement of its Obligations under the Loan Documents now or hereafter arising or asserted by reason of (i) any disability or other defense of any Borrower or any other Person with respect to the Obligations, (ii) the unenforceability or invalidity of any security or guaranty for the Obligations or the lack of perfection or continuing perfection or failure of priority of any security for the Obligations, (iii) the cessation for any cause whatsoever of the liability of any Borrower or any other Person (other than by reason of the full and final payment and performance of all Obligations), (iv) any failure of Lender to marshal assets in favor of any of the Borrowers or any other Person, (v) any failure of Lender to give notice of sale or other disposition of any Collateral for the Obligations to any Borrower or to any other Person or any defect in any notice that may be given in connection with any such sale or disposition, (vi) any failure of Lender to comply in any non-material respect with applicable laws in connection with the sale or other disposition of any collateral or other security for any Obligation, (vii) any act or omission of Lender or others that directly or indirectly results in or aids the discharge or release of any Borrower or of any other Person or of any of the Obligations or any other security or guaranty therefor by operation of law or otherwise, (viii) any law which provides that the obligation of a surety or guarantor must neither be larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety's or guarantor's obligation in proportion to the principal obligation, (ix) any failure of Lender to file or enforce a claim in any bankruptcy or similar proceeding with respect to any Person, (x) the election by Lender, in any bankruptcy or similar proceeding of any Person, of the application or non-application of Section 1111(b)(2) of the Bankruptcy Code, (xi) any extension of credit or the grant of any lien under Section 364 of the Bankruptcy Code except to the extent otherwise provided in this Agreement, (xii) any use of cash collateral under Section 363 of the Bankruptcy Code, (xiii) any agreement or stipulation with respect to the provision of adequate protection in any bankruptcy or similar proceeding of any Person, (xiv) the avoidance of any lien or security interest in favor of Lender securing the Obligations for any reason, or (xv) any bankruptcy or similar proceeding commenced by or against any Person, including any discharge of, or bar or stay against collecting, all or any of the Obligations (or any interest thereon) in or as a result of any such proceeding. Without in any way limiting the foregoing, with respect to the Loan Documents and the Obligations, Borrower: (A) waives all rights and defenses arising out of an election of remedies by Lender even though that election of remedies, such as non-judicial foreclosure with respect to security for Borrowers' obligations, has destroyed each of their rights of subrogation and reimbursement against the other; and (B) waives any right to a fair value hearing or similar proceeding following a non-judicial foreclosure of the Obligations.

(e) Borrowers represent and warrant to Lender that they have established adequate means of obtaining from each other, on a continuing basis, financial and other information pertaining to their respective businesses, operations and condition (financial and otherwise) and their respective properties, and each now is and hereafter will be completely familiar with the businesses, operations and condition (financial and otherwise) of the other and their respective properties. Each Borrower hereby expressly waives and relinquishes any duty on the part of Lender to disclose to such Borrower any matter, fact or thing related to the businesses, operations or condition (financial or otherwise) of the other Borrowers or the other Borrowers' properties, whether now known or hereafter known by Lender during the life of this Agreement. With respect to any of the Obligations, Lender need not inquire into the powers of any Borrower or the officers, employees or other Persons acting or purporting to act on such Borrower's behalf.

(f) Without limiting the foregoing, or anything else contained in this Agreement, each Borrower waives all rights and defenses that it may have because the Obligations are secured by real property. This means, among other things:

(i) Lender may collect on the Obligations from any Borrower without first foreclosing on any real or personal property collateral pledged by the other Borrowers; and

(ii) If Lender foreclose on any real property collateral pledged by any Borrower for the Obligations: (A) the amount of the indebtedness owed by the other Borrowers may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; and (B) Lender may collect from any Borrower even if Lender, by foreclosing on the real property collateral, has destroyed any right any Borrower may have to collect from the other Borrowers.

(iii) This is an unconditional and irrevocable waiver of any rights and defenses each Borrower may have because the Obligations are secured by real property. Each Borrower expressly waives any right to receive notice of any judicial or nonjudicial foreclosure or sale of any real property collateral provided by the other Borrowers to secure the Obligations and failure to receive any such notice shall not impair or affect such Borrower's obligations hereunder or the enforceability of this Agreement or the other Loan Documents or any liens created or granted hereby or thereby.

(iv) Notwithstanding anything to the contrary elsewhere contained herein or in any other Loan Document to which any Borrower is a party, with respect to the Loan and all other Obligations, each Borrower hereby waives with respect to the other Borrowers and their successors and assigns (including any surety) and any other Person any and all rights at law or in equity, to subrogation, to reimbursement, to exoneration, to contribution, to set-off, to any other rights and defenses available to it or to any other rights that could accrue to a surety against a principal, to a guarantor against a maker or obligor, to an accommodation party against the party accommodated, or to a holder or transferee against a maker and which each of them may have or hereafter acquire against the other or any other Person in connection with or as a result of such Borrower's execution, delivery and/or performance of this Agreement or any other Loan Document to which it is a party until the Obligations are paid and performed in full. Each Borrower agrees that it shall not have or assert any such rights against any other Borrower or any other Borrower's successors and assigns or any other Person (including any surety), either directly or as an attempted set-off to any action commenced against such Borrower by any other Borrower (as borrower or in any other capacity) or any other Person until all the Obligations are paid and performed in full. Each Borrower hereby acknowledges and agrees that this waiver is intended to benefit Lender and shall not limit or otherwise affect any Borrower's liability under this Agreement or any other Loan Document to which it is a party, or the enforceability hereof or thereof.

EACH BORROWER WARRANTS AND AGREES THAT EACH OF THE WAIVERS AND CONSENTS SET FORTH HEREIN IS MADE WITH FULL KNOWLEDGE OF ITS SIGNIFICANCE AND CONSEQUENCES, WITH THE UNDERSTANDING THAT EVENTS GIVING RISE TO ANY DEFENSE WAIVED MAY DIMINISH, DESTROY OR OTHERWISE ADVERSELY AFFECT RIGHTS WHICH EACH OTHERWISE MAY HAVE AGAINST THE OTHER, AGAINST LENDER OR OTHERS, OR AGAINST ANY COLLATERAL. IF ANY OF THE WAIVERS OR CONSENTS HEREIN IS DETERMINED TO BE CONTRARY TO ANY APPLICABLE LAW OR PUBLIC POLICY, SUCH WAIVERS AND CONSENTS SHALL BE EFFECTIVE TO THE MAXIMUM EXTENT PERMITTED BY LAW.

[The Remainder of the Page is Intentionally Blank]

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

BORROWER:

Kaja Holdings LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of KAJA Holdings, LLC

Kaja Holdings 2, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of KAJA Holdings 2, LLC

DSV SPV3 LLC
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of DSV SPV3, LLC

LENDER:

DLP Lending Fund LLC,
a Delaware limited liability company

By: /s/ Donald Wenner

Donald Wenner
President

(Signatures continue on following page)

SCHEDULE 1

Borrower Entities

[to be inserted]

Schedule 1 - 1

SCHEDULE 1.1(a)

Allocated Loan Amounts

Attached.

Schedule 1.1(a) - 1

SCHEDULE 1.1(b)

List of Projects

[to be inserted]

Schedule 1.1(b) - 1

SCHEDULE 4.1.1

Organizational Chart

[to be inserted]

Schedule 4.1.1 - 1

PROMISSORY NOTE

\$2,581,840.00

August 26, 2020

FOR VALUE RECEIVED, the undersigned, jointly and severally (individually and collectively, "**Borrower**"), as maker, having its principal place of business at 16 Berryhill Road, Suite 200 Columbia, SC 29210, hereby unconditionally promises to pay to the order of DLP LENDING FUND LLC, a Delaware limited liability company, as lender, having an address at 95 Highland Avenue, St. Augustine, FL 32095 (together with its successors and assigns, collectively, "**Lender**"), or at such other place as the holder hereof may from time to time designate in writing, the principal sum of TWO MILLION FIVE HUNDRED EIGHTY ONE THOUSAND EIGHT HUNDRED FORTY and 00/100 Dollars (\$2,581,840.00), or so much thereof as is advanced pursuant to that certain Loan Agreement, dated the date hereof, between Borrower and Lender (as the same may be amended, modified, restated, replaced, supplemented or otherwise modified from time to time, the "**Loan Agreement**"), in lawful money of the United States of America, with interest thereon to be computed from the date of this Promissory Note (as the same may be amended, supplemented, restated, replaced or otherwise modified from time to time, this "**Note**") at the Interest Rate (as defined in the Loan Agreement), and to be paid in accordance with the terms of this Note and the Loan Agreement. All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement.

ARTICLE 1 – PAYMENT TERMS

Borrower agrees to pay the principal sum of this Note and interest on the unpaid principal sum of this Note and all other amounts due under the Loan Agreement and other Loan Documents from time to time outstanding without relief from valuation and appraisal laws at the rates and at the times specified in the Loan Agreement and the outstanding balance of the principal sum of this Note and all accrued and unpaid interest thereon and all other amounts due under the Loan Agreement and other Loan Documents shall be due and payable, in all events, on the Maturity Date. The obligations of each Borrower or party under this Note shall be joint and several.

ARTICLE 2 – DEFAULT AND ACCELERATION

The Debt shall without notice become immediately due and payable at the option of Lender, if any payment required in this Note is not paid (a) on or prior to the date when due, (b) on the Maturity Date or (c) on the happening of any other Event of Default.

ARTICLE 3 – LOAN DOCUMENTS

This Note is secured by the Security Instrument and the other Loan Documents. All of the terms, covenants and conditions contained in the Loan Agreement, the Security Instrument and the other Loan Documents are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. In the event of a conflict or inconsistency between the terms of this Note and the Loan Agreement, the terms and provisions of the Loan Agreement shall govern.

ARTICLE 4 – SAVINGS CLAUSE

Notwithstanding anything to the contrary contained herein, (a) all agreements and communications between Borrower and Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed interest, the interest contracted for, charged or received by Lender shall never exceed the Maximum Legal Rate or amount, (b) in calculating whether any interest exceeds the Maximum Legal Rate, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Borrower to Lender, and (c) if through any contingency or event Lender receives or is deemed to receive interest in excess of the Maximum Legal Rate, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Borrower to Lender.

ARTICLE 5 – NO ORAL CHANGE

This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

ARTICLE 6 – WAIVERS

Borrower and all others who may become liable for the payment of all or any part of the Debt do hereby jointly and severally waive presentment and demand for payment, notice of dishonor, notice of intention to accelerate, notice of acceleration, protest and notice of protest and non-payment and all other notices of any kind. No release of any security for the Debt or extension of time for payment, of this Note or any installment hereof, and no alteration, amendment or waiver of any provision of this Note, the Loan Agreement or the other Loan Documents made by agreement between Lender or any other Person shall release, modify, amend, waive, extend, change, discharge, terminate or affect the liability of Borrower, and any other Person who may become liable for the payment of all or any part of the Debt, under this Note, the Loan Agreement or the other Loan Documents. No notice to or demand on Borrower shall be deemed to be a waiver of the obligation of Borrower or of the right of Lender to take further action without further notice or demand as provided for in this Note, the Loan Agreement or the other Loan Documents. If Borrower is a partnership or limited liability company, the agreements herein contained shall remain in force and be applicable, notwithstanding any changes in the individuals or entities comprising the partnership or limited liability company, and the term "Borrower," as used herein, shall include any alternate or successor partnership or limited liability company, but any predecessor partnership or limited liability company and their partners or members shall not thereby be released from any liability. If Borrower is a corporation, the agreements contained herein shall remain in full force and be applicable notwithstanding any changes in the shareholders comprising, or the officers and directors relating to, the corporation, and the term "Borrower" as used herein, shall include any alternative or successor corporation, but any predecessor corporation shall not be relieved of liability hereunder. Nothing in the foregoing two sentences shall be construed as a consent to, or a waiver of, any prohibition or restriction on transfers of interests in such partnership, limited liability company or corporation, as applicable, which may be set forth in the Loan Agreement, the Security Instrument or any other Loan Document.

ARTICLE 7 – TRANSFER

Upon the transfer of this Note in whole or in part, Borrower hereby waiving notice of or consent to any such transfer, Lender may deliver all the collateral mortgaged, granted, pledged or assigned pursuant to the Loan Documents, or any part thereof, to the transferee who shall thereupon become vested with all the rights (and liabilities arising thereafter) herein or under Legal Requirements of and given to Lender with respect thereto, and Lender shall thereafter forever be relieved and fully discharged from any liability or responsibility in the matter; but Lender shall retain all rights hereby given to it with respect to any liabilities and the collateral not so transferred.

ARTICLE 8 – GOVERNING LAW AND WAIVER OF TRIAL BY JURY

This Note shall be governed in accordance with the terms and provisions of Section 10.3 and Section 10.7 of the Loan Agreement.

ARTICLE 9 – NOTICES

All notices or other written communications hereunder shall be delivered in accordance with Section 10.6 of the Loan Agreement.

ARTICLE 10 TRANSACTION ASSIGNMENT AND REGISTRAR

I. ASSIGNMENTS, PARTICIPATIONS

A. Assignments by Lender, etc. Subject to compliance with this Article 10, any Lender may on or after the date hereof sell and assign, or pledge, hypothecate or encumber, all or any portion of its Loans and all other Obligations with respect thereto, to or with Persons as may be selected by such Lender in its sole and absolute discretion (each an “*Assignee*”) and on terms and conditions satisfactory to in its sole and absolute discretion (which shall include the execution and delivery by the Assignee of assignment documentation in form and substance satisfactory to such assigning Lender). Borrower shall cooperate in all reasonable respects with such Lender in connection with the sale and assignment, or pledge, hypothecation or encumbrance, of all or any portion of such Lender’s interest in the Loan, and shall, in connection therewith, promptly execute and deliver such documents as may be reasonably requested by such Lender; provided, that such cooperation shall not include reimbursement of any Lender or any Assignee for any costs incurred in connection with such assignment or related documents.

A. Effect of Assignment. Pursuant to any assignment or participation of all or any portion of a Lender’s Loan as contemplated in this Article 10 to any Assignee, such Lender (a) may, subject to compliance with this Article 10, transfer its obligations hereunder and under the other Loan Documents (or may transfer the portion thereof corresponding to the transferred portion of the Obligations) and, except as otherwise specified herein, any Assignee shall succeed to the rights and obligations of Lender hereunder in respect of the transferred portion, and (b) shall relinquish its rights and be released from its obligations hereunder and under this Agreement and the other Loan Documents as to the transferred portion of its interest in the Loan.

B. Assignments by Borrower. No Borrower shall have any right to assign its rights or obligations hereunder or under the other Loan Documents or any interest herein or therein without the prior written consent of Lender and each of its successors and assigns, which consent may be withheld by in their sole and absolute discretion. Any attempted or purported assignment in contravention of this Article 10 shall be null and void ab initio.

C. Participations. Subject to compliance with this Article 10, any Lender may at any time, without the consent of, or notice to, Borrower, sell to one or more Persons as may be selected by such Lender in its sole and absolute discretion a participation (each a “*Participant*”) in all or a portion of such Lender’s rights and/or obligations under this Agreement (including all or a portion of the interest in the Loan owing to it); provided that (a) such Lender’s obligations under this Agreement shall remain unchanged, (b) such Lender shall remain solely responsible to the other Parties hereto for the performance of such obligations, (c) Borrower shall continue to deal solely and directly with Lender in connection with such Lender’s rights and obligations under this Agreement and the other Loan Documents, and (d) no Participant shall have any right to approve any amendment or waiver of any provision of any Loan Document, or any consent to any departure by Borrower or any other party therefrom, except to the extent that such amendment, waiver or consent would reduce the principal of, or interest on, the Loan or any fees or other amounts payable hereunder, in each case to the extent subject to such participation, or postpone any date fixed for any payment of any amount hereunder, to the extent subject to such participation.

II. REGISTRATION

A. Registered Obligation. Borrower hereby acknowledges and makes this Note (if any) a registered obligation for United States withholding tax purposes. DLP Lending Fund LLC, as Borrower's non-fiduciary agent for this purpose, shall be the registrar for this Note (if any) (the "**Registrar**") with full power of substitution. In the event the Registrar becomes unable or unwilling to act as registrar under this Agreement, Borrower shall reasonably designate a successor Registrar.

B. Register. The Registrar shall maintain, or cause to be maintained, a register (the "**Register**") for the recordation of the names and addresses of each Lender and any Assignee of all or any portion of such Lender's interest in the Loan and the principal amount outstanding of the Loan (and stated interest accrued but unpaid thereon) (the "**Registered Loan**") held by Lender and each Assignee from time to time. Borrower, each Lender and each Assignee shall treat each Person whose name is recorded in the Register as a "Lender" hereunder for all purposes of this Agreement. The Register shall be available for inspection by Borrower at any reasonable time and from time to time upon reasonable prior notice.

C. Registration of Assignment. A Registered Loan (and the registered Note evidencing the same, if any) may be assigned or sold in whole or in part only by registration of such assignment or sale on the Register (and each registered Note, if any, shall expressly so provide), which registration the Registrar shall effect immediately upon receipt of assignment documentation. Any assignment or sale of all or part of such Registered Loan (and the registered Note evidencing the same, if any) may be effected only by registration of such assignment or sale on the Register, together with the surrender of the registered Note evidencing the same, if any, duly endorsed by (or accompanied by a written instrument of assignment or sale duly executed by) the holder of such registered Note, if any, whereupon, at the request of the designated assignee(s) or transferee(s), one or more new registered Notes in the same aggregate principal amount shall be issued to the designated assignee(s) or transferee(s). Prior to the registration of assignment or sale of any Registered Loan (and the registered Note evidencing the same, if any), Borrower shall treat the Person in whose name such Registered Loan (and the registered Note evidencing the same, if any) is registered as the owner thereof for the purpose of receiving all payments thereon and for all other purposes, notwithstanding notice to the contrary.

D. Participant Register. If any Lender sells a participation or participations in the Loan to a Participant, such Lender shall report such sale of a participation to the Registrar and the Registrar shall, acting solely for this purpose as a non-fiduciary agent of Borrower, maintain a register on which it enters the name and the address of each Participant and the principal amounts of each Participant's participation interest in the Loan (or other rights or obligations) held by it (the "**Participant Register**"). The entries in the Participant Register shall be conclusive, absent manifest error, and each Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation interest as the owner thereof for all purposes notwithstanding any notice to the contrary. In maintaining the Participant Register, the Registrar shall be acting as the agent of Borrower solely for purposes of applicable United States federal income tax law and undertakes no duty, responsibility or obligation to Borrower and, without limitation, in no event shall the Registrar be a fiduciary of Borrower for any purpose, except that the Registrar shall maintain the Participant Register and, upon reasonable prior notice from Borrower, shall make the Participant Register available for inspection by Borrower at any reasonable time and from time to time.

[The Remainder of the Page is Intentionally Blank]

IN WITNESS WHEREOF, Borrower has duly executed this Promissory Note as of the day and year first above written.

BORROWER:

Kaja Holdings LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US
Home Rentals, LLC, the sole member of KAJA Holdings,
LLC

Kaja Holdings 2, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US
Home Rentals, LLC, the sole member of KAJA Holdings
2, LLC

DSV SPV3 LLC
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US
Home Rentals, LLC, the sole member of DSV SPV3, LLC

Signature Page – Promissory Note

LOAN AGREEMENT

Dated as of August 26, 2020

among

THE ENTITIES SET FORTH ON SCHEDULE 1 ATTACHED HERETO,

individually and collectively, as Borrower

and

DLP LENDING FUND LLC,

as Lender

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LOAN AGREEMENT

This LOAN AGREEMENT, dated as of August 26, 2020 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this “*Agreement*”), between DLP LENDING FUND LLC, a Delaware limited liability company (“*Lender*”), having an address at 95 Highland Avenue, St. Augustine, FL 32095, and THE ENTITIES SET FORTH ON SCHEDULE 1 ATTACHED HERETO, jointly and severally (individually and collectively, “*Borrower*”), having its principal place of business at 16 Berryhill Road, Suite 200 Columbia, SC 29210

WITNESSETH:

WHEREAS, Borrower desires to obtain a loan in the original principal amount of FIVE MILLION FOUR THOUSAND EIGHT HUNDRED EIGHTY EIGHT and 00/100 Dollars (\$5,004,888.00) from Lender pursuant to this Agreement (the “*Loan*”); and

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

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

ARTICLE I

DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1 Definitions For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

“*Accrued Interest*” shall mean all accrued and unpaid interest on the outstanding principal balance of the Loan from time to time.

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

“*Agreement*” shall mean this Loan Agreement, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“*Allocated Loan Amount*” shall mean, with respect to each Individual Property, the amount set forth on Schedule 1.1(a) hereof.

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

“*Approved Plans*” means complete plans, drawings, specifications and scope of work, that comply with applicable Legal Requirements and have been approved in writing by Lender, for the Project.

“*Assignment of Management Agreement*” shall mean individually and collectively as applicable, an Assignment of Management Agreement and Subordination of Management Fees, dated as of the date hereof or thereafter, as applicable, among Lender, Borrower and Manager, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

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

“Bankruptcy Action” shall mean with respect to any Person (a) such Person filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (b) the filing of an involuntary petition against such Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition against such Person; (c) such Person filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition from any Person; (d) such Person consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, assignee, sequestrator (or similar official), liquidator, or examiner for such Person or any portion of the Property; (e) the filing of a petition against a Person seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code or any other applicable law, (f) under the provisions of any other law for the relief or aid of debtors, an action taken by any court of competent jurisdiction that allows such court to assume custody or Control of a Person or of the whole or any substantial part of its property or assets or (g) such Person making an assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due.

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

“Basic Carrying Costs” shall mean, for any period, the sum of the following costs: (a) Taxes, (b) Other Charges and (c) Insurance Premiums.

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

“Business Day” shall mean any day other than a Saturday, Sunday or any other day on which any of the following institutions is not open for business: (i) banks and savings and loan institutions in New York or Pennsylvania, (ii) the financial institution that maintains any collection account for or on behalf of any Reserve Funds, (iii) the New York Stock Exchange or (iv) the Federal Reserve Bank of New York.

“Casualty” shall have the meaning set forth in Section 6.2 hereof.

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

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

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

“Collateral” shall have the meaning ascribed to such term in the Security Instrument.

“Completion” or **“Complete”** shall mean one hundred percent (100%) completion of construction, renovation, rehabilitation of a Project, as applicable, subject to usual and customary punch list items, in a good and workmanlike manner and in compliance with all Legal Requirements, and in a manner consistent and compliant in all material respects with the applicable Project Documents as approved by Lender, and free and clear of all liens, claims, encumbrances and rights of others, other than Permitted Encumbrances, as evidenced by the issuance of certificates of completion by Lender’s consultant or inspecting architect or engineer, if any, in each case in form and substance acceptable to Lender and, if available or required under applicable Legal Requirements, a final or partial certificate of occupancy and, as applicable, acceptance of completion by the applicable tenant.

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

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

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

“**Debt**” shall mean the Outstanding Principal Balance together with all interest accrued and unpaid thereon and all other sums due to Lender in respect of the Loan under the Note, this Agreement, the Security Instrument or any other Loan Document.

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

“**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 twenty-four percent (24%) per annum.

“**Distribution**” means (i) any dividend, distribution or other payment of any kind on any shares of capital stock or other securities or partnership, membership, economic or other interests, or (ii) any fee, payment, bonus or other remuneration of any kind, or (iii) any repayment of or debt service on loans or other indebtedness other than the Loan.

“**Dollars**” and the sign “\$” shall mean lawful money of the United States of America.

“**Embargoed Person**” shall mean any person, entity or government subject to trade restrictions under U.S. law, including, but not limited to, The USA Patriot Act (including the anti-terrorism provisions thereof), the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701, et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder including those related to Specially Designated Nationals and Specially Designated Global Terrorists, with the result that the investment in Borrower or any Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan made by Lender is in violation of law.

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

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

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

“**ERISA Affiliate**” shall mean each person (as defined in section 3(9) of ERISA) that together with Borrower would be deemed to be a “single employer” within the meaning of Section 414(b), (c), (m) or (o) of the Code.

“**Event of Default**” shall have the meaning set forth in Section 8.1.1(a) hereof.

“**Exchange Act**” shall mean the Securities Exchange Act of 1934, as the same may be amended, modified or replaced, from time to time.

“**Exchange Act Filing**” shall have the meaning set forth in Section 5.1.11(f) hereof.

“**Extended Maturity Date**” shall have the meaning set forth in Section 2.6.1 hereof.

“**Extension Notice**” shall have the meaning set forth in Section 2.6.1 hereof.

“**First Extension Option**” shall have the meaning set forth in Section 2.6.1 hereof.

“**First Payment Date**” shall have the meaning set forth in Section 2.3.2 hereof.

“**Fiscal Year**” shall mean each twelve (12) month period commencing on January 1 and ending on December 31 during each year of the term of the Loan.

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

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

“**Guarantor**” shall mean, jointly and severally, and, as the context requires, individually and collectively, Alexander Szkaradek, Antoni Szkaradek, Michael P. Beys each an individual; US Home Rentals, LLC, a Delaware limited liability company and FTE Networks, Inc., a Delaware corporation.

“**Guaranty**” shall mean that certain Guaranty dated as of the date hereof, from Guarantor in favor of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

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

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

“**In Balance**” means, with respect to each Project, no Deficiency then exists with respect to such Project.

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

“**Indemnified Parties**” shall mean Lender and any of its Affiliates and any of their officers, directors, members, partners, employees, representatives and consultants.

“**Indemnifying Person**” shall mean Borrower and each Guarantor, on a joint and several basis.

“**Individual Property**” shall mean all parcels of land, the Improvements thereon and all personal property owned by the Borrower and encumbered by a Security Instrument, together with all rights pertaining to such property and Improvements, as more particularly described in the granting clauses of each such Security Instrument and referred to therein as the “Property”.

“**Interest Period**” shall mean (i) initially, the period commencing on and including the date of the funding of the Loan and ending on and including the last day of the calendar month of the Closing Date, and (ii) thereafter, for any specified Payment Date including the Maturity Date, the period commencing on and including the first (1st) day of the calendar month prior to such Payment Date and ending on the last day of the calendar month in which such Payment Date occurs.

“**Interest Rate**” shall mean a fixed rate of Eleven and Ninety-Nine Hundredths percent (11.99%) per annum.

“**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 Property by or on behalf of Borrower, and (a) every modification, amendment or other agreement relating to such lease, sublease, subsublease, or other agreement entered into in connection with such lease, sublease, subsublease, or other agreement, and (b) every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto.

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

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

“**Lien**” shall mean any mortgage, deed of trust, deed to secure debt, indemnity deed of trust, lien (statutory or otherwise), pledge, hypothecation, easement, restrictive covenant, preference, assignment, security interest, or any other encumbrance, charge or transfer of, or any agreement to enter into or create any of the foregoing, on or affecting Borrower, the Property, or any portion thereof or any interest therein, or any direct or indirect 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 have the meaning set forth in the recitals hereof.

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

“**Management Agreement**” shall mean any property management agreement or similar agreement entered into by and between Borrower and Manager, pursuant to which Manager is to provide management and other services with respect to the Property, and any successor property management approved by Lender, in writing, in Lender’s sole discretion.

“**Manager**” shall mean, the individual or entity who provides management and other services with respect to the Property pursuant to a Management Agreement.

“**Material Adverse Change**” or “**Materially Adverse Effect**” shall mean that the business, operations, property, assets, liabilities or financial condition of any applicable Person and each of their subsidiaries, taken as a whole, or the ability of any such Person to perform its obligations under the Loan Documents, has changed in a manner which could materially impair the value of Lender’s security for the Loan or prevent timely repayment of the Loan or otherwise prevent the applicable person or entity from timely performing any of its material obligations under the Loan Documents or any Lease, as the case may be, as determined by Lender.

“**Material Agreements**” shall have the meaning set forth in Section 15.20 hereof.

“**Maturity Date**” shall mean the Stated Maturity Date, provided that (a) in the event of the exercise by Borrower of the First Extension Option pursuant to Section 2.6, the Maturity Date shall be the First Extended Maturity Date, and (b) in the event of the exercise by Borrower of the Second Extension Option pursuant to Section 2.6, the Maturity Date shall be the Second Extended Maturity Date, or such earlier date on which the final payment of principal of the Note becomes due and payable as herein or therein provided, whether at the Stated Maturity Date, by declaration of acceleration, or otherwise.

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

“**Multiemployer Plan**” shall mean a multiemployer plan, as defined in Section 4001(a)(3) of ERISA to which Borrower or any ERISA Affiliate is making or accruing an obligation to make contributions or has within any of the preceding three plan years made or accrued an obligation to make contributions.

“**Multiple Employer Plan**” shall mean an employee benefit plan, other than a Multiemployer Plan, to which Borrower or any ERISA Affiliate, and one or more employers other than Borrower or an ERISA Affiliate, is making or accruing an obligation to make contributions or, in the event that any such plan has been terminated, to which Borrower or an ERISA Affiliate made or accrued an obligation to make contributions during any of the five plan years preceding the date of termination of such plan.

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

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

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

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

“**Obligations**” shall mean, collectively, Borrower’s obligations for the payment of the Debt and the performance of the Other Obligations.

“**OFAC**” shall mean the Office of Foreign Asset Control of the Department of the Treasury of the United States of America.

“**Officer’s Certificate**” shall mean a certificate delivered to Lender by Borrower which is signed by an authorized officer of (i) Borrower, or (ii) any direct or indirect general partner or member of Borrower with authority to act on behalf of and bind Borrower.

“**Operations Agreements**” shall mean any covenants, restrictions, easements, declarations or agreements of record relating to the construction, operation or use of the Property, together with all amendments, modifications or supplements thereto.

“**Other Charges**” shall mean all ground rents, maintenance charges, impositions other than Taxes, any “common expenses” or expenses allocated to and required to be paid by Borrower under any Operations Agreements and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property, now or hereafter levied or assessed or imposed against the Property or any part thereof.

“**Other Obligations**” shall mean (a) the performance of all obligations of Borrower contained herein; (b) the performance of each obligation of Borrower or any Guarantor contained in any other Loan Document; (c) the payment of all costs, expenses, legal fees and liabilities incurred by Lender in connection with the enforcement of any of Lender’s rights or remedies under the Loan Documents, or any other instrument, agreement or document which evidences or secures any other Obligations or collateral therefor, whether now in effect or hereafter executed; and (d) the payment, performance, discharge and satisfaction of all other liabilities and obligations of Borrower and/or Guarantor to Lender, whether now existing or hereafter arising, direct or indirect, absolute or contingent, and including, without limitation, each liability and obligation of Borrower and each Guarantor under any one or more of the Loan Documents and any amendment, extension, modification, replacement or recasting of any one or more of the instruments, agreements and documents referred to herein or therein or executed in connection with the transactions contemplated hereby or thereby.

“**Outstanding Principal Balance**” shall mean, as of any date, the outstanding principal balance of the Loan. For the avoidance of doubt, the outstanding principal balance of the Loan shall include Project Reserve Funds and all other funds held by lender or escrow agent.

“**Payment Date**” shall mean, commencing with the First Payment Date, the first (1st) day of each calendar month during the term of the Loan until and including the Maturity Date or, for purposes of making payments hereunder, but not for purposes of calculating Interest Periods, if such day is not a Business Day, the immediately preceding Business Day.

“**Permitted Encumbrances**” shall mean, collectively (a) the Liens and security interests created by the Loan Documents, (b) all Liens, encumbrances and other matters disclosed in “Schedule B-I” of the Title Insurance Policy, (c) Liens, if any, for Taxes imposed by any Governmental Authority which are not yet due or delinquent, and (d) such other title and survey exceptions as Lender has approved or may approve in writing in Lender’s sole discretion, which Permitted Encumbrances in the aggregate do not materially adversely affect the value or use of the Property or Borrower’s ability to repay the Loan.

“**Permitted Transfer**” means any of the following: (a) any Transfer, directly as a result of the death of a natural person, of stock, membership interests, partnership interests or other ownership interests previously held by the decedent in question to the Person or Persons lawfully entitled thereto; (b) any Transfer, directly as a result of the legal incapacity of a natural person, of stock, membership interests, partnership interests or other ownership interests previously held by such natural person to the Person or Persons lawfully entitled thereto; and (c) any Transfer expressly permitted by and completed strictly in accordance with [Section 5.2.10](#).

“**Person**” shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any Governmental Authority, and any fiduciary acting in such capacity on behalf of any of the foregoing.

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

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

“**Prohibited Transaction**” shall mean any action or 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.

“**Project**” shall mean and refer to, individually and collectively as applicable, the rehabilitation improvements to each Individual Property more particularly described on Schedule 1.1(b) hereto, that will be funded, in whole or in part, with disbursements of Project Reserve Funds.

“**Project Budget**” shall mean a budget for construction of each Project approved by Lender in its sole discretion and any modifications thereof approved by Lender in writing in its sole and absolute discretion.

“**Project Contracts**” shall mean each contract or agreement to which Borrower or any agent of Borrower is a party, providing for the provision of construction services (including architect’s or engineering services), labor or material in connection with a Project.

“**Project Costs**” shall mean all costs and expenses of every kind and nature whatsoever to be incurred by Borrower in connection with the Completion of a Project, including such reserves and contingencies as Lender shall reasonably require.

“**Project Documents**” shall mean each of the following as approved by Lender with respect to each Project: the Approved Plans and the applicable Project Contracts.

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

“**Project Reserve Funds**” shall have the meaning set forth in Section 7.4.1 hereof.

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

“**Release Amount**” shall mean, for an Individual Property, the lesser of:

(a) the Debt; or

(b) an amount equal to the Allocated Loan Amount for such Individual Property set forth on Schedule 1.1(a) (as adjusted pursuant to Sections 2.4.1(c) and 2.4.2(a) if applicable) multiplied by one hundred and ten percent (110%).

“**Release Property**” shall have the meaning set forth in Section 2.7 hereof.

“**Rents**” shall mean all rents (including additional rents of any kind and percentage rents), rent equivalents, moneys payable as damages (including payments by reason of the rejection of a Lease in a Bankruptcy Action) or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other payments and consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower or any of their agents or employees from any and all sources arising from or attributable to the Property, and the Improvements, including charges for oil, gas, water, steam, heat, ventilation, air-conditioning, electricity, license fees, maintenance fees, charges for Taxes, operating expenses or other amounts payable to Borrower (or for the account of Borrower), revenues from telephone services, vending and all receivables, customer obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of the Property or rendering of services by Borrower, or any of its agents or employees and proceeds, if any, from business interruption or other loss of income insurance.

“Reserve Accounts” shall mean, collectively, the Project Reserve Account, the Net Proceeds Account, and any other escrow or reserve account established pursuant to the Loan Documents

“Reserve Funds” shall mean, collectively, the Project Reserve Funds and any other escrow or reserve funds established pursuant to the Loan Documents.

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

“Retention Amount” shall have the meaning set forth in Section 6.4(b)(iv) hereof.

“Second Extension Option” shall have the meaning set forth in Section 2.6.1 hereof.

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

“Security Instrument” shall mean those certain first priority Deeds of Trust, Security Agreements, Assignment of Leases and Fixture Filings of even date herewith, made by Borrower for the benefit of Lender as security for the Obligations and encumbering the Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Servicer” shall have the meaning set forth in Section 9.3 hereof.

“Servicing Agreement” shall have the meaning set forth in Section 9.3 hereof.

“Severed Loan Documents” shall have the meaning set forth in Section 9.2 hereof.

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

“Stated Maturity Date” shall mean August 31, 2021.

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

“Taxes” shall mean all taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against (a) the Property or part thereof, together with all interest and penalties thereon and (b) against the rents, issues, income or profits thereof or upon the lien or estate hereby created, whether any or all of said taxes, assessments or charges be levied directly or indirectly or as excise taxes or ad valorem real estate or personal property taxes or as income taxes.

“Tenant” shall mean the lessee of all or any portion of the Property under a Lease.

“Title Company” shall mean the title insurance company which issued the Title Insurance Policy.

“Title Insurance Policy” shall mean an ALTA mortgagee title insurance policy in a form acceptable to Lender (or, if the State does not permit the issuance of such ALTA policy, such form as shall be permitted in the State and acceptable to Lender) with respect to the Property and insuring the Lien of any of the Security Instrument encumbering the Property.

“**Transfer**” shall mean means the sale, transfer, hypothecation, pledge, encumbrance, mortgage, conveyance, lease, alienation, assignment, disposition, divestment, or leasing with option to purchase, or assignment of the Property, or any portion thereof or interest therein or in Borrower (whether direct or indirect, legal or equitable including the issuance, sale, assignment, alienation, conveyance, divestment, transfer, disposition, hypothecation, pledge, mortgage or encumbrance of any ownership interest in Borrower or in any entity having an ownership interest in Borrower, whether direct or indirect); or entering into any agreement or contract to do any of the foregoing which is not conditioned on compliance with the terms of the Loan Documents with respect to Transfers, or undertaking, suffering or causing any of the foregoing to occur voluntarily, involuntarily or by operation of law.

“**UCC**” shall mean the Uniform Commercial Code as in effect in the State in which the Property is located, as the same may be amended from time to time *provided, however*, that if by reason of mandatory provisions of law, the perfection or the effect of perfection or non-perfection or priority of the security interest in any item or portion of the collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State in which the Property is located (“**Other UCC State**”), “**UCC**” means the Uniform Commercial Code as in effect in such Other UCC State, as the same may be amended from time to time, for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection or priority.

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

Section 1.2 Principles of Construction. All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All uses of the word “including” shall mean “including, without limitation” unless the context shall indicate otherwise. Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined.

ARTICLE II

GENERAL TERMS

Section 2.1 Loan Commitment; Disbursement to Borrower.

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

2.1.2 Single Disbursement to Borrower. Borrower may request and receive only one disbursement hereunder in respect of the Loan and any amount borrowed and repaid in respect of the Loan may not be re-borrowed. Borrower acknowledges and agrees that the Loan has been fully funded as of the Closing Date.

2.1.3 The Note, Security Instrument and Loan Documents. The Loan shall be evidenced by the Note and secured by the Security Instrument, and the other Loan Documents.

2.1.4 Use of Proceeds. Borrower shall use the proceeds of the Loan to (a) refinance the Property, (b) make deposits of Reserve Funds into the Reserve Accounts on the Closing Date in the amounts provided herein (Borrower hereby authorizing Lender to reserve a portion of the proceeds of the Loan in the amount of the Reserve Funds from disbursement of the proceeds of the Loan on the date hereof), (c) pay costs and expenses incurred in connection with the closing of the Loan, as approved by Lender, and (d) pay for Project Costs.

2.1.5 Upfront Payment. At Closing, Borrower shall pay to Lender an upfront fee (the "*Upfront Payment*") in an amount equal to Seventy-Five Thousand and No/100 Dollars (\$75,000.00), less any portion of the Upfront Fee paid to Lender prior to the Closing. The Upfront Payment is fully earned and non-refundable.

Section 2.2 Interest Rate.

2.2.1 Interest Rate. Subject to Section 2.2.4 hereof, interest on the Outstanding Principal Balance shall accrue from the date of the funding of the Loan to but excluding the Maturity Date at the Interest Rate.

2.2.2 Interest Calculation. With respect to any applicable period, interest on the Outstanding Principal Balance 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 the Interest Rate and a three hundred sixty (360) day year by (c) the average Outstanding Principal Balance in effect for the applicable period as calculated by Lender.

2.2.3 Default Rate. In the event that, and for so long as, any Event of Default shall have occurred and be continuing, the Outstanding Principal Balance and, to the extent permitted by law, all accrued and unpaid interest in respect thereof and any other amounts due pursuant to the Loan Documents, shall accrue interest at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained herein.

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

Section 2.3 Debt Service Payments.

2.3.1 Payments Generally. For purposes of making payments hereunder, but not for purposes of calculating Interest Periods, if the day on which such payment is due is not a Business Day, then amounts due on such date shall be due on the immediately succeeding Business Day. All amounts due pursuant to this Agreement and the other Loan Documents shall be payable without setoff, counterclaim, defense or any other deduction whatsoever.

2.3.2 Monthly Debt Service Payment. On the Closing Date, Borrower shall make a payment of interest only for the period commencing on and including the date of the funding of the Loan through and including September 30, 2020. Beginning on October 1, 2020 (the "*First Payment Date*") and each subsequent Payment Date up to and including the Maturity Date, Borrower shall make a payment to Lender of principal (if any) and interest in an amount equal to the Monthly Debt Service Payment Amount, which payments shall be applied to accrued and unpaid interest.

2.3.3 Payment on Maturity Date. Borrower shall pay to Lender not later than 3:00 P.M., Philadelphia city time, on the Maturity Date the Outstanding Principal Balance, all accrued and unpaid interest and all other amounts due hereunder and under the Note, the Security Instrument and the other Loan Documents.

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

2.3.5 Method and Place of Payment Except as otherwise specifically provided herein, all payments and prepayments under this Agreement and the Note shall be made to Lender not later than 2:00 P.M., Philadelphia city time, on the date when due and shall be made in Dollars in immediately available funds at Lender's office or as otherwise directed by Lender, 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. Any prepayments required to be made hereunder shall be deemed to have been timely made for purposes of this Section 2.3.5.

2.3.6 ACH Payment All payments due and owing under this Agreement or any other Loan Documents shall be made by wire transfer to an account designated by Lender to Borrower from time to time, or at Lender's election, shall be made through automated clearing house ("**ACH**") transfers from the Borrower directly to Lender. In this regard, if Lender elects to receive payments through ACH, shall execute and deliver to Lender an authorization agreement for direct payments whereby, among other things, Lender shall be irrevocably authorized to initiate ACH transfers from the a payment account designated by Borrower to Lender in the amounts required or permitted under this Agreement and all other Loan Documents. Lender's authorization for direct ACH transfers as hereby provided shall be irrevocable and such ACH transfers shall continue until all Obligations are paid in full. For so long as any Obligations remain outstanding, Borrower shall: (i) not revoke Lender's authority to initiate ACH transfers as hereby contemplated; (ii) not change, modify, close or otherwise affect the designated payment account; (iii) deposit all revenues of any nature or kind whatsoever relating to Borrower or its business only into the designated payment account; and (iv) be responsible for all costs, expenses or other fees and charges incurred by Lender as a result of any failed or returned ACH transfers, whether resulting from insufficient sums being available in the designated payment account, or otherwise. Borrower shall undertake any and all required actions, execute any required documents, instruments or agreements, or to otherwise do any other thing required or requested by Lender in order to effectuate the requirements of this Section 2.3.6.

Section 2.4 Prepayments.

2.4.1 Voluntary Prepayments.

(a) Except as otherwise provided in this Section 2.4, Borrower shall not have the right to prepay the Loan in whole or in part. Provided no Event of Default has occurred and is continuing, Borrower may prepay the Loan in whole upon the satisfaction of the following conditions:

(b) Borrower shall provide a written notice to Lender of such prepayment no less than thirty (30) days, and no more than sixty (60) days, prior to the date of such prepayment, specifying the Business Day on which a prepayment of the Debt (the "**Prepayment Date**") is to be made; and

(c) Borrower shall pay to Lender on the Prepayment Date, together with any portion of the Outstanding Principal Balance being repaid:

(i) all accrued and unpaid interest on the amount of the Outstanding Principal Balance being prepaid, which, for the avoidance of doubt, shall include interest on such amount calculated at the applicable Interest Rate through the end of the Interest Period in which such prepayment occurs; and

(ii) without duplication of any of the foregoing, all other sums, then due under the Note, this Agreement, the Security Instrument, and the other Loan Documents.

(d) If for any reason Borrower fails to prepay the Loan on the Prepayment Date (including if such notice is revoked), Borrower shall pay to Lender any actual out-of-pocket losses, costs, damages or expenses (including reasonable attorneys' fees and expenses) incurred by Lender in connection therewith.

(e) Upon receipt by Lender of a voluntary prepayment permitted pursuant to the terms of this Agreement, except for a prepayment made (i) in connection with a release of any Individual Property from the Lien of any of the Security Instruments or (ii) any Casualty/Condemnation Prepayment up to the Allocated Loan Amount of the applicable Individual Property, the Allocated Loan Amount for each Individual Property that is then subject to the Lien of any of the Security Instruments shall be reduced on a pro rata basis by such amount.

2.4.2 Mandatory Prepayments.

(a) 90-Day Principal Payments. On December 1, 2020, Borrower shall make a payment to Lender (the “**Initial 90-Day Principal Payment**”) in an amount equal to five percent (5%) of the Outstanding Principal Balance. Beginning on March 1, 2021 and on each third (3rd) Payment Date thereafter (i.e., on June 1, September 1, December 1 and March 1 of each calendar year), Borrower shall make a payment to Lender (each such payment, and together with the Initial 90-Day Principal Payment, collectively the “**90-Day Principal Payments**”) in an amount (but not less than zero) equal to (a) ten percent (10%) of the Outstanding Principal Balance, less (b) all Release Amounts paid to Lender pursuant to and in accordance with Section 2.7 hereof and applied to pay down the Outstanding Principal Balance but only to the extent such Release Amounts have not been applied to reduce any prior 90-Day Principal Payments. Provided no Event of Default exists, Lender shall apply the 90-Day Principal Payments to the Outstanding Principal Balance.

(b) Net Proceeds Payments. On the Payment Date immediately succeeding the date on which Lender actually receives any Net Proceeds, and if Lender is not required to make such Net Proceeds available to Borrower for a Restoration in accordance with the terms of this Agreement, Borrower shall prepay or authorize Lender to apply the Net Proceeds as a prepayment of the Outstanding Principal Balance in an amount equal to one hundred percent (100%) of such Net Proceeds provided that Borrower shall simultaneously therewith pay to Lender all accrued and unpaid interest on the principal amount being repaid (which, for the avoidance of doubt, shall include interest accruing on such amounts through the last day of the Interest Period in which such repayment occurs). Notwithstanding anything herein to the contrary, so long as no Event of Default has then occurred and is continuing, no or any other prepayment premium, penalty or fee shall be due in connection with any prepayment made pursuant to this Section 2.4.2.

2.4.3 Prepayments After Default. If, during the continuance of an Event of Default, payment of all or any part of the Debt is tendered by Borrower and accepted by Lender or is otherwise recovered by Lender (including through application of any Reserve Funds), such tender or recovery shall be deemed to be a voluntary prepayment by Borrower in violation of the prohibition against prepayment set forth in Section 2.4.1 hereof, and Borrower shall pay, as part of the Debt, all of the interest calculated at the Interest Rate on the amount of principal being prepaid through and including the end of the Interest Period in which such prepayment occurs.

Section 2.5 Release of Property. Except as set forth in Section 2.7 below, no repayment, prepayment 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 of the Security Instruments. Lender shall, upon the written request and at the expense of Borrower, upon payment in full of the Debt in accordance with the terms of this Agreement and the other Loan Documents, release the Lien of the Security Instruments.

Section 2.6 Extension Option(s).

2.6.1 Extension Option(s). Subject to the provisions of this Section 2.6.1, Borrower shall have the option (the “**First Extension Option**”), by irrevocable written notice (the “**First Extension Notice**”) delivered to Lender no later than thirty (30) days prior to the Stated Maturity Date, to extend the Maturity Date to August 31, 2022 (the “**First Extended Maturity Date**”). Borrower’s right to so extend the Maturity Date shall be subject to the satisfaction of the following conditions precedent prior to the effectiveness of any such extension:

(a) (i) no Event of Default shall have occurred and be continuing on the date Borrower delivers the First Extension Notice or the Second Extension Notice, as applicable, and (ii) no Default or Event of Default shall have occurred and be continuing on the Stated Maturity Date and the First Extended Maturity Date, as applicable;

(b) All amounts due and payable by Borrower and any other Person pursuant to this Agreement or the other Loan Documents as of the Stated Maturity Date or the First Maturity Date, as applicable, and all costs and expenses of Lender, including fees and expenses of Lender’s counsel, in connection with the Loan and/or the extension shall have been paid in full;

(c) Borrower shall deliver an Officer's Certificate to Lender (i) certifying that all representations and warranties set forth in this Agreement remain true, correct and complete in all material respects as of the commencement of the applicable Extension Option, and (ii) waiving any claims, counterclaims, rights of rescission, set-offs or defenses, known or unknown, against Lender as of the commencement of the applicable Extension Option.

If Borrower is unable to satisfy all of the foregoing conditions within the applicable time frames for each, Lender shall have no obligation to extend the Stated Maturity Date hereunder.

2.6.2 Extension Documentation. If requested by Lender, Borrower shall execute and deliver an agreement in form and substance reasonably acceptable to Lender commemorating the extension of the Maturity Date upon the exercise of an Extension Option and satisfaction of all applicable conditions to such extension as provided in Section 2.6.1; provided that no such agreement shall materially increase or alter the obligations of Borrower pursuant to the Loan Documents (it being acknowledged that a ratification by Borrower or any Guarantor of its respective obligations under the Loan Documents to which it is a party or a certification by Borrower and/or any Guarantor that its respective representations and warranties set forth in the Loan Documents to which it is a party remain true and correct in all material respects as of the first day of any extension term shall not constitute an increase in Borrower's obligations for such purpose).

2.7 Release of Individual Property. At any time Borrower may obtain the release of an Individual Property from the Lien of the applicable Security Instrument thereon and related Loan Documents (each such Individual Property, a "**Release Property**") and the release of Borrower's obligations under the Loan Documents with respect to such Release Property (other than those expressly stated to survive), upon the satisfaction of each of the following conditions:

(a) Not more than ninety (90) calendar days and not less than ten (10) calendar days prior to the date of the release, Borrower delivers a notice to Lender setting forth (i) the date of the proposed release and (ii) a description of the Release Property that will be subject to the release;

(b) no Event of Default shall be continuing on the date that the Release Property is released from the Lien of the Security Instrument thereon other than as expressly permitted below;

(c) Borrower shall have paid to Lender the applicable Release Amount;

(d) Borrower shall submit to Lender, not less than ten (10) days prior to the date of such release, a release of Lien (and related Loan Documents) for such Release Property for execution by Lender. Such release shall be in a form appropriate in each jurisdiction in which such Release Property is located and that would be reasonably satisfactory to a prudent lender. In addition, Borrower shall provide all documentation Lender reasonably requires to be delivered by Borrower in connection with such release, together with an Officer's Certificate certifying that such documentation (A) will effect such release in accordance with the terms of this Agreement, and (B) will not impair or otherwise adversely affect the Liens, security interests and other rights of Lender under the Loan Documents not being released (or as to the parties to the Loan Documents and Individual Properties subject to the Loan Documents not being released);

(e) Borrower shall have paid or reimbursed Lender for all reasonable out of pocket costs and expenses incurred by Lender (including, without limitation, reasonable attorneys' fees and disbursements) in connection with any release effectuated pursuant to this Section 2.7, and Borrower shall have paid all third-party fees, costs and expenses incurred in connection with any such release, including but not limited to, the payment of all recording charges, filing fees, taxes or other similar expenses incurred in the reasonable judgment of Lender in order to effectuate the release;

(f) [Intentionally omitted]

(g) At Lender's request, Borrower shall deliver to Lender (i) an endorsement to the Title Insurance Policy for the remaining Property (to the extent reasonably available in the State in which the remaining Property is located) insuring the Security Instrument, which endorsement (A) extends the effective date of such Title Insurance Policy for the remaining Property to the effective date of the release, (B) confirms no change in the priority of the Security Instrument on the balance of the Property (exclusive of the Release Parcel); and (C) lists any Permitted Encumbrances; and (ii) at Lender's request, a survey in form and substance reasonably acceptable to Lender of the remaining portion of the Property; and

(h) Notwithstanding the foregoing provisions of this Section 2.7, if the Loan is included in a REMIC Trust, as a condition to such release, Borrower shall have established to Lender's reasonable satisfaction that the loan-to-value ratio of the Loan (expressed as a percentage) based upon valuations obtained by Borrower at its sole cost and expense using (i) an existing appraisal (if such release occurs within twenty-four (24) months of the Closing Date), (ii) a new appraisal or (iii) a broker's price opinion or other written determination of value using a commercially reasonable valuation method (provided, in each case, that such appraisal, opinion or other determination constitutes a commercially reasonable method permitted to a REMIC Trust, and provided, further, that such valuation shall be based solely on the value of real property and shall exclude personal property and going-concern value) does not exceed 125% immediately after the release of the Release Property, no such release will be permitted unless the Borrower pays down the principal balance of the Loan by an amount not less than the greater of (A) the Release Amount or (B) the least of one of the following amounts: (i) if the Individual Property is sold, the net proceeds of an arm's-length sale of the Release Property to an unrelated Person, (ii) the fair market value of the Release Property at the time of the release, or (iii) an amount such that the loan-to-value ratio of the Loan as so determined by Lender after the release is not greater than the loan-to-value ratio of the Loan immediately prior to the release, unless the Lender receives an opinion of counsel that, if (B) is not followed, the Securitization will not fail to maintain its status as a REMIC Trust as a result of the release.

ARTICLE III

[**Intentionally Omitted**]

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

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

4.1.1 Organization. Borrower has been duly organized and is validly existing and in good standing with requisite power and authority to own its properties and to transact the business in which it is now engaged and as contemplated by this Agreement, including, without limitation, the power and authority to do business in the State. Borrower is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations. Borrower possesses all rights, licenses, permits and authorizations, governmental or otherwise, necessary to entitle it to own its properties and to transact the businesses in which it is now engaged. The sole business of Borrower is the ownership, management and operation of the Property. The ownership interests of Borrower are as set forth on the organizational chart attached hereto as Schedule 4.1.1. Borrower (a) has complied in all respects with its articles of organization or limited liability company agreement; (b) has maintained complete books and records and bank accounts separate from those of its Affiliates; and (c) has obeyed all formalities required to maintain its status as, and at all times has held itself out to the public as, a legal entity separate and distinct from any other entity (including, but not limited to, any Affiliate thereof). The signatory hereto has all necessary power, authority and legal right to execute this Agreement, the Note and the other Loan Documents on Borrower's behalf to which Borrower is a party. Guarantor has the necessary power, authority and legal right to execute, deliver and perform its obligations under the Guaranty.

4.1.2 Proceedings. Borrower has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents. This Agreement and the other Loan Documents to which it is a party have been duly executed and delivered by or on behalf of Borrower and constitute the legal, valid and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

4.1.3 No Conflicts. The execution, delivery and performance of this Agreement and the other Loan Documents by Borrower and/or Guarantor, as applicable, will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any Lien, charge or encumbrance (other than pursuant to the Loan Documents) upon any of the property or assets of Borrower pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, partnership agreement, management agreement or other agreement or instrument to which Borrower is a party or by which any of Borrower's property or assets is subject, nor will such action result in any violation of the provisions of any Legal Requirements of any Governmental Authority having jurisdiction over Borrower or any of Borrower's properties or assets, and any consent, approval, authorization, order, registration or qualification of or with any court or any such Governmental Authority required for the execution, delivery and performance by Borrower and/or any Guarantor, as applicable, of this Agreement or any other Loan Documents has been obtained and is in full force and effect.

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

4.1.5 Agreements. Borrower is not a party to any agreement or instrument or subject to any restriction which might materially and adversely affect Borrower or the Property, or Borrower's business, properties or assets, operations or condition, financial or otherwise. Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party or by which Borrower or the Property are bound. Borrower has no material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower is a party or by which Borrower or the Property is otherwise bound, other than as permitted by this Agreement.

4.1.6 Title. Borrower has good, marketable and insurable fee simple title to the real property comprising part of the Property and good title to the balance of the Property, free and clear of all Liens whatsoever except the Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. The Security Instrument, when properly recorded in the appropriate records, together with any UCC-1 financing statements required to be filed in connection therewith, will create (a) a valid, perfected first priority lien on the Property, subject only to Permitted Encumbrances and the Liens created by the Loan Documents, and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty, solely to the extent such security interests can be perfected by the filing of a UCC-1 financing statement, all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. There are no claims for payment for work, labor or materials affecting the Property which are or may become a Lien prior to, or of equal priority with, the Liens created by the Loan Documents.

4.1.7 Solvency. Borrower has (a) not entered into the transaction contemplated by this Agreement or executed the Note, this Agreement or any other Loan Documents with the actual intent to hinder, delay or defraud any creditor and (b) received reasonably equivalent value in exchange for its obligations under such Loan Documents. After 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 liabilities (including contingent liabilities, if any), 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 incur debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debts 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 the obligations of Borrower). No Bankruptcy Action exists against Borrower and Borrower has never been a debtor party in a Bankruptcy Action. No Bankruptcy Action exists against any Guarantor, and neither Borrower nor has any Guarantor has ever been a debtor party in a Bankruptcy Action. Neither Borrower nor any Guarantor is contemplating either a Bankruptcy Action or the liquidation of all or a major portion of Borrower's or Guarantor's respective assets or properties, and Borrower has no knowledge of any Person contemplating the filing of any petition against Borrower or any Guarantor.

4.1.8 Full and Accurate Disclosure. No statement of fact made by or on behalf of Borrower in this Agreement or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no material information that has not been disclosed to Lender which adversely affects, nor as far as Borrower can reasonably foresee, might materially adversely affect, the Property or the business, operations or condition (financial or otherwise) of Borrower or any Guarantor.

4.1.9 No Plan Assets. Borrower is not an “employee benefit plan,” as defined in Section 3(3) of ERISA, subject to Title I of ERISA or Section 4975 of the Code, and none of the assets of Borrower constitutes or will constitute “plan assets” of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101. Compliance by Borrower and each Guarantor with the provisions hereof will not involve any Prohibited Transaction. Neither Guarantor nor Borrower has any pension, profit sharing, stock option, insurance or other arrangement or plan for employees covered by Title IV of ERISA, and no “Reportable Event” as defined in ERISA has occurred and is now continuing with respect to any such plan. The performance by Borrower of its obligations under the Loan Documents and Borrower’s conducting of its operations do not violate any provisions of ERISA. In addition, (a) Borrower is not a “governmental plan” within the meaning of Section 3(32) of ERISA, (b) transactions by or with Borrower are not subject to any state statute or regulation regulating investments of, or fiduciary obligations with respect to, governmental plans within the meaning of Section 2(32) of ERISA which is similar to the provisions of Section 406 of ERISA or Section 4975 of the Code currently in effect, which prohibit or otherwise restrict the transactions contemplated by this Agreement, and (c) none of Borrower, Guarantor or ERISA Affiliate is at the date hereof, or has been at any time within the two years preceding the date hereof, an employer required to contribute to any Multiemployer Plan or Multiple Employer Plan, or a “contributing sponsor” (as such term is defined in Section 4001 of ERISA) in any Multiemployer Plan or Multiple Employer Plan; and none of Borrower, Guarantor or any ERISA Affiliate has any contingent liability with respect to any post-retirement “welfare benefit plan” (as such term is defined in ERISA) except as disclosed to Lender in writing.

4.1.10 Compliance. Borrower and the Property (including the use thereof) comply in all material respects with all applicable Legal Requirements, including, without limitation, building and zoning ordinances and codes. Borrower is not in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority, including, without limitation, any order of a bankruptcy court or plan approved thereby. There has not been committed by Borrower (or any other Person), any act or omission affording any Governmental Authority the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower’s obligations under any of the Loan Documents. Neither the Improvements, if any, as constructed, nor the use of the Property or any contemplated accessory uses, will violate (a) any Legal Requirements (including subdivision, zoning, building, environmental protection and wetland protection Legal Requirements), or (b) any building permits, restrictions or records, or agreements affecting the Property or any part thereof. Neither the zoning authorizations, approvals or variances nor any other right to construct or to use the Property is to any extent dependent upon or related to any real estate other than the Property.

4.1.11 Financial Information. All financial data with respect to the Property and Guarantor, including, without limitation, the statements of cash flow and income and operating expense, that have been delivered to Lender in connection with the Loan (a) are true, complete and correct in all material respects, (b) fairly and accurately represent the financial condition of the Property and each Guarantor as of the date of such reports, and (c) to the extent prepared or audited by an independent certified public accounting firm, have been prepared in accordance with GAAP (or such other accounting basis acceptable to Lender) throughout the periods covered, except as disclosed therein. Except for Permitted Encumbrances, Borrower does not have any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and reasonably likely to have a Materially Adverse Effect on the Property or the Project. Since the date of such financial statements, there has been no Material Adverse Change (or any other material change) in the financial condition, operation or business of Borrower or any Guarantor from that set forth in said financial statements.

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

4.1.13 Federal Reserve Regulations. No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulation U or any other Regulations of such Board of Governors, or for any purposes prohibited by any Legal Requirements or by the terms and conditions of this Agreement or the other Loan Documents.

4.1.14 Public Access. The Property has rights of access to public ways and, upon construction thereon, will be served by water, sewer, sanitary sewer and storm drain facilities adequate to service the Property for its intended uses. All public utilities necessary or convenient to the full use and enjoyment of the Property are located either in the public right-of-way abutting the Property (which will be connected so as to serve the Property without passing over other property) or in recorded easements serving the Property and such easements are set forth in and insured by the Title Insurance Policy. All roads necessary for the use of the Property for its current purpose have been completed and dedicated to public use and accepted by all Governmental Authorities. There is no on-site sewage disposal system and, upon construction thereon, the Property will be served by a sewer system maintained by a Governmental Authority or property owners association.

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

4.1.16 Separate Lots. The Property is comprised of multiple parcels more particularly described on Schedule 1.1(a) which each constitute(s) a separate tax lot or lots and does not constitute a portion of any other tax lot not a part of the Property.

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

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

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

4.1.20 Insurance. Borrower has obtained and has delivered to Lender evidence of all Policies, with all premiums paid thereunder, reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. No claims have been made or are currently pending, outstanding or otherwise remain unsatisfied under any such Policies, and neither Borrower nor any other Person, has done, by act or omission, anything which would impair the coverage of any such Policies.

4.1.21 Flood Zone. None of the Improvements on the Property are located in an area as identified by the Federal Emergency Management Agency as an area having special flood hazards or, if so located, the flood insurance required pursuant to Section 6.1(a)(i) hereof is in full force and effect with respect to the Property.

4.1.22 Leases. Any and all Leases at the Property (a) provide for rental rates comparable to existing local market rates, contain reasonable market rate terms and do not contain any terms which would materially adversely affect Lender's rights under the Loan Documents, (b) are for a lease term not exceeding one year, including all extensions, (c) are with individual, residential, non-commercial tenants, and (d) have been entered into by Borrower in its ordinary course of business. No Person has any possessory interest in the Property or right to occupy the same other than tenants pursuant to the express terms of the Leases.

4.1.23 Survey. Each Survey for the Property delivered to Lender is accurate.

4.1.24 Principal Place of Business; State of Organization. Borrower's principal place of business as of the date hereof is the address set forth in the introductory paragraph of this Agreement. Borrower is organized under the laws of the State of Delaware and is qualified to do business in the all states in which Borrower is required to be qualified.

4.1.25 Filing and Recording Taxes. All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the transfer of the Property to Borrower have been paid. All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Security Instrument, have been paid or are being paid simultaneously with the disbursement of the proceeds of the Loan to Borrower.

4.1.26 [Intentionally omitted].

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

4.1.28 No Change in Facts or Circumstances; Disclosure. All information submitted by Borrower and any Guarantor to Lender including, but not limited to, all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan or in satisfaction of the terms thereof and all statements of fact made by Borrower and each Guarantor in this Agreement or in any other Loan Document, are accurate, complete and correct in all material respects. There has been no Material Adverse Change in any condition, fact, circumstance or event that would make any such information inaccurate, incomplete or otherwise misleading in any material respect or that otherwise materially and adversely affects or might materially and adversely affect the use, operation or value of the Property or the business operations and/or the financial condition of Borrower or any Guarantor. Borrower and each Guarantor have disclosed to Lender all material facts and have not failed to disclose any material fact that could cause any information provided to Lender or representation or warranty made herein to be materially misleading.

4.1.29 Investment Company Act. Borrower is not (a) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; (b) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 2005, as amended; or (c) subject to any other Federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

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

4.1.31 Filing of Returns. Borrower and each Guarantor have filed all Federal income tax returns and all other material tax returns, domestic and foreign, or extensions, as the case may be, required to be filed by it and have paid all material taxes and assessments payable by it that have become due, other than those not yet delinquent and except for those being contested in good faith. Borrower and each Guarantor have each established on its books such charges, accruals and reserves in respect of taxes, assessments, fees and other governmental charges for all fiscal periods as are required by sound accounting principles consistently applied. Neither Borrower, nor any Guarantor knows of any proposed assessment for additional Federal, foreign or state taxes for any period, or of any basis therefor, that, individually or in the aggregate, taking into account such charges, accruals and reserves in respect thereof as such Person has made, could reasonably be expected to cause a Material Adverse Change with respect to Borrower, Guarantor or the Property.

4.1.32 Operations Agreements. Each Operations Agreement is in full force and effect and neither Borrower nor, to the best of Borrower's knowledge, any other party to any such Operations Agreement, 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.

Section 4.2 Survival of Representations. Borrower agrees that all of the representations and warranties of Borrower set forth in Section 4.1 and elsewhere in this Agreement and in the other Loan Documents shall survive for so long as any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

ARTICLE V

BORROWER COVENANTS

Section 5.1 Affirmative Covenants. From the date hereof and until payment and performance in full of all Obligations, Borrower hereby covenants and agrees with Lender that:

5.1.1 Existence; Compliance with Legal Requirements. Borrower shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, licenses, permits and franchises and comply with all Legal Requirements applicable to Borrower and the Property. There shall never be committed by Borrower, and Borrower shall not permit any other Person in occupancy of or involved with the operation or use of the Property to commit, any act or omission affording any Governmental Authority the right of forfeiture against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. Borrower shall not commit, permit or suffer to exist any act or omission affording such right of forfeiture. Borrower shall at all times maintain, preserve and protect all franchises and trade names, preserve all the remainder of its property used or useful in the conduct of its business, and shall keep the Property in good working order and repair, and from time to time make, or cause to be made, all reasonably necessary repairs, renewals, replacements, betterments and improvements thereto, all as more fully provided in the Security Instrument. Borrower shall keep the Property insured at all times by financially sound and reputable insurers, to such extent and against such risks, and maintain liability and such other insurance, as is more fully provided in this Agreement. After prior notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding promptly initiated and conducted in good faith and with due diligence, the validity of any Legal Requirement, the applicability of any Legal Requirement to Borrower or the Property or any alleged violation of any Legal Requirement, provided, that: (a) no Default or Event of Default has occurred and is continuing; (b) such proceeding shall be permitted under, and be conducted in accordance with, the provisions of any instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances; (c) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (d) Borrower shall, upon final determination thereof, promptly comply with any such Legal Requirement determined to be valid or applicable or cure any violation of any Legal Requirement; (e) such proceeding shall suspend the enforcement of the contested Legal Requirement against Borrower and the Property; and (f) Borrower shall furnish such security as may be required in the proceeding, or as may be requested by Lender, to insure compliance with such Legal Requirement, together with all interest and penalties payable in connection therewith. Lender may apply any such security, as necessary to cause compliance with such Legal Requirement at any time when, in the judgment of Lender, the validity, applicability or violation of such Legal Requirement is finally established or the Property (or any part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost.

5.1.2 Taxes and Other Charges. Borrower shall pay, all Taxes and Other Charges now or hereafter levied or assessed or imposed against the Property, or any part thereof, as the same become due and payable. Borrower will deliver or cause to be delivered to Lender receipts for payment or other evidence satisfactory to Lender that the Taxes and Other Charges have been so paid or are not then delinquent no later than ten (10) days prior to the date on which the Taxes and/or Other Charges would otherwise be delinquent if not paid. Borrower shall not suffer and shall promptly pay or cause to be paid and discharged any Lien or charge whatsoever which may be or become a Lien or charge against the Property, and shall promptly pay or cause to be paid all utility services provided to the Property. After prior notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Taxes or Other Charges, provided that (a) no Default or Event of Default has occurred and remains uncured; (b) such proceeding shall be permitted under, and be conducted in accordance with, the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances; (c) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (d) Borrower shall promptly upon final determination thereof pay or cause to be paid the amount of any such Taxes or Other Charges, together with all costs, interest and penalties which may be payable in connection therewith; (e) such proceeding shall suspend the collection of such contested Taxes or Other Charges from the Property (except that if such Taxes or Other Charges must be paid sooner in order to avoid being delinquent, then Borrower shall pay or cause the same to be paid prior to delinquency, and upon making such payment or causing such payment to be made prior to delinquency Borrower may continue such contest); and (f) Borrower shall furnish such security as may be required in the proceeding, or as may be requested by Lender, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon. Lender may pay over any such cash deposit or part thereof held by Lender to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established or the Property (or part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost or there shall be any danger of the Lien of the Security Instrument being primed by any related Lien.

5.1.3 Litigation. Borrower shall give prompt notice to Lender of any litigation or proceedings by any Governmental Authority pending or threatened against Borrower and/or any Guarantor which might have a Materially Adverse Effect on Borrower's or any Guarantor's condition (financial or otherwise) or business or the Property.

5.1.4 Access to Property. Borrower shall permit agents, representatives and employees of Lender to inspect the Property or any part thereof at reasonable hours upon reasonable advance notice (which may be given verbally).

5.1.5 Notice of Default. Borrower shall promptly advise Lender of any Material Adverse Change in Borrower's or any Guarantor's condition, financial or otherwise, or of the occurrence of any Default or Event of Default of which Borrower has knowledge.

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

5.1.7 Perform Loan Documents. Borrower shall observe, perform and satisfy all the terms, provisions, covenants and conditions of, and shall pay when due all costs, fees and expenses to the extent required under the Loan Documents. Payment of the costs and expenses associated with any of the foregoing shall be in accordance with the terms and provisions of this Agreement, including, without limitation, the provisions of Section 10.13 hereof.

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

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

(a) furnish to Lender all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements, and each and every other document, certificate, agreement and instrument required to be furnished by Borrower pursuant to the terms of the Loan Documents or which are reasonably requested by Lender in connection therewith;

(b) authorize the filing or recording of or execute and deliver to Lender such documents, instruments, certificates, assignments, financing statements 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 under the Loan Documents, as Lender may reasonably require; and

(c) 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. In furtherance hereof, Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of protecting, perfecting, preserving and realizing upon the interests granted pursuant to this Agreement and to effect the intent hereof, all as fully and effectually as Borrower might or could do; and Borrower hereby ratifies all that Lender shall lawfully do or cause to be done by virtue hereof. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other applicable Loan Document, and in the case of the Note, receipt of an indemnity from Lender, Borrower will issue, in lieu thereof, a replacement Note or other applicable Loan Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Loan Document in the same principal amount thereof and otherwise of like tenor. Borrower hereby authorizes Lender to file an "all assets" financing statement with respect to the Collateral.

5.1.10 Mortgage Taxes. Borrower shall simultaneously with the disbursement of the proceeds of the Loan pay all state, county and municipal recording and all other taxes imposed upon the execution and recordation of the Security Instrument.

5.1.11 Financial Reporting.

(a) Borrower will keep and maintain or will cause to be kept and maintained on a Fiscal Year basis in accordance with GAAP (or such other accounting basis selected by Borrower and reasonably acceptable to Lender), proper and accurate books, records and accounts reflecting all of the financial affairs of Borrower and all items of income and expense in connection with the operation of the Property. Lender shall have the right from time to time at all times during normal business hours upon reasonable notice (which may be verbal) to examine such books, records and accounts at the office of Borrower or any other Person maintaining such books, records and accounts and to make such copies or extracts thereof as Lender shall desire. After the occurrence of an Event of Default, Borrower shall pay any costs and expenses incurred by Lender to examine Borrower's accounting records with respect to the Property, as Lender shall reasonably determine to be necessary or appropriate in the protection of Lender's interest. Upon Lender's request, Borrower shall furnish to Lender such other information reasonably necessary and sufficient to fairly represent the financial condition of Borrower and the Property.

(b) Borrower will furnish to Lender annually, within one hundred twenty (120) days following the end of each Fiscal Year of Borrower, and within thirty (30) days of the end of each calendar quarter, a complete copy of Borrower's and each Guarantor's annual (or quarterly, as applicable) financial statements certified as true and correct by the party providing such statements (and, for the annual of statements of Borrower prepared by an independent certified public accountant acceptable to Lender) in accordance with GAAP (or such other accounting basis acceptable to Lender, consistently applied) covering the Property for such Fiscal Year (or calendar quarter) and containing statements of profit and loss for Borrower, Guarantor and the Property and a balance sheet for Borrower and each Guarantor. Such statements of Borrower shall set forth the financial condition and the results of operations for the Property for such Fiscal Year (or calendar quarter), and an Officer's Certificate certifying that each annual financial statement of Borrower fairly presents the financial condition and the results of operations of Borrower and the Property subject to such reporting, and that such financial statements have been prepared in accordance with GAAP and as of the date thereof whether 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. Guarantor's annual financial statements shall be accompanied by a certificate executed and delivered by Guarantor (if such Guarantor is a natural person) or an officer or other duly authorized representative of Guarantor (if such Guarantor is an entity) certifying that each annual financial statement presents fairly the financial condition and the results of operations of Guarantor being reported upon and that such financial statements have been prepared in accordance with GAAP (or such other accounting basis acceptable to Lender, and, for Guarantors, Lender hereby approves sound and prudent cash based financial statements consistently applied) and as of the date thereof whether there exists an event or circumstance which constitutes a Default or Event of Default by Guarantor under the Loan Documents, and if such Default or an 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 shall also provide such monthly reports and statements as are reasonably required by Lender within twenty (20) days after the end of each calendar month.

(d) Borrower shall furnish to Lender, within twenty (20) days after request (or as soon thereafter as may be reasonably possible), such further detailed information with respect to the operation of the Property and the financial affairs of Borrower as may be reasonably requested by Lender.

(e) Any reports, statements or other information required to be delivered under this Agreement shall be delivered in electronic form (or such other form as required by Lender) and Borrower agrees that Lender may disclose information regarding the Property and Borrower that is provided to Lender pursuant to this Section 5.1.11 in connection with any Lender Assignment to such parties requesting such information in connection with such Lender Assignment.

(f) Without limitation on other requirements of this Agreement, Lender may require, at Borrower's cost and expense, quarterly valuations of the Loan and Borrower shall cooperate in connection therewith; provided, however, so long as no Event of Default exists, Borrower shall not be required to reimburse Lender more than \$2,500 for the cost of any such quarterly valuation.

5.1.12 Business and Operations. Borrower will continue to engage in the businesses presently conducted by it as and to the extent the same are necessary for the ownership, maintenance, management and operation of the 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, maintenance, management and operation of the Property or ownership and management of an interest in Borrower (as applicable).

5.1.13 Title to the Property. Borrower will warrant and defend (a) the title to the Property and every part thereof, subject only to Permitted Encumbrances, and (b) the validity and priority of the Lien of each of the Security Instruments, subject only to Permitted Encumbrances, in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any losses, costs, damages or expenses (including attorneys' fees and expenses, and court costs) incurred by Lender if an interest in the Property, other than as permitted hereunder, is claimed by another Person.

5.1.14 Costs of Enforcement. In the event (a) that the Security Instrument is foreclosed in whole or in part or that the Security Instrument is put into the hands of an attorney for collection, suit, action or foreclosure, (b) of the foreclosure of any mortgage prior to or subsequent to the Security Instrument in which proceeding Lender is made a party, or (c) of a Bankruptcy Action related to Borrower or an assignment by Borrower for the benefit of its creditors, Borrower, on behalf of itself and its successors and assigns, agrees that it/they shall be chargeable with and shall pay all costs of collection and defense, including attorneys' fees and expenses, and court costs, incurred by Lender or Borrower in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, together with all required service or use taxes.

5.1.15 Estoppel Statement.

(a) After request by Lender, Borrower shall within ten (10) days furnish Lender with a statement, duly acknowledged and certified, setting forth (i) the original principal amount of the Loan, (ii) the Outstanding Principal Balance, (iii) the Interest Rate of the Loan, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the performance of the Obligations, if any, and (vi) that the Note, this Agreement, the Security Instrument and the other Loan Documents are valid, legal and binding obligations of Borrower and have not been modified or if modified, giving particulars of such modification.

(b) Borrower shall use commercially reasonable efforts to deliver to Lender upon request, tenant estoppel certificates from each commercial Tenant, if any, in form and substance reasonably satisfactory to Lender provided that Borrower shall not be required to deliver such certificates more frequently than once in any calendar year.

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

5.1.17 Performance by Borrower. Borrower shall in a timely manner observe, perform and fulfill each and every covenant, term and provision of each Loan Document executed and delivered by, or applicable to, Borrower and shall not enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Loan Document without the prior written consent of Lender.

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

5.1.19 Leasing Matters. Any Lease executed after the date hereof (and any amendment or termination thereof) shall require the prior written consent of Lender, which consent shall be in Lender's sole and absolute discretion. Borrower shall furnish Lender with true, correct and complete executed copies of all Leases, amendments thereof and any related agreements. Without limitation, and as applicable, Lender shall be deemed to have approved all renewals of Leases and all proposed Leases so long as the same (a) provide for rental rates comparable to existing local market rates, contain reasonable market rate terms and do not contain any terms which would materially adversely affect Lender's rights under the Loan Documents, (b) are for a lease term not exceeding one year, including all extensions, (c) are with individual, residential, non-commercial tenants, and (d) have been entered into by Borrower in its ordinary course of business. All Leases executed after the date hereof shall provide that they are subordinate to the Security Instrument and the Liens created thereby and that the Tenant thereunder agrees to attorn to Lender or any other purchaser of the Property at a sale by foreclosure (or deed in lieu thereof) or power of sale. Borrower (a) shall observe and perform the obligations imposed upon the lessor under the Leases in a commercially reasonable manner; (b) shall enforce the terms, covenants and conditions contained in the Leases upon the part of the Tenant thereunder to be observed or performed in a commercially reasonable manner and in a manner which does not impair the value of the Property involved, provided that in no event shall Borrower terminate or accept the surrender of any Lease by a Tenant unless by reason of a Tenant default and then only in a commercially reasonable manner to preserve and protect the Property; *provided, however*, that no such termination or surrender of any Lease will be permitted without the prior written consent of Lender or unless such termination or surrender is specifically provided for in the Lease; (c) shall not collect any of the Rents more than one (1) month in advance (other than security deposits required pursuant to such Lease); (d) shall not execute any other assignment of the lessor's interest in the Leases or the Rents (except to Lender pursuant to the Loan Documents); (e) shall not alter, modify or change the terms of the Leases; and (f) shall execute and deliver at the request of Lender all such further assurances, confirmations and assignments in connection with the Leases as Lender shall from time to time reasonably require. Lender shall have the right to require each new Tenant to execute and deliver to Lender a subordination, non-disturbance of possession and attornment agreement in form, content and manner of execution reasonably acceptable to Lender.

5.1.20 Operation of Property.

(a) Borrower shall: (i) promptly perform and/or observe in all material respects all of the covenants and agreements required to be performed and observed by it under any of the Operations Agreements and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Lender of any material default under any Operations Agreement of which it is aware; and (iii) enforce the performance and observance of all of the covenants and agreements required to be performed and/or observed by any party (other than Borrower) under the Operations Agreements, in a commercially reasonable manner.

(b) All Material Agreements shall be subject to the prior review and approval, not to be unreasonably withheld, of Lender. As used herein, “**Material Agreements**” shall mean each contract and agreement relating to the ownership, management, development, use, operation, leasing, maintenance, repair or improvement of the Property, as to which either (a) there is an obligation of Borrower to pay more than \$50,000 in the aggregate, or (b) the term thereof extends beyond one year (unless cancelable on thirty (30) days or less notice without requiring the payment of termination fees or payments of any kind).

5.1.21 Changes in the Legal Requirements Regarding Taxation. If any Legal Requirement or other law, order, requirement or regulation of any Governmental Authority is enacted or adopted or amended after the date the Loan is funded which imposes a tax, either directly or indirectly, on the Obligations or Lender’s interest in the Property, Borrower must pay or cause to be paid such tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of such tax or interest and penalties by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then in any such event, Lender may, by written notice to Borrower of not less than ninety (90) days, declare the Obligations immediately due and payable.

5.1.22 No Credits on Account of the Obligations. Borrower will not claim or demand or be entitled to any credit or credits on account of the Obligations for any payment of Taxes assessed against the Property and no deduction shall otherwise be made or claimed from the assessed value of the Property for real estate tax purposes because of the Loan Documents or the Obligations. If Legal Requirements or other laws, orders, requirements or regulations require such claim, credit or deduction, Lender may, by written notice to Borrower of not less than ninety (90) days, declare the Obligations immediately due and payable.

5.1.23 Personal Property. Borrower shall cause all of its personal property, fixtures, attachments and equipment delivered upon, attached to or used in connection with the operation of the Property to always be located at the Property and shall be kept free and clear of all Liens, encumbrances and security interests, except Permitted Encumbrances.

5.1.24 Rehabilitation Project.

(a) Project Documents. Borrower shall diligently and continuously undertake to Complete each Project in conformance with the applicable Project Documents. Borrower will perform its obligations under the Project Documents and will enforce the terms of the Project Documents.

(b) Permits. Borrower shall pay for and obtain or cause to be paid for and obtained all permits, licenses and approvals required by applicable Legal Requirements with regard to each Project.

(c) Lender Consultants. At Borrower’s expense, Lender shall have the right to employ an inspecting architect, engineer or consultant with respect to a Project. Borrower shall pay immediately upon demand the fees and expenses of any architect, engineer or consultant employed by Lender for the purpose of reviewing plans or otherwise engaged by Lender with respect to any Project.

(d) Performance by Lender. Upon the occurrence of an Event of Default, Lender shall have the right, without limitation of Lender’s other remedies under the Loan Documents, upon written notice to Borrower, either before or after accelerating the Debt or commencing foreclosure, either directly or through Lender’s agents and contractors to (i) enter onto the Property, (ii) complete the Project, (iii) modify the Project as Lender deems necessary, (iv) hire or replace any contractor or vendor retained by Borrower in connection with the Project as Lender deems necessary, (v) expend such sums as Lender determines necessary to Complete such Project and (vi) purchase any insurance coverage deemed appropriate by Lender in its sole discretion relating to the Project or Lender’s exercise of its rights under this Section 5.1.24(d). Borrower hereby waives any right to contest any such costs or expenses incurred by Lender in the exercise of Lender’s rights under this Section 5.1.24(d), and such costs and expenses (a) shall be added to the Debt, (b) shall be secured by the Security Instrument, (c) shall accrue interest at the Default Rate, and (d) shall be payable to Lender upon demand. Borrower hereby agrees to indemnify and hold harmless Lender for any such costs or expenses. Borrower hereby grants Lender an irrevocable power of attorney, coupled with an interest, to exercise Lender’s rights under this Section 5.1.24(d). Lender does not have and shall not have any obligation to complete any Project.

Section 5.2 Negative Covenants. From the date hereof until payment and performance in full of the Obligations, Borrower covenants and agrees with Lender that it will not do, directly or indirectly, any of the following:

5.2.1 Operation of Property. Borrower shall not, without Lender's prior consent (which consent shall be in Lender's sole and absolute discretion): enter into, amend, surrender, terminate, waive any rights under or cancel any Management Agreement.

5.2.3 Liens. Borrower shall not create, incur, assume, permit or suffer to exist any Lien on any portion of the Property or permit any such action to be taken, except for Permitted Encumbrances.

5.2.4 Dissolution. Borrower shall not (a) engage in any dissolution, liquidation, consolidation or merger with or into any other business entity, (b) engage in any business activity not related to the ownership and operation of the Property, (c) transfer, lease or sell, in one transaction or any combination of transactions, the assets or all or substantially all of the properties or assets of Borrower except to the extent permitted by the Loan Documents, or (d) modify, amend, waive or terminate its organizational documents or its qualification and good standing in any jurisdiction.

5.2.5 Change in Business. Borrower shall not enter into any line of business other than the ownership and operation of the Property, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business.

5.2.6 Debt Cancellation. Borrower shall not cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to Borrower by any Person, except for adequate consideration and in the ordinary course of Borrower's business.

5.2.7 Zoning. Borrower shall not initiate or consent to any zoning reclassification of any portion of the Property or seek any variance under any existing zoning ordinance, or use or permit the use of any portion of the 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, in each case, without the prior written consent of Lender.

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

5.2.9 Principal Place of Business and Organization. Borrower shall not change its principal place of business set forth in the introductory paragraph of this Agreement without first giving Lender at least thirty (30) days prior notice. Borrower shall not change the place of its organization as set forth in Section 4.1.24 without the consent of Lender, which consent shall not be unreasonably withheld. Upon Lender's request, Borrower shall execute and deliver additional financing statements, security agreements and other instruments which may be necessary to effectively evidence or perfect Lender's security interest in the Property as a result of such change of principal place of business or place of organization.

5.2.10 ERISA.

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

(b) Borrower further covenants and agrees to 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 (1) Borrower is not an “employee benefit plan” as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a “governmental plan” within the meaning of Section 3(32) of ERISA; (2) Borrower is not subject to any state statute regulating investments of, or fiduciary obligations with respect to, governmental plans; and (3) one or more of the following circumstances is true: (i) Equity interests in Borrower are publicly offered securities, within the meaning of 29 C.F.R. §2510.3-101(b)(2); (ii) Less than twenty-five percent (25%) of each outstanding class of equity interests in Borrower is held by “benefit plan investors” within the meaning of 29 C.F.R. §2510.3-101(f)(2); (iii) Borrower qualifies as an “operating company” or a “real estate operating company” within the meaning of 29 C.F.R. §2510.3-101(c) or (e); or (iv) The Loan meets the requirements of PTE 95-60, 90-1, 84-14 or similar exemption.

5.2.11 Transfers; Assumptions.

(a) Without the prior written consent of Lender and except to the extent otherwise set forth in this Section 5.2.10, no Transfer may occur without the prior written consent of Lender in its sole and absolute discretion.

(b) Notwithstanding the provisions of this Section 5.2.10, Lender’s consent shall not be required in connection with a Permitted Transfer; *provided, however*, that all of the following conditions are satisfied with respect to any such Transfers: (1) Borrower shall provide Lender thirty (30) days’ prior written notice thereof (other than a Permitted Transfer for which notice shall occur within thirty (30) days’ after such Transfer), (2) such Transfer shall not result in a change in the day-to-day management and operations of the Property, (3) [intentionally omitted], and (4) such Transfer shall not result in a breach of Section 5.2.9 or 5.2.13. Notwithstanding anything set forth herein, and without limiting any restrictions on any Transfer set forth herein, if any proposed transfer of any direct or indirect interests in Borrower would otherwise be a Permitted Transfer or not require Lender’s consent but shall result in any Person owning more than twenty percent (20%) of the direct or indirect legal, beneficial or economic interest in Borrower (other than Persons currently owning more than twenty percent (20%) of the direct or indirect legal, beneficial or economic interest in Borrower), approval of such transferee is required so that Lender can confirm the transfer and transferee complies with all legal and regulatory requirements and Lender policies relating to such transfer and transferee, including, without limitation, the Patriot Act and federal regulations issued with respect thereto and to ensure compliance with the representations in Section 4.1.30 hereof.

(c) Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon a Transfer without Lender’s consent. This provision shall apply to every Transfer regardless of whether voluntary or not, or whether or not Lender has consented to any previous Transfer.

5.2.12 Operations Agreements. Borrower shall not, without the prior written consent of Lender, modify any of the Operations Agreements.

5.2.13 [Intentionally omitted].

5.2.14 Embargoed Person; OFAC. As of the date hereof and at all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower and any Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person; (b) no Embargoed Person has any interest of any nature whatsoever in Borrower or any Guarantor, as applicable, with the result that the investment in Borrower or any Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of Borrower or any Guarantor, as applicable, have been derived from any unlawful activity with the result that the investment in Borrower or any Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law. Neither Borrower nor any Guarantor is (or will be) a Person with whom Lender is restricted from doing business under OFAC regulations (including those persons named on OFAC’s Specially Designated and Blocked Persons list) or under any statute, executive order (including the September 24, 2001 #13224 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and shall not engage in any dealings or transactions or otherwise be associated with such Persons. In addition, to help the US Government fight the funding of terrorism and money laundering activities, The USA Patriot Act (and the regulations thereunder) requires Lender to obtain, verify and record information that identifies its customers. Borrower shall provide Lender with any additional information that Lender deems necessary from time to time in order to ensure compliance with The USA Patriot Act and any other applicable Legal Requirements concerning money laundering and similar activities.

5.2.15 Distributions. Borrower shall not make or permit any Distribution.

5.2.16 Affiliate Agreements. Borrower shall not enter into any agreement with an Affiliate without Lender's prior written consent, in its sole and absolute discretion.

ARTICLE VI

INSURANCE; CASUALTY; CONDEMNATION

Section 6.1 Insurance.

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

(i) comprehensive "All Risk" or "Special Form" insurance on the Improvements and the Personal Property (A) in an amount equal to one hundred percent (100%) of the "**Full Replacement Cost**," which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations) with no depreciation; (B) containing an agreed amount endorsement with respect to the Improvements and Personal Property waiving all co-insurance provisions, or confirmation that co-insurance does not apply; and (C) providing for no deductible in excess of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) for all such insurance coverage. In addition, Borrower shall obtain: (x) if any portion of the Improvements is currently, or at any time in the future, located in a Federally designated "special flood hazard area", flood hazard insurance in an amount equal to the Outstanding Principal Balance or such other amount as Lender shall require; (y) earthquake insurance in amounts and in form and substance satisfactory to Lender in the event the Property is located in an area with a high degree of seismic activity; and (z) windstorm insurance in amounts and in form and substance satisfactory to Lender in the event such windstorm coverage is excluded under the Special Form Coverage, provided that the insurance pursuant to clauses (x), (y) and (z) hereof shall be on terms consistent with the comprehensive "All Risk" or "Special Form" insurance policy required under this subsection (i);

(ii) commercial general liability insurance, including a broad form comprehensive general liability endorsement and coverage against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, such insurance (A) to be on the so-called "occurrence" form with a combined limit of not less than Two Million and No/100 Dollars (\$2,000,000.00) in the aggregate and One Million and No/100 Dollars (\$1,000,000.00) per occurrence (and, if on a blanket policy, containing an "Aggregate Per Location" endorsement); (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 insured contracts; and (5) contractual liability covering the indemnities contained in Article VIII of the Security Instrument to the extent the same is available;

(iii) if there are tenants of the Property, rental loss insurance (A) with loss payable to Lender; (B) covering all risks required to be covered by the insurance provided for in subsection (i) above; and (C) for loss of Rents in an amount equal to one hundred percent (100%) of the projected rents from ` for a period of twelve (12) months from the date of such Casualty (assuming such Casualty had not occurred) and notwithstanding that the policy may expire prior to or at the end of such period. The amount of such loss of Rents or business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on Borrower's reasonable estimate of income to be derived from the Property for the succeeding twelve (12) month period. Notwithstanding anything to the contrary set forth herein, all proceeds payable to Lender pursuant to this subsection shall be held by Lender and shall be applied at Lender's sole discretion to (I) the Debt, or (II) operating expenses for the Property approved by Lender in its sole discretion; *provided, however*, that nothing herein contained shall be deemed to relieve Borrower of its obligations to pay the Debt, 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 forms do not otherwise apply, (A) owner's and contractor's 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 Property, and (4) with an agreed amount endorsement waiving co-insurance provision, or confirmation that co-insurance does not apply;

(v) if Borrower ever has any direct employees, worker's compensation insurance with respect to any employees of Borrower, as required by any Governmental Authority or Legal Requirement;

(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) if Borrower ever has any direct employees or owns any motor vehicles, motor vehicle liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence of not less than One Million and No/100 Dollars (\$1,000,000.00);

(viii) umbrella or excess liability insurance in an amount not less than Five Million and No/100 Dollars (\$5,000,000.00) per occurrence on terms consistent with the commercial general liability insurance policy required under subsection (ii) above;

(ix) if the Property is or becomes a legal "non-conforming" use or structure, ordinance or law coverage to compensate for the value of the undamaged portion of the Property, the cost of demolition and increased cost of construction in amounts as requested by Lender;

(x) if applicable, the commercial property, business income, general liability and umbrella or excess liability insurance required under Sections 6.1(a)(i), (ii), (iii) and (viii) above shall cover perils of terrorism and acts of terrorism and Borrower shall maintain commercial property and business income insurance for loss resulting from perils and acts of terrorism on terms (including amounts) consistent with those required under Sections 6.1(a)(i), (ii), (iii) and (viii) above at all times during the term of the Loan so long as Lender determines that either (I) prudent owners of real estate comparable to the Property are maintaining same or (II) prudent institutional lenders (including, without limitation, investment banks) to such owners are requiring that such owners maintain such insurance; and

(xi) upon sixty (60) days' notice, such other insurance and in such amounts as Lender from time to time may request against such other insurable hazards which at the time are commonly insured against for properties similar to the Property located in or around the region in which the Property is located.

(b) All insurance provided for in Section 6.1(a) shall be obtained under valid and enforceable policies (collectively, the "**Policies**" or in the singular, the "**Policy**"), and shall be subject to the approval of Lender as to insurance companies, amounts, deductibles, loss payees and insureds. The Policies shall be issued by financially sound and responsible insurance companies authorized to do business in the State and having a claims paying ability rating of "A-" or better by S&P or "A-X" or better by AM Best or "A3" or better by Moody's Investor Service, Inc.. Prior to the expiration dates of the Policies theretofore furnished to Lender, certificates of insurance evidencing the renewal or successor Policies accompanied by evidence satisfactory to Lender of payment of the premiums due thereunder (the "**Insurance Premiums**"), shall be delivered by Borrower to Lender. Borrower shall supply an original or certified copy of the original policy within ten (10) days of request by Lender, provided that the policy is available.

(c) Any blanket insurance Policy shall specifically allocate to the 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 Property in compliance with the provisions of Section 6.1(a).

(d) All Policies provided for or contemplated by Section 6.1(a), except for the Policy referenced in Section 6.1(a)(v), shall name Borrower as the insured and Lender (and its successors and assigns) as Mortgagee, Loss Payee and Additional Insured, as its interests may appear, and in the case of property damage, boiler and machinery, flood and earthquake insurance, shall contain a standard non-contributing mortgagee clause in favor of Lender providing that the loss thereunder shall be payable to Lender.

(e) All Policies provided for in this Section 6.1 shall contain clauses or endorsements to the effect that: (i) no act or negligence of Borrower, or anyone acting for Borrower, or of any tenant or other occupant, or failure to comply with the provisions of any Policy, which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Lender is concerned; (ii) the Policies on which Lender is listed as a Mortgagee shall not be canceled without at least thirty (30) days' notice to Lender; (iii) Lender shall not be liable for any Insurance Premiums thereon or subject to any assessments thereunder; and (iv) shall contain a waiver of subrogation in favor of Lender.

(f) If at any time Lender is not in receipt of written evidence that all Policies are in full force and effect, Lender shall have the right, without notice to Borrower, to take such action as Lender deems necessary to protect its interest in the Property, including, without limitation, the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate. 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 Security Instrument and shall bear interest at the Default Rate. Provided no Event of Default exists, Lender shall promptly provide Borrower with notice of any such premiums incurred.

(g) Without limitation, Borrower shall continue to maintain all insurance that is in effect as of the date hereof.

Section 6.2 Casualty. If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (a "**Casualty**"), Borrower shall (a) give prompt notice of such damage to Lender, and (b) promptly commence and diligently prosecute the completion of Restoration so that the Property resembles, as nearly as possible, the condition the Property was in immediately prior to such Casualty, with such alterations as may be reasonably approved by Lender and otherwise in accordance with Section 6.4. Borrower shall pay all costs of such Restoration whether or not such costs are covered by insurance. Lender may, but shall not be obligated to make proof of loss if not made promptly by Borrower. In addition, Lender may participate in (and have approval rights over) any settlement discussions with any insurance companies with respect to any Casualty in which the Net Proceeds or the costs of completing Restoration are equal to or greater than five percent (5%) of the applicable Allocated Loan Amount for the affected Individual Property and Borrower shall deliver to Lender all instruments required by Lender to permit such participation.

Section 6.3 Condemnation. Borrower shall promptly give Lender notice of the actual or threatened commencement of any proceeding in respect of Condemnation, and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings, and Borrower shall from time to time deliver to Lender all instruments requested by 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 taking by any public or quasi-public authority through Condemnation or otherwise (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to perform the Obligations at the time and in the manner provided in this Agreement and the other Loan Documents and the Outstanding Principal Balance shall not be reduced until any Award shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Obligations. Lender shall not be limited to the interest paid on the Award by the applicable 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 Property or any portion thereof is taken by a Governmental Authority, Borrower shall promptly commence and diligently prosecute Restoration and otherwise comply with the provisions of Section 6.4. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the Award, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the Award, or a portion thereof sufficient to pay the Debt.

Section 6.4 Restoration. If there are any Improvements on the Property, the following provisions shall apply:

(a) If the Net Proceeds and the costs of completing Restoration shall each be less than five percent (5%) of the applicable Allocated Loan Amount for the affected Individual Property, then the Net Proceeds will be disbursed by Lender to Borrower upon receipt, provided that all of the conditions set forth in Section 6.4(b)(i) are met and Borrower delivers to Lender a written undertaking to expeditiously commence and to satisfactorily complete with due diligence Restoration in accordance with the terms of this Agreement.

(b) If the Net Proceeds are equal to or greater than five percent (5%) of the applicable Allocated Loan Amount for the affected Individual Property, but less than twenty percent (20%) of the applicable Allocated Loan Amount for the affected Individual Property, or the costs of completing Restoration are equal to or greater than five percent (5%) of the applicable Allocated Loan Amount for the affected Individual Property, but less than twenty percent (20%) of the applicable Allocated Loan Amount for the affected Individual Property, then, in either case, the Net Proceeds will be held by Lender and Lender shall make the Net Proceeds available for Restoration in accordance with the provisions of this Section 6.4. The term "**Net Proceeds**" for purposes of this Section 6.4 shall mean: (i) the net amount of all insurance proceeds received by Lender pursuant to Section 6.1 (a)(i), (iv), (vi), (ix) and (x) as a result of such damage or destruction, after deduction of Lender's reasonable costs and expenses (including, but not limited to, reasonable counsel costs and fees), if any, in collecting same ("**Insurance Proceeds**"), or (ii) the net amount of the Award, after deduction of Lender's reasonable costs and expenses (including, but not limited to, reasonable counsel costs and fees), if any, in collecting same ("**Condemnation Proceeds**"), whichever the case may be.

(i) The Net Proceeds shall be made available to Borrower for Restoration upon the determination of Lender in its sole discretion that the following conditions are met:

(A) no Event of Default shall have occurred and be continuing;

(B) in the event the Net Proceeds are Condemnation Proceeds, 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 Property, and no portion of the Improvements is located on such land;

(C) if applicable, Leases demising in the aggregate a percentage amount equal to or greater than ninety percent (90%) of the total rentable space in the affected Individual Property which has been demised under executed and delivered Leases in effect as of the date of the occurrence of such Casualty or Condemnation, whichever the case may be, shall remain in full force and effect during and after the completion of Restoration, notwithstanding the occurrence of any such Casualty or Condemnation, whichever the case may be, and will make all necessary repairs and restorations thereto at their sole cost and expense;

(D) Borrower shall commence Restoration as soon as reasonably practicable (but in no event later than sixty (60) days after such Casualty or Condemnation, whichever the case may be, occurs) and shall diligently pursue the same to satisfactory completion;

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

(F) Lender shall be satisfied that Restoration will be completed on or before the earliest to occur of (1) four (4) months prior to the Maturity Date, (2) the earliest date required for such completion under the terms of any Leases, (3) such time as may be required under all applicable Legal Requirements in order to repair and restore the affected Individual Property to the condition it was in immediately prior to such Casualty or to as nearly as possible the condition it was in immediately prior to such Condemnation, as applicable, or (4) the expiration of the insurance coverage referred to in Section 6.1(a)(iii);

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

(H) Restoration shall be done and completed by Borrower in an expeditious and diligent fashion and in compliance with all applicable Legal Requirements;

(I) such Casualty or Condemnation, as applicable, does not result in the loss of access to the affected Individual Property or the related Improvements;

(J) Borrower shall deliver, or cause to be delivered, to Lender a signed detailed budget approved in writing by Borrower's architect or engineer stating the entire cost of completing Restoration, which budget shall be acceptable to Lender; and

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

(ii) The Net Proceeds shall be paid directly to Lender for deposit in an interest-bearing account (the "*Net Proceeds Account*") and, until disbursed in accordance with the provisions of this Section 6.4(b), shall constitute additional security for the Debt and the Other Obligations. The Net Proceeds shall be disbursed by Lender to, or as directed by, Borrower from time to time during the course of Restoration, upon receipt of evidence satisfactory to Lender that (A) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with Restoration have been paid for in full, and (B) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Property which have not either been fully bonded to the satisfaction of Lender and discharged of record or in the alternative fully insured to the satisfaction of Lender by the Title Company.

(iii) All plans and specifications required in connection with Restoration shall be subject to prior review and acceptance in all respects by Lender in its discretion and by an independent consulting engineer selected by Lender (the "*Casualty Consultant*"). Lender shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with Restoration. The identity of the contractor engaged in Restoration, as well as the contracts under which it has been engaged, shall be subject to prior review and acceptance by Lender in its discretion and the Casualty Consultant. All costs and expenses incurred by Lender in connection with making the Net Proceeds available for Restoration including, without limitation, reasonable counsel fees and disbursements and the Casualty Consultant's fees, shall be paid by Borrower.

(iv) In no event shall 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 Restoration, as certified by the Casualty Consultant, minus the Retention Amount. The term "*Retention Amount*" shall mean, as to each contractor, subcontractor or materialman engaged in Restoration, an amount equal to ten percent (10%) of the costs actually incurred for work in place as part of Restoration, as certified by the Casualty Consultant, until Restoration has been completed. The Retention Amount shall in no event, and notwithstanding anything to the contrary set forth above in this Section 6.4(b), be less than the amount actually held back by Borrower from contractors, subcontractors and materialmen engaged in Restoration. The Retention Amount shall not be released until the Casualty Consultant certifies to Lender that Restoration has been completed in accordance with the provisions of this Section 6.4(b) and that all approvals necessary for the re-occupancy and use of the Property have been obtained from all appropriate Governmental Authorities, and Lender receives evidence satisfactory to Lender that the costs of Restoration have been paid in full or will be paid in full out of the Retention Amount; *provided, however*, that Lender will release the portion of the Retention Amount being held with respect to any contractor, subcontractor or materialman engaged in 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 Security Instrument and evidence of payment of any premium payable for such endorsement. If required by Lender, the release of any such portion of the Retention Amount shall be approved by the surety company, if any, which has issued a payment or performance bond with respect to the contractor, subcontractor or materialman.

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

(vi) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the 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 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 Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this Section 6.4(b) shall constitute additional security for the Debt and the Other Obligations.

(vii) The excess, if any, of the Net Proceeds and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Lender after the Casualty Consultant certifies to Lender that Restoration has been completed in accordance with the provisions of this Section 6.4(b), and the receipt by Lender of evidence satisfactory to Lender that all costs incurred in connection with Restoration have been paid in full, shall be remitted by Lender to Borrower, provided no Event of Default shall have occurred and shall be continuing.

(c) If Net Proceeds are (i) equal to or greater than twenty percent (20%) of the applicable Allocated Loan Amount for the affected Individual Property, (ii) not required to be made available for Restoration (due to Borrower's inability to satisfy the conditions set forth in Section 6.4(b)(i) or otherwise), or (iii) not to be returned to Borrower as excess Net Proceeds pursuant to Section 6.4(b)(vii), then in any such event all Net Proceeds may be retained and applied by Lender in accordance with Section 2.4.2 hereof toward reduction of the Outstanding Principal Balance whether or not then due and payable in such order, priority and proportions as Lender in its sole discretion shall deem proper, or, in the sole discretion of Lender, the same may be paid, either in whole or in part, to Borrower for such purposes as Lender shall approve, in its sole discretion. No prepayment charge shall be payable by Borrower by reason of a Casualty or Condemnation.

(d) In the event of foreclosure of the Security Instrument, or other transfer of title to the Property in extinguishment in whole or in part of the Debt all right, title and interest of Borrower in and to the Policies that are not blanket Policies then in force concerning the Property and all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure or Lender or other transferee in the event of such other transfer of title.

ARTICLE VII

RESERVE FUNDS

Section 7.1 [Intentionally Omitted]

Section 7.2 [Intentionally Omitted]

Section 7.3 Reserve Funds, Generally.

(a) Borrower (i) hereby grants to Lender a first priority security interest in all of the Reserve Funds and any and all monies now or hereafter deposited in each Reserve Account as additional security for payment and performance of the Obligations and (ii) will take all actions necessary to maintain in favor of Lender a perfected first priority security interest in the Reserve Funds, including, without limitation, filing or authorizing Lender to file UCC-1 financing statements and continuations thereof. Until expended or applied in accordance herewith, the Reserve Funds shall constitute additional security for the Obligations.

(b) Upon the occurrence of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in any or all of the Reserve Funds to the reduction of the Outstanding Principal Balance or the payment of any other amounts then due and owing under this Agreement or any of the other Loan Documents in any order in its sole discretion.

(c) Borrower shall not further pledge, assign or grant any security interest in any Reserve Fund or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 financing statements, except those naming Lender as the secured party, to be filed with respect thereto.

(d) The Reserve Funds shall not constitute trust funds and may be commingled with other monies held by Lender. No earnings or interest on the Reserve Funds shall be payable to Borrower. Lender shall not have any obligation to keep or maintain such Reserve Funds or any funds deposited therein in interest bearing accounts.

(e) Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys' fees and expenses) (collectively, "**Claims**") arising from or in any way connected with the Reserve Funds or the performance of the obligations for which the Reserve Funds were established; provided, however, Borrower shall not be obligated to indemnify Lender for any such Claims to the extent arising from Lender's gross negligence or willful misconduct. Borrower shall assign to Lender all rights and claims Borrower may have against all Persons supplying labor, materials or other services which are to be paid from or secured by the Reserve Funds; *provided, however*, that Lender may not pursue any such right or claim unless an Event of Default has occurred and remains uncured.

(f) Upon payment in full of the Debt in accordance with the terms of this Agreement and the other Loan Documents, Lender shall return any remaining Reserve Funds to Borrower.

Section 7.4 Project Reserve Funds.

7.4.1 Deposits of Project Reserve Funds. Borrower shall deposit with Lender (which amount may be net funded by Lender but deemed disbursed) an amount equal to \$735,000.00 on the Closing Date for the purpose of funding Project Costs, which amounts shall be deposited into a Reserve Account (the "**Project Reserve Account**"). Amounts deposited from time to time into the Project Reserve Account pursuant to this Section 7.4.1 are referred to herein as the "**Project Reserve Funds**". The allocated amount of Project Reserve Funds with respect to each Individual Property, are set forth on Schedule 1.1(a) hereof.

7.4.2 Disbursement of Project Reserve Funds.

(a) Disbursements Upon Completion of Project at Individual Property. Each disbursement of Project Reserve Funds shall be released subject to satisfaction of the following conditions, any of which may be waived by Lender in Lender's sole discretion:

(i) Any request for a disbursement of Project Reserve Funds shall be submitted to Lender on Lender's form of request, not less than ten (10) Business Days prior to the anticipated date for the disbursement of Project Reserve Funds, and shall be accompanied by all evidence required to be approved by Lender as a condition to such disbursement, including an Officer's Certificate stating that said conditions are then satisfied;

(ii) Disbursement of Project Reserve Funds shall only be used for the portion of the Project at the Individual Property to which the request for disbursement of Project Reserve Funds relates shall not exceed the amount of the Project Reserve Funds allocated to the applicable Individual Property;

(iii) Borrower shall be in compliance with the terms and conditions of Section 5.1.24;

(iv) The relevant portion of the Project at an Individual Property to which the requested disbursement of Project Reserve Funds relates shall be Complete;

(v) At Lender's election, Lender shall have received certificates of Lender's consultant, any Architect and the General Contractor that the such portion of the Project is Complete;

(vi) Evidence reasonably acceptable to Lender, together with all other appropriate certificates and other documentation that Lender may require from, and as are customarily issued by, applicable Governmental Authorities, evidencing (i) compliance with all applicable Legal Requirements, including final certificates of occupancy and all consents or approvals required from third parties or any Governmental Authority have been obtained, and (ii) that no petitions, actions or proceedings are pending or threatened which could reasonably be expected to materially alter or declare invalid any approvals, consents, permits or certificates for or relating to the Project, or any part thereof;

(vii) Final unconditional waivers of lien (and evidence of payment) from all other contractors, subcontractors and materialmen as required by Lender or the Title Company; and

(viii) Lender shall have received notices of title continuation showing that since the date of the last disbursement of Project Reserve Funds there has been no adverse change in the state of title to the applicable Individual Property not approved by Lender, and, to the extent that any new improvements have been constructed at the applicable Individual Property outside their footprint on the date of the most recent survey, no adverse survey exceptions with respect to the Property not theretofore approved by Lender, and Lender may, in its discretion, require an endorsement to the Title Insurance Policy, in form and content satisfactory to Lender, insuring, in effect, that such disbursement has the same priority as the initial disbursement of the Loan and that there has been no Material Adverse Change in the condition of title to the Property since the issuance of the Title Insurance Policy;

(ix) No actions, suits or proceedings shall then be pending nor have any been threatened against or which affect Borrower, any Guarantor or the Property which could have a Material Adverse Change on Borrower, Guarantor or the Property;

(x) No Default or Event of Default shall have occurred and be continuing and all representations and warranties set forth in this Agreement and in any other Loan Document shall be materially true and correct as of the date of Borrower's request for the disbursement, the date the disbursement is made, and immediately following the making of the disbursement;

(xi) No substantial unrepaired damage to any portion of the Property by fire or other casualty which is not in Lender's judgment adequately covered by collectible proceeds of insurance; and

(xii) Borrower shall have paid all of the costs and expenses incurred by Lender, including reasonable attorneys' fees and expenses, all title premiums and other title and survey charges in connection with the proposed disbursement and a nonrefundable rehabilitation management in the amount of Two Hundred Ninety-Five and No/100 Dollars (\$295.00) payable to Lender with respect to each disbursement of Project Reserve Funds.

(b) Disbursement by Wire Transfer. Disbursement of Project Reserve Funds shall be made at Lender's election by wire transfer, at Borrower's cost and expense, or by check. Lender may, in its election, make payments of the Project Reserve Funds directly to the contractor, subcontractor, or material supplier. Lender may also require, at Lender's election, in its sole discretion, at Borrower's sole cost and expense, that disbursements of Project Reserve Funds be made through (a) the Title Company pursuant to a construction loan disbursement escrow agreement or (b) a vending control company. Any such arrangement with the Title Company or a vending control company shall be in Lender's sole discretion

(c) Waiver of Conditions. Lender may from time to time, in its sole discretion, waive any condition or conditions to any disbursement of Project Reserve Funds without such waiver or series of waivers constituting a course of dealing or any amendment to this Agreement or a prohibition against subsequent imposition of such condition or conditions or a waiver of a default.

ARTICLE VIII

DEFAULTS

Section 8.1 Event of Default

8.1.1 Generally

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

(i) if any portion of the Debt is not paid when due (including, without limitation, the failure of Borrower to repay the entire outstanding principal balance of the Note in full on the Maturity Date);

(ii) if any of the Taxes or Other Charges are not paid when the same are due and payable without payment of a penalty;

(iii) if the Policies are not kept in full force and effect, or if copies of the certificates evidencing the Policies (or certified copies of the Policies if requested by Lender) are not delivered to Lender within thirty (30) days after written request therefor;

(iv) the occurrence of any Transfer (except a Permitted Transfer) or other encumbrance with respect to any portion of the Property or the Collateral in violation of the provisions of this Agreement or Article 6 of the Security Instrument, or the occurrence of any Transfer in violation of the provisions of Section 5.2.10 hereof;

(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 or deemed remade;

(vi) if Borrower or any Guarantor shall (i) make an assignment for the benefit of creditors or (ii) generally not be paying its debts as they become due;

(vii) if a receiver, liquidator or trustee shall be appointed for Borrower, or if Borrower shall be adjudicated bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to Federal bankruptcy law, or any similar Federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower, or if any proceeding for the dissolution or liquidation of Borrower shall be instituted; *provided, however*, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, upon the same not being discharged, stayed or dismissed within ninety (90) days;

(viii) if a receiver, liquidator or trustee shall be appointed for any Guarantor or if any 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 Guarantor, or if any proceeding for the dissolution or liquidation of any Guarantor shall be instituted; *provided, however*, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by the applicable Guarantor, upon the same not being discharged, stayed or dismissed within ninety (90) days; provided, further, however, it shall be at Lender's option to determine whether any of the foregoing shall be an Event of Default;

(ix) 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;

(x) if Borrower breaches any representation, warranty or covenant contained in Section 4.1.26 or any of its respective negative covenants contained in Section 5.2;

(xi) with respect to any term, covenant or provision set forth herein which specifically contains a notice requirement or grace period, if Borrower shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

(xii) Borrower breaches any covenant contained in Section 5.1.11 and such breach continues for ten (10) days after notice from Lender;

(xiii) 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 (xi) 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 thirty (30) day period and provided further that Borrower shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed ninety (90) days; or

(xiv) if there shall be a Default under any of the other Loan Documents beyond any applicable cure periods contained in such documents, whether as to Borrower, Guarantor or the Property.

(b) Upon the occurrence of an Event of Default (other than an Event of Default described in clauses (vi), (vii) or (viii) above) and at any time thereafter, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, Lender may take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, without limitation, declaring the Obligations to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents against Borrower and the Property, including, without limitation, all rights or remedies available at law or in equity; 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.

8.1.2 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 (including, without limitation, Lender may accelerate the Loan and declare the Outstanding Principal Balance and all other amounts under the Loan Documents due and payable and institute foreclosure proceedings), 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. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by 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. To the fullest extent permitted by law or equity, without limiting the generality of the foregoing, Borrower agrees that if an Event of Default is continuing (i) Lender shall not be 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 Property and the Security Instrument has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Debt or the Obligations have been paid in full.

(b) With respect to Borrower and the Property, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to the Property for the satisfaction of any of the Debt in any preference or priority, and Lender may seek satisfaction out of the 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 Security Instrument in any manner and for any amounts secured by the Security Instrument then due and payable as determined by Lender in its sole discretion, including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose the Security Instrument to recover such delinquent payments or (ii) in the event Lender elects to accelerate less than the entire Outstanding Principal Balance, Lender may foreclose the Security Instrument to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by the Security Instrument as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to the Security Instrument to secure payment of sums secured by the Security Instrument and not previously recovered.

(c) Lender shall have the right from time to time to partially foreclose the Security Instrument in any manner and for any amounts secured by the Security Instrument then due and payable as determined by Lender in its sole discretion, including the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and/or interest, Lender may foreclose the Security Instrument to recover such delinquent payments, or (ii) in the event Lender elects to accelerate less than the entire Outstanding Principal Balance, Lender may foreclose the Security Instrument to recover so much of the Debt as Lender may accelerate and such other sums secured by the Security Instrument as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to the Security Instrument to secure payment of sums secured by the Security Instrument and not previously recovered.

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

(e) If an Event of Default exists, Lender may (directly or by its agents, employees, contractors, engineers, architects, nominees, attorneys or other representatives), but without any obligation to do so and without notice to Borrower and without releasing Borrower from any obligation hereunder, cure the Event of Default in such manner and to such extent as Lender may deem necessary to protect the security hereof. Subject to Tenants' rights under the Leases, Lender (and its agents, employees, contractors, engineers, architects, nominees, attorneys or other representatives) are authorized to enter upon the Property to cure such Event of Default, and Lender is authorized to appear in, defend, or bring any action or proceeding reasonably necessary to maintain, secure or otherwise protect the Property or the priority of the Lien granted by the Security Instrument.

(f) Lender may appear in and defend any action or proceeding brought with respect to the Property and may bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its sole discretion, decides should be brought to protect its interest in the Property. Lender shall, at its option, be subrogated to the Lien of any mortgage or other security instrument discharged in whole or in part by the Obligations, and any such subrogation rights shall constitute additional security for the payment of the Obligations.

(g) As used in this Section 8.1.2, a "foreclosure" shall include, without limitation, a power of sale.

8.1.3 Remedies Cumulative; Waivers. The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or to impair any remedy, right or power consequent thereon.

8.1.4 CONFESSION OF JUDGMENT. THE FOLLOWING PARAGRAPH SETS FORTH A WARRANT OF AUTHORITY FOR ANY ATTORNEY TO CONFESS JUDGMENT AGAINST THE BORROWER. IN GRANTING THIS WARRANT OF ATTORNEY TO CONFESS JUDGMENT AGAINST THE BORROWER, BORROWER, FOLLOWING CONSULTATION WITH (OR DECISION NOT TO CONSULT) COUNSEL FOR BORROWER AND WITH KNOWLEDGE OF THE LEGAL EFFECT HEREOF, HEREBY KNOWINGLY, INTENTIONALLY, VOLUNTARILY AND UNCONDITIONALLY WAIVES ANY AND ALL RIGHTS BORROWER HAS OR MAY HAVE TO PRIOR NOTICE AND AN OPPORTUNITY OF REHEARING UNDER THE RESPECTIVE CONSTITUTIONS AND LAWS OF THE UNITED STATES OF AMERICA, THE COMMONWEALTH OF PENNSYLVANIA, OR ELSEWHERE. IT IS SPECIFICALLY ACKNOWLEDGED BY BORROWER THAT LENDER HAS RELIED ON THIS WARRANT OF ATTORNEY AS AN INDUCEMENT TO GRANT FINANCIAL ACCOMMODATIONS TO BORROWER. UPON AND FOLLOWING THE OCCURRENCE OF AN UNCURED EVENT OF DEFAULT, BORROWER HEREBY AUTHORIZES AND EMPOWERS ANY ATTORNEY OF ANY COURT OF RECORD OR THE PROTHONOTARY OR CLERK OF ANY COUNTY IN THE COMMONWEALTH OF PENNSYLVANIA, OR IN ANY JURISDICTION WHERE PERMITTED BY LAW OR THE CLERK OF ANY UNITED STATES DISTRICT COURT, TO APPEAR FOR BORROWER IN ANY AND ALL ACTIONS WHICH MAY BE BROUGHT HEREUNDER AND ENTER AND CONFESS JUDGMENT AGAINST BORROWER OR ANY OF THEM IN FAVOR OF LENDER FOR SUCH SUMS AS ARE DUE OR MAY BECOME DUE HEREUNDER OR UNDER ANY OTHER LOAN DOCUMENT, TOGETHER WITH COSTS OF SUIT AND ACTUAL COLLECTION COSTS INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES EQUAL TO FIVE PERCENT (5%) OF THE LIABILITIES THEN DUE AND OWING BUT IN NO EVENT LESS THAN \$5,000, WITH OR WITHOUT DECLARATION, WITHOUT PRIOR NOTICE, WITHOUT STAY OF EXECUTION AND WITH RELEASE OF ALL PROCEDURAL ERRORS AND THE RIGHT TO ISSUE EXECUTIONS FORTHWITH. IF A COPY OF THIS NOTE VERIFIED BY AFFIDAVIT OF ANY OFFICER OF LENDER SHALL HAVE BEEN FILED IN SUCH ACTION, IT SHALL NOT BE NECESSARY TO FILE THE ORIGINAL THEREOF AS A WARRANT OF ATTORNEY, ANY PRACTICE OR USAGE TO THE CONTRARY NOTWITHSTANDING. THE AUTHORITY HEREIN GRANTED TO CONFESS JUDGMENT SHALL NOT BE EXHAUSTED BY ANY SINGLE EXERCISE THEREOF, BUT SHALL CONTINUE AND MAY BE EXERCISED FROM TIME TO TIME AS OFTEN AS LENDER SHALL FIND IT NECESSARY AND DESIRABLE AND AT ALL TIMES UNTIL FULL PAYMENT OF ALL AMOUNTS DUE HEREUNDER AND UNDER THE OTHER LOAN DOCUMENTS. LENDER MAY CONFESS ONE OR MORE JUDGMENTS IN THE SAME OR DIFFERENT JURISDICTIONS FOR ALL OR ANY PART OF BORROWER'S OBLIGATIONS ARISING HEREUNDER OR UNDER ANY OTHER LOAN DOCUMENT TO WHICH BORROWER IS A PARTY, WITHOUT REGARD TO WHETHER JUDGMENT HAS THERETOFORE BEEN CONFESSED ON MORE THAN ONE OCCASION FOR THE SAME OBLIGATIONS. IN THE EVENT THAT ANY JUDGMENT CONFESSED AGAINST BORROWER IS STRICKEN OR OPENED UPON APPLICATION BY OR ON BEHALF OF BORROWER FOR ANY REASONS, LENDER IS HEREBY AUTHORIZED AND EMPOWERED TO AGAIN APPEAR FOR AND CONFESS JUDGMENT AGAINST BORROWER FOR ANY PART OR ALL OF THE LIABILITIES DUE AND OWING UNDER THIS NOTE AND THE OTHER LOAN DOCUMENTS, AS HEREIN PROVIDED.

ARTICLE IX

SPECIAL PROVISIONS

Section 9.1 Transfer of Loan. Lender may, at any time, sell, transfer or assign this Agreement, the Note, the Security Instrument and the other Loan Documents, and any or all servicing rights with respect thereto, or grant participations therein or issue mortgage pass-through certificates or other securities (the "*Securities*") evidencing a beneficial interest in a rated or unrated public offering or private placement (such sales, participation, offering and/or placement, collectively, a "*Lender Assignment*"). Lender may forward to each purchaser, transferee, assignee, servicer, participant or investor in such participations or Securities (collectively, the "*Investor*"), each prospective Investor, and any organization maintaining databases on the underwriting and performance of commercial mortgage loans, all documents and information which Lender now has or may hereafter acquire relating to the Loan or to Borrower, any Guarantor or the Property, whether furnished by Borrower, any Guarantor or otherwise, as Lender determines necessary or desirable, including, without limitation, financial statements relating to Borrower, Guarantor, the Property and any Tenant at the Property. Borrower irrevocably waives any and all rights it may have under law or in equity to prohibit such disclosure, including but not limited to any right of privacy.

Section 9.2 Severed Loan Documents. 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 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 (and cause other parties who executed any of the Loan Documents to execute and deliver) to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender may reasonably request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender and Borrower. 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 the parties thereto only as of the Closing Date.

Section 9.3 Servicer. At the option of Lender, the Loan may be serviced by a master servicer, primary servicer, special servicer and/or trustee (any such master servicer, primary servicer, special servicer, and trustee, together with its agents, nominees or designees, are collectively referred to as "*Servicer*") selected by Lender and Lender may delegate all or any portion of its responsibilities under this Agreement and the other Loan Documents to Servicer pursuant to a pooling and servicing agreement, servicing agreement, special servicing agreement or other agreement providing for the servicing of one or more mortgage loans (collectively, the "*Servicing Agreement*") between Lender and Servicer. Without limitation, Borrower shall promptly reimburse Lender on demand for (a) interest payable on advances made by Servicer with respect to delinquent debt service payments (to the extent interest at the Default Rate actually paid by Borrower in respect of such payments are insufficient to pay the same) or expenses paid by Servicer or trustee in respect of the protection and preservation of the Property (including, without limitation, on account of Basic Carrying Costs), (b) all costs and expenses, liquidation fees, workout fees, special servicing fees, operating advisor fees or any other similar fees payable by Lender to Servicer which may be due and payable under the Servicing Agreement (whether on a periodic or a continuing basis) as a result of an Event of Default under the Loan, the Loan becoming specially serviced, the commencement or continuance of any enforcement action of any kind with respect to the Loan or any of the Loan Documents, a refinancing or a restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" of the Loan Documents, or any Bankruptcy Action involving Borrower, Principal, Guarantor or any of their respective principals or Affiliates, (c) all costs and expenses of any Property inspections and/or appraisals (or any updates to any existing inspection or appraisal) that Servicer or the trustee may be required to obtain (but not more than one appraisal in any twelve months unless an Event of Default exists), and (d) all costs and expenses relating to or arising from any special requests made by Borrower or Guarantor during the term of the Loan including, without limitation, in connection with a prepayment, defeasance, assumption or modification of the Loan.

Section 9.4 Cooperation. Borrower and Guarantor agree to reasonably cooperate with Lender (and agree to cause their respective officers and representatives to cooperate) in connection with any Lender Assignment or potential Lender Assignment.

ARTICLE X

MISCELLANEOUS

Section 10.1 Survival. This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Obligations are outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the legal representatives, successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Lender.

Section 10.2 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 and absolute discretion of Lender and shall be final and conclusive.

Section 10.3 Governing Law. THIS AGREEMENT WAS NEGOTIATED IN THE COMMONWEALTH OF PENNSYLVANIA, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE COMMONWEALTH OF PENNSYLVANIA, AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE COMMONWEALTH OF PENNSYLVANIA, 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 COMMONWEALTH OF PENNSYLVANIA APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT TO THE SECURITY INSTRUMENT AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE COMMONWEALTH OF PENNSYLVANIA SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND/OR THE OTHER LOAN DOCUMENTS, AND THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA.

(a) EXCEPTIONS, NOTWITHSTANDING THE FOREGOING CHOICE OF LAW:

(i) THE PROCEDURES GOVERNING THE ENFORCEMENT BY LENDER OF ITS FORECLOSURE AND OTHER REMEDIES AGAINST BORROWER AND GUARANTOR UNDER THE SECURITY INSTRUMENT AND UNDER THE OTHER LOAN DOCUMENTS WITH RESPECT TO THE REAL PROPERTY ASSETS OF BORROWER, INCLUDING BY WAY OF ILLUSTRATION, BUT NOT IN LIMITATION, ACTIONS FOR FORECLOSURE, FOR INJUNCTIVE RELIEF OR FOR THE APPOINTMENT OF A RECEIVER SHALL BE GOVERNED BY THE LAWS OF THE STATE WHERE SUCH PROPERTY OR OTHER ASSETS ARE LOCATED;

(ii) LENDER SHALL COMPLY WITH APPLICABLE LAW IN THE STATE WHERE THE PROPERTY OR OTHER ASSETS ARE LOCATED TO THE EXTENT REQUIRED BY THE LAW OF SUCH JURISDICTION IN CONNECTION WITH THE FORECLOSURE OF THE SECURITY INTERESTS AND LIENS CREATED UNDER THE SECURITY INSTRUMENT;

(iii) PROVISIONS OF FEDERAL LAW AND THE LAW OF THE STATE WHERE THE PROPERTY IS LOCATED SHALL APPLY IN DEFINING THE TERMS HAZARDOUS SUBSTANCES, ENVIRONMENTAL STATUTES, AND LEGAL REQUIREMENTS AS SUCH TERMS ARE USED IN THIS LOAN AGREEMENT, AND THE OTHER LOAN DOCUMENTS, WITH RESPECT TO THE PROPERTY, BORROWER AND GUARANTOR; AND

(iv) MATTERS OF REAL ESTATE, LANDLORD-TENANT AND PROPERTY LAW SHALL BE GOVERNED BY THE LAWS OF THE STATE WHERE THE PROPERTY IS SITUATED.

(b) AGENT FOR SERVICE OF PROCESS. ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY AT LENDER'S SOLE OPTION BE INSTITUTED IN ANY FEDERAL DISTRICT COURT OR STATE COURT IN THE COMMONWEALTH OF PENNSYLVANIA, COUNTY OF NORTHAMPTON, PURSUANT TO PENNSYLVANIA LAW, AND BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY OBJECTIONS WHICH BORROWER MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

FTE Networks, Inc.
237 West 35th Street, Suite 806
New York, NY 10001
Attn: CEO
Phone: 646-755-3605
Email: mbeys@blmlp.com

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON BORROWER'S 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 THE COMMONWEALTH OF PENNSYLVANIA, AND BORROWER 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 CONCLUSIVELY BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE COMMONWEALTH OF PENNSYLVANIA. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN THE COMMONWEALTH OF PENNSYLVANIA (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN THE COMMONWEALTH OF PENNSYLVANIA OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR. NOTHING CONTAINED HEREIN SHALL AFFECT THE RIGHT OF AGENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST BORROWER IN ANY OTHER JURISDICTION.

Section 10.4 Modification, Waiver in Writing. No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Note, or of any other Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances.

Section 10.5 Delay Not a Waiver. Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

Section 10.6 Notices. All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested, (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, or (c) facsimile (with answer back acknowledged) or as a PDF or similar attachment to an e-mail, provided that such facsimile or email attachment shall be followed within one (1) business day by delivery of such notice pursuant to clause (a) or (b) above, in each case addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a notice to the other parties hereto in the manner provided for in this Section 10.6):

If to Lender: DLP Lending Fund LLC
95 Highland Avenue, Suite 300
Bethlehem, PA 28017
Attention: Barry W. DeGroot, Esq.
E-Mail: barry@dlpre.com

with a copy to: Pircher, Nichols & Meeks LLP
1901 Avenue of the Stars, Suite 1200
Los Angeles, California 90067
Attention: Real Estate Notices (WBT: 6004.2)
Facsimile No.: (310) 201-8922
E-Mail: realestatenotices@pircher.com

If to Borrower: FTE Legal
237 West 35th Street, Suite 806
New York, NY 10001
Attn: Corporate Counsel
Phone: (239) 315-3161
Email: legal@fnet.com

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; in the case of expedited prepaid delivery, upon the first attempted delivery on a Business Day; or in the case of facsimile or PDF or similar attachment to an e-mail, upon sender's receipt of a machine-generated confirmation of successful transmission after advice by telephone to recipient that a facsimile or e-mail notice is forthcoming. Any failure to deliver a notice by reason of a change of address not given in accordance with this Section 10.6, or any refusal to accept a notice, shall be deemed to have been given when delivery was attempted. Any notice required or permitted to be given by any party hereunder or under any other Loan Document may be given by its respective counsel.

Section 10.7 Waiver of Trial by Jury. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER.

Section 10.8 Headings. The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 10.9 Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Section 10.10 Preferences. 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 Debt. 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 10.11 Waiver of Notice. Borrower hereby expressly waives, and 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.

Section 10.12 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, Borrower agrees that neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment. The parties hereto agree that any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment. Further, it is agreed Lender shall not be in default under this Agreement, or under any other Loan Document, unless a written notice specifically setting forth the claim of Borrower shall have been given to Lender within thirty (30) days after Borrower first had knowledge of the occurrence of the event which Borrower alleges gave rise to such claim and Lender does not remedy or cure the default, if any there be, promptly thereafter. Failure to give such notice shall constitute a waiver of such claim.

Section 10.13 Expenses; Indemnity.

(a) Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender upon receipt of notice from Lender for all costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Lender in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including without limitation any opinions requested by Lender as to any legal matters arising under this Agreement or the other Loan Documents with respect to the Property); (ii) Borrower's ongoing performance of and compliance with Borrower's respective agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date, including, without limitation, confirming compliance with environmental and insurance requirements; (iii) Lender's ongoing performance and compliance with all agreements and conditions contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date; (iv) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters requested by Lender; (v) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement; (vi) the filing and recording fees and expenses, title insurance and 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; (vii) enforcing or preserving any rights, either in response to third party claims or in prosecuting or defending any action or proceeding or other litigation, in each case against, under or affecting Borrower, this Agreement, the other Loan Documents, the Property, or any other security given for the Loan; and (viii) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the 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 or any other amounts required under Section 9.3; *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 cost and expenses due and payable to Lender may be paid by Lender from any Reserve Account.

(b) Borrower shall indemnify, defend and hold harmless the Indemnified Parties from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for Lender in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not Lender shall be designated a party thereto), that may be imposed on, incurred by, or asserted against any Indemnified Party in any manner relating to or arising out of (i) any breach by Borrower of its Obligations under, or any 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 (the liabilities, losses, costs, expenses and other matters described in this subparagraph (b), collectively, the “**Indemnified Liabilities**”); *provided, however*, that Borrower shall not have any obligation to an Indemnified Party hereunder to the extent that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of such Indemnified Party. To the extent that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall pay the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by the Indemnified Parties.

Section 10.14 Exhibits and Schedules Incorporated. Any Exhibits and Schedules annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

Section 10.15 Offsets, Counterclaims and Defenses. Any assignee of Lender’s interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses solely to the extent such offsets, counterclaims or defenses are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

Section 10.16 No Joint Venture or Partnership; No Third Party Beneficiaries.

(a) Borrower 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 Property other than that of mortgagee, beneficiary or lender.

(b) This Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the Obligations contained herein or therein. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender’s sole discretion, Lender deems it advisable or desirable to do so.

Section 10.17 Publicity. All news releases, publicity or advertising by Borrower or its Affiliates through any media intended to reach the general public which refers to the Loan Documents or the financing evidenced by the Loan Documents, to Lender or any of its Affiliates shall be subject to the prior approval of Lender.

Section 10.18 Waiver of Marshalling of Assets; Homestead Waiver. 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 Property, or to a sale in inverse order of alienation in the event of foreclosure of the Security Instrument, 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 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 Property in preference to every other claimant whatsoever. To the extent permitted by applicable law, Borrower hereby waives any Homestead protections that may be available to Borrower under the law of the state in which the Property is located.

Section 10.19 Waiver of Counterclaim. Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents.

Section 10.20 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 its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any 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 10.21 Brokers and Financial Advisors. Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement other than Direct Lending Partners LLC, which arranged the Loan. Borrower hereby agrees to 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 10.21 shall survive the expiration and termination of this Agreement and the payment of the Debt.

Section 10.22 Prior Agreements. This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, including, without limitation, the Term Sheet dated April 13, 2020 between Borrower (or an agent or representative of Borrower) and Lender, are superseded by the terms of this Agreement and the other Loan Documents.

Section 10.23 Cumulative Rights. All of the rights of Lender under this Agreement hereunder and under each of the other Loan Documents and any other agreement now or hereafter executed in connection herewith or therewith, shall be cumulative and may be exercised singly, together, or in such combination as Lender may determine in its sole judgment.

Section 10.24 Counterparts; Electronic Delivery. This Agreement and all of the other Loan Documents may be executed in several counterparts, each of which when executed and delivered is an original, but all of which together shall constitute one instrument. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart which is executed by the party against whom enforcement of this Agreement is sought. The delivery of an executed counterpart of this Agreement or any other Loan Document (other than Note) by facsimile or as a PDF or similar attachment to an email shall constitute effective delivery of such counterpart for all purposes with the same force and effect as the delivery of an original, executed counterpart.

Section 10.25 Time is of the Essence. Time is of the essence of each provision of this Agreement and the other Loan Documents.

Section 10.26 Consent of Holder. Wherever this Agreement refers to Lender's consent or discretion or other rights, such references to Lender shall be deemed to refer to any holder of the Loan. The holder of the Loan may from time to time appoint a trustee or servicer, and Borrower shall be entitled to rely upon written instructions executed by a purported officer of the holder of the Loan as to the extent of authority delegated to any such trustee or from time to time and determinations made by such trustee or servicer to the extent identified as within the delegated authority of such trustee or servicer, unless and until such instructions are superseded by further written instructions from the holder of the Loan.

Section 10.27 Successor Laws. Any reference in this Agreement to any statute or regulation shall be deemed to include any successor statute or regulation.

Section 10.28 Reliance on Third Parties. Lender may perform any of its responsibilities hereunder through one or more agents, attorneys or independent contractors. In addition, Lender may conclusively rely upon the advice or determinations of any such agents, attorneys or independent contractors in performing any discretionary function under the terms of this Agreement.

Section 10.29 Joint Borrower. The representations, covenants, warranties and obligations of Borrower shall be joint and several. Each entity that constitutes Borrower acknowledges and agrees that it shall be jointly and severally liable for the Loan and all other Obligations arising under this Agreement and/or any of the other Loan Documents. In furtherance thereof, each Borrower acknowledges and agrees as follows:

(a) For the purpose of implementing the joint borrower provisions of the Loan Documents, each Borrower hereby irrevocably appoints each other Borrower as its agent and attorney-in-fact for all purposes of the Loan Documents, including the giving and receiving of notices and other communications.

(b) To induce Lender to make the Loan, and in consideration thereof, each Borrower hereby agrees to indemnify Lender against, and hold Lender harmless from, any and all liabilities, expenses, losses, damages and/or claims of damage or injury asserted against Lender by any Borrower or by any other Person arising from or incurred by reason of (i) reliance by Lender on any requests or instructions from any Borrower, or (ii) any other action taken by Lender in good faith with respect to this Agreement or the other Loan Documents.

(c) Each Borrower acknowledges that the liens and security interests created or granted herein and by the other Loan Documents will secure the Obligations of all Borrowers under the Loan Documents and, in full recognition of that fact, each Borrower consents and agrees that Lender may, at any time and from time to time, without notice or demand, and without affecting the enforceability or security hereof or of any other Loan Document:

(i) agree with any Borrower to supplement, modify, amend, extend, renew, accelerate, or otherwise change the time for payment or the terms of the Obligations or any part thereof, including any increase or decrease of the rate(s) of interest thereon;

(ii) agree with any Borrower to supplement, modify, amend or waive, or enter into or give any agreement, approval or consent with respect to, the Obligations or any part thereof or any of the Loan Documents or any additional security or guaranties, or any condition, covenant, default, remedy, right, representation or term thereof or thereunder;

(iii) accept new or additional instruments, documents or agreements in exchange for or relative to any of the Loan Documents or the Obligations or any part thereof;

(iv) accept partial payments on the Obligations;

(v) receive and hold additional security or guaranties for the Obligations or any part thereof;

(vi) release, reconvey, terminate, waive, abandon, subordinate, exchange, substitute, transfer and enforce any security for or guaranties of the Obligations, and apply any security and direct the order or manner of sale thereof as Lender, in its sole and absolute discretion may determine;

(vii) release any Person or any guarantor from any personal liability with respect to the Obligations or any part thereof; or

(viii) settle, release on terms satisfactory to Lender or by operation of applicable laws or otherwise liquidate or enforce any Obligations and any security therefor or guaranty thereof in any manner, consent to the transfer of any such security and bid and purchase at any sale; and consent to the merger, change or any other restructuring or termination of the corporate existence of any Borrower or any other Person, and correspondingly restructure the obligations of such Borrower or other Person, and any such merger, change, restructuring or termination shall not affect the liability of any Borrower or the continuing existence of any lien or security interest hereunder, under any other Loan Document to which any Borrower is a party or the enforceability hereof or thereof with respect to all or any part of the Obligations.

(d) Upon the occurrence of and during the continuance of any Event of Default, Lender may enforce this Agreement and the other Loan Documents independently as to each Borrower and independently of any other remedy or security Lender at any time may have or hold in connection with the Obligations, and in collecting on the Loan it shall not be necessary for Lender to marshal assets in favor of any Borrower or any other Person or to proceed upon or against and/or exhaust any other security or remedy before proceeding to enforce this Agreement and the other Loan Documents. Each Borrower expressly waives any right to require Lender, in connection with Lender's efforts to obtain repayment of the Loan and Other Obligations, to marshal assets in favor of any Borrower or any other Person or to proceed against any other Person or any collateral provided by any other Person, and agrees that Lender may proceed against any Persons and/or collateral in such order as it shall determine in its sole and absolute discretion in connection with Lender's efforts to obtain repayment of the Loan and other Obligations. Lender may file a separate action or actions against each Borrower to enforce the Obligations, whether action is brought or prosecuted with respect to any other security or against any other Person, or whether any other Person is joined in any such action or actions. Each Borrower agrees that Lender, each Borrower and/or any other Person may deal with each other in connection with the Obligations or otherwise, or alter any contracts or agreements now or hereafter existing between any of them, in any manner whatsoever, all without in any way altering or affecting the security of this Agreement or the other Loan Documents. The rights of Lender hereunder and under the other Loan Documents shall be reinstated and revived, and the enforceability of this Agreement and the other Loan Documents shall continue, with respect to any amount at any time paid on account of the Obligations which thereafter shall be required to be restored or returned by Lender as a result of the bankruptcy, insolvency or reorganization of any Borrower or any other Person, or otherwise, all as though such amount had not been paid. The enforceability of this Agreement and the other Loan Documents at all times shall remain effective even though any or all Obligations, or any other security or guaranty therefor, may be or hereafter may become invalid or otherwise unenforceable as against any Borrower or any other Person and whether or not any Borrower or any other Person shall have any personal liability with respect thereto. Each Borrower expressly waives any and all defenses to the enforcement of its Obligations under the Loan Documents now or hereafter arising or asserted by reason of (i) any disability or other defense of any Borrower or any other Person with respect to the Obligations, (ii) the unenforceability or invalidity of any security or guaranty for the Obligations or the lack of perfection or continuing perfection or failure of priority of any security for the Obligations, (iii) the cessation for any cause whatsoever of the liability of any Borrower or any other Person (other than by reason of the full and final payment and performance of all Obligations), (iv) any failure of Lender to marshal assets in favor of any of the Borrowers or any other Person, (v) any failure of Lender to give notice of sale or other disposition of any Collateral for the Obligations to any Borrower or to any other Person or any defect in any notice that may be given in connection with any such sale or disposition, (vi) any failure of Lender to comply in any non-material respect with applicable laws in connection with the sale or other disposition of any collateral or other security for any Obligation, (vii) any act or omission of Lender or others that directly or indirectly results in or aids the discharge or release of any Borrower or of any other Person or of any of the Obligations or any other security or guaranty therefor by operation of law or otherwise, (viii) any law which provides that the obligation of a surety or guarantor must neither be larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety's or guarantor's obligation in proportion to the principal obligation, (ix) any failure of Lender to file or enforce a claim in any bankruptcy or similar proceeding with respect to any Person, (x) the election by Lender, in any bankruptcy or similar proceeding of any Person, of the application or non-application of Section 1111(b)(2) of the Bankruptcy Code, (xi) any extension of credit or the grant of any lien under Section 364 of the Bankruptcy Code except to the extent otherwise provided in this Agreement, (xii) any use of cash collateral under Section 363 of the Bankruptcy Code, (xiii) any agreement or stipulation with respect to the provision of adequate protection in any bankruptcy or similar proceeding of any Person, (xiv) the avoidance of any lien or security interest in favor of Lender securing the Obligations for any reason, or (xv) any bankruptcy or similar proceeding commenced by or against any Person, including any discharge of, or bar or stay against collecting, all or any of the Obligations (or any interest thereon) in or as a result of any such proceeding. Without in any way limiting the foregoing, with respect to the Loan Documents and the Obligations, Borrower: (A) waives all rights and defenses arising out of an election of remedies by Lender even though that election of remedies, such as non-judicial foreclosure with respect to security for Borrowers' obligations, has destroyed each of their rights of subrogation and reimbursement against the other; and (B) waives any right to a fair value hearing or similar proceeding following a non-judicial foreclosure of the Obligations.

(e) Borrowers represent and warrant to Lender that they have established adequate means of obtaining from each other, on a continuing basis, financial and other information pertaining to their respective businesses, operations and condition (financial and otherwise) and their respective properties, and each now is and hereafter will be completely familiar with the businesses, operations and condition (financial and otherwise) of the other and their respective properties. Each Borrower hereby expressly waives and relinquishes any duty on the part of Lender to disclose to such Borrower any matter, fact or thing related to the businesses, operations or condition (financial or otherwise) of the other Borrowers or the other Borrowers' properties, whether now known or hereafter known by Lender during the life of this Agreement. With respect to any of the Obligations, Lender need not inquire into the powers of any Borrower or the officers, employees or other Persons acting or purporting to act on such Borrower's behalf.

(f) Without limiting the foregoing, or anything else contained in this Agreement, each Borrower waives all rights and defenses that it may have because the Obligations are secured by real property. This means, among other things:

(i) Lender may collect on the Obligations from any Borrower without first foreclosing on any real or personal property collateral pledged by the other Borrowers; and

(ii) If Lender foreclose on any real property collateral pledged by any Borrower for the Obligations: (A) the amount of the indebtedness owed by the other Borrowers may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; and (B) Lender may collect from any Borrower even if Lender, by foreclosing on the real property collateral, has destroyed any right any Borrower may have to collect from the other Borrowers.

(iii) This is an unconditional and irrevocable waiver of any rights and defenses each Borrower may have because the Obligations are secured by real property. Each Borrower expressly waives any right to receive notice of any judicial or nonjudicial foreclosure or sale of any real property collateral provided by the other Borrowers to secure the Obligations and failure to receive any such notice shall not impair or affect such Borrower's obligations hereunder or the enforceability of this Agreement or the other Loan Documents or any liens created or granted hereby or thereby.

(iv) Notwithstanding anything to the contrary elsewhere contained herein or in any other Loan Document to which any Borrower is a party, with respect to the Loan and all other Obligations, each Borrower hereby waives with respect to the other Borrowers and their successors and assigns (including any surety) and any other Person any and all rights at law or in equity, to subrogation, to reimbursement, to exoneration, to contribution, to set-off, to any other rights and defenses available to it or to any other rights that could accrue to a surety against a principal, to a guarantor against a maker or obligor, to an accommodation party against the party accommodated, or to a holder or transferee against a maker and which each of them may have or hereafter acquire against the other or any other Person in connection with or as a result of such Borrower's execution, delivery and/or performance of this Agreement or any other Loan Document to which it is a party until the Obligations are paid and performed in full. Each Borrower agrees that it shall not have or assert any such rights against any other Borrower or any other Borrower's successors and assigns or any other Person (including any surety), either directly or as an attempted set-off to any action commenced against such Borrower by any other Borrower (as borrower or in any other capacity) or any other Person until all the Obligations are paid and performed in full. Each Borrower hereby acknowledges and agrees that this waiver is intended to benefit Lender and shall not limit or otherwise affect any Borrower's liability under this Agreement or any other Loan Document to which it is a party, or the enforceability hereof or thereof.

EACH BORROWER WARRANTS AND AGREES THAT EACH OF THE WAIVERS AND CONSENTS SET FORTH HEREIN IS MADE WITH FULL KNOWLEDGE OF ITS SIGNIFICANCE AND CONSEQUENCES, WITH THE UNDERSTANDING THAT EVENTS GIVING RISE TO ANY DEFENSE WAIVED MAY DIMINISH, DESTROY OR OTHERWISE ADVERSELY AFFECT RIGHTS WHICH EACH OTHERWISE MAY HAVE AGAINST THE OTHER, AGAINST LENDER OR OTHERS, OR AGAINST ANY COLLATERAL. IF ANY OF THE WAIVERS OR CONSENTS HEREIN IS DETERMINED TO BE CONTRARY TO ANY APPLICABLE LAW OR PUBLIC POLICY, SUCH WAIVERS AND CONSENTS SHALL BE EFFECTIVE TO THE MAXIMUM EXTENT PERMITTED BY LAW.

[The Remainder of the Page is Intentionally Blank]

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

BORROWER:

Alan Investments III, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of Alan Investments III, LLC

(Signatures continue on following page)

LENDER:

DLP Lending Fund LLC,
a Delaware limited liability company

By: /s/ Donald Wenner
Donald Wenner
President

SCHEDULE 1

Borrower Entities

[to be inserted]

Schedule 1 - 1

SCHEDULE 1.1(a)

Allocated Loan Amounts

Attached.

Schedule 1.1(a) - 1

SCHEDULE 1.1(b)

List of Projects

[to be inserted]

Schedule 1.1(b) - 1

SCHEDULE 4.1.1

Organizational Chart

[to be inserted]

Schedule 4.1.1 - 1

PROMISSORY NOTE

\$5,004,888.00

August 26, 2020

FOR VALUE RECEIVED, the undersigned, jointly and severally (individually and collectively, "**Borrower**"), as maker, having its principal place of business at 16 Berryhill Road, Suite 200 Columbia, SC 29210, hereby unconditionally promises to pay to the order of DLP LENDING FUND LLC, a Delaware limited liability company, as lender, having an address at 95 Highland Avenue, St. Augustine, FL 32095 (together with its successors and assigns, collectively, "**Lender**"), or at such other place as the holder hereof may from time to time designate in writing, the principal sum of FIVE MILLION FOUR THOUSAND EIGHT HUNDRED EIGHTY EIGHT and 00/100 Dollars (\$5,004,888.00), or so much thereof as is advanced pursuant to that certain Loan Agreement, dated the date hereof, between Borrower and Lender (as the same may be amended, modified, restated, replaced, supplemented or otherwise modified from time to time, the "**Loan Agreement**"), in lawful money of the United States of America, with interest thereon to be computed from the date of this Promissory Note (as the same may be amended, supplemented, restated, replaced or otherwise modified from time to time, this "**Note**") at the Interest Rate (as defined in the Loan Agreement), and to be paid in accordance with the terms of this Note and the Loan Agreement. All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement.

ARTICLE 1 – PAYMENT TERMS

Borrower agrees to pay the principal sum of this Note and interest on the unpaid principal sum of this Note and all other amounts due under the Loan Agreement and other Loan Documents from time to time outstanding without relief from valuation and appraisal laws at the rates and at the times specified in the Loan Agreement and the outstanding balance of the principal sum of this Note and all accrued and unpaid interest thereon and all other amounts due under the Loan Agreement and other Loan Documents shall be due and payable, in all events, on the Maturity Date. The obligations of each Borrower or party under this Note shall be joint and several.

ARTICLE 2 – DEFAULT AND ACCELERATION

The Debt shall without notice become immediately due and payable at the option of Lender, if any payment required in this Note is not paid (a) on or prior to the date when due, (b) on the Maturity Date or (c) on the happening of any other Event of Default.

ARTICLE 3 – LOAN DOCUMENTS

This Note is secured by the Security Instrument and the other Loan Documents. All of the terms, covenants and conditions contained in the Loan Agreement, the Security Instrument and the other Loan Documents are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. In the event of a conflict or inconsistency between the terms of this Note and the Loan Agreement, the terms and provisions of the Loan Agreement shall govern.

ARTICLE 4 – SAVINGS CLAUSE

Notwithstanding anything to the contrary contained herein, (a) all agreements and communications between Borrower and Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed interest, the interest contracted for, charged or received by Lender shall never exceed the Maximum Legal Rate or amount, (b) in calculating whether any interest exceeds the Maximum Legal Rate, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Borrower to Lender, and (c) if through any contingency or event Lender receives or is deemed to receive interest in excess of the Maximum Legal Rate, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Borrower to Lender.

ARTICLE 5 – NO ORAL CHANGE

This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

ARTICLE 6 – WAIVERS

Borrower and all others who may become liable for the payment of all or any part of the Debt do hereby jointly and severally waive presentment and demand for payment, notice of dishonor, notice of intention to accelerate, notice of acceleration, protest and notice of protest and non-payment and all other notices of any kind. No release of any security for the Debt or extension of time for payment, of this Note or any installment hereof, and no alteration, amendment or waiver of any provision of this Note, the Loan Agreement or the other Loan Documents made by agreement between Lender or any other Person shall release, modify, amend, waive, extend, change, discharge, terminate or affect the liability of Borrower, and any other Person who may become liable for the payment of all or any part of the Debt, under this Note, the Loan Agreement or the other Loan Documents. No notice to or demand on Borrower shall be deemed to be a waiver of the obligation of Borrower or of the right of Lender to take further action without further notice or demand as provided for in this Note, the Loan Agreement or the other Loan Documents. If Borrower is a partnership or limited liability company, the agreements herein contained shall remain in force and be applicable, notwithstanding any changes in the individuals or entities comprising the partnership or limited liability company, and the term "Borrower," as used herein, shall include any alternate or successor partnership or limited liability company, but any predecessor partnership or limited liability company and their partners or members shall not thereby be released from any liability. If Borrower is a corporation, the agreements contained herein shall remain in full force and be applicable notwithstanding any changes in the shareholders comprising, or the officers and directors relating to, the corporation, and the term "Borrower" as used herein, shall include any alternative or successor corporation, but any predecessor corporation shall not be relieved of liability hereunder. Nothing in the foregoing two sentences shall be construed as a consent to, or a waiver of, any prohibition or restriction on transfers of interests in such partnership, limited liability company or corporation, as applicable, which may be set forth in the Loan Agreement, the Security Instrument or any other Loan Document.

ARTICLE 7 – TRANSFER

Upon the transfer of this Note in whole or in part, Borrower hereby waiving notice of or consent to any such transfer, Lender may deliver all the collateral mortgaged, granted, pledged or assigned pursuant to the Loan Documents, or any part thereof, to the transferee who shall thereupon become vested with all the rights (and liabilities arising thereafter) herein or under Legal Requirements of and given to Lender with respect thereto, and Lender shall thereafter forever be relieved and fully discharged from any liability or responsibility in the matter; but Lender shall retain all rights hereby given to it with respect to any liabilities and the collateral not so transferred.

ARTICLE 8 – GOVERNING LAW AND WAIVER OF TRIAL BY JURY

This Note shall be governed in accordance with the terms and provisions of Section 10.3 and Section 10.7 of the Loan Agreement.

ARTICLE 9 – NOTICES

All notices or other written communications hereunder shall be delivered in accordance with Section 10.6 of the Loan Agreement.

ARTICLE 10 TRANSACTION ASSIGNMENT AND REGISTRAR

I. ASSIGNMENTS, PARTICIPATIONS

A. Assignments by Lender, etc. Subject to compliance with this Article 10, any Lender may on or after the date hereof sell and assign, or pledge, hypothecate or encumber, all or any portion of its Loans and all other Obligations with respect thereto, to or with Persons as may be selected by such Lender in its sole and absolute discretion (each an “*Assignee*”) and on terms and conditions satisfactory to in its sole and absolute discretion (which shall include the execution and delivery by the Assignee of assignment documentation in form and substance satisfactory to such assigning Lender). Borrower shall cooperate in all reasonable respects with such Lender in connection with the sale and assignment, or pledge, hypothecation or encumbrance, of all or any portion of such Lender’s interest in the Loan, and shall, in connection therewith, promptly execute and deliver such documents as may be reasonably requested by such Lender; provided, that such cooperation shall not include reimbursement of any Lender or any Assignee for any costs incurred in connection with such assignment or related documents.

A. Effect of Assignment. Pursuant to any assignment or participation of all or any portion of a Lender’s Loan as contemplated in this Article 10 to any Assignee, such Lender (a) may, subject to compliance with this Article 10, transfer its obligations hereunder and under the other Loan Documents (or may transfer the portion thereof corresponding to the transferred portion of the Obligations) and, except as otherwise specified herein, any Assignee shall succeed to the rights and obligations of Lender hereunder in respect of the transferred portion, and (b) shall relinquish its rights and be released from its obligations hereunder and under this Agreement and the other Loan Documents as to the transferred portion of its interest in the Loan.

B. Assignments by Borrower. No Borrower shall have any right to assign its rights or obligations hereunder or under the other Loan Documents or any interest herein or therein without the prior written consent of Lender and each of its successors and assigns, which consent may be withheld by in their sole and absolute discretion. Any attempted or purported assignment in contravention of this Article 10 shall be null and void ab initio.

C. Participations. Subject to compliance with this Article 10, any Lender may at any time, without the consent of, or notice to, Borrower, sell to one or more Persons as may be selected by such Lender in its sole and absolute discretion a participation (each a “*Participant*”) in all or a portion of such Lender’s rights and/or obligations under this Agreement (including all or a portion of the interest in the Loan owing to it); provided that (a) such Lender’s obligations under this Agreement shall remain unchanged, (b) such Lender shall remain solely responsible to the other Parties hereto for the performance of such obligations, (c) Borrower shall continue to deal solely and directly with Lender in connection with such Lender’s rights and obligations under this Agreement and the other Loan Documents, and (d) no Participant shall have any right to approve any amendment or waiver of any provision of any Loan Document, or any consent to any departure by Borrower or any other party therefrom, except to the extent that such amendment, waiver or consent would reduce the principal of, or interest on, the Loan or any fees or other amounts payable hereunder, in each case to the extent subject to such participation, or postpone any date fixed for any payment of any amount hereunder, to the extent subject to such participation.

II. REGISTRATION

A. Registered Obligation. Borrower hereby acknowledges and makes this Note (if any) a registered obligation for United States withholding tax purposes. DLP Lending Fund LLC, as Borrower's non-fiduciary agent for this purpose, shall be the registrar for this Note (if any) (the "**Registrar**") with full power of substitution. In the event the Registrar becomes unable or unwilling to act as registrar under this Agreement, Borrower shall reasonably designate a successor Registrar.

B. Register. The Registrar shall maintain, or cause to be maintained, a register (the "**Register**") for the recordation of the names and addresses of each Lender and any Assignee of all or any portion of such Lender's interest in the Loan and the principal amount outstanding of the Loan (and stated interest accrued but unpaid thereon) (the "**Registered Loan**") held by Lender and each Assignee from time to time. Borrower, each Lender and each Assignee shall treat each Person whose name is recorded in the Register as a "Lender" hereunder for all purposes of this Agreement. The Register shall be available for inspection by Borrower at any reasonable time and from time to time upon reasonable prior notice.

C. Registration of Assignment. A Registered Loan (and the registered Note evidencing the same, if any) may be assigned or sold in whole or in part only by registration of such assignment or sale on the Register (and each registered Note, if any, shall expressly so provide), which registration the Registrar shall effect immediately upon receipt of assignment documentation. Any assignment or sale of all or part of such Registered Loan (and the registered Note evidencing the same, if any) may be effected only by registration of such assignment or sale on the Register, together with the surrender of the registered Note evidencing the same, if any, duly endorsed by (or accompanied by a written instrument of assignment or sale duly executed by) the holder of such registered Note, if any, whereupon, at the request of the designated assignee(s) or transferee(s), one or more new registered Notes in the same aggregate principal amount shall be issued to the designated assignee(s) or transferee(s). Prior to the registration of assignment or sale of any Registered Loan (and the registered Note evidencing the same, if any), Borrower shall treat the Person in whose name such Registered Loan (and the registered Note evidencing the same, if any) is registered as the owner thereof for the purpose of receiving all payments thereon and for all other purposes, notwithstanding notice to the contrary.

D. Participant Register. If any Lender sells a participation or participations in the Loan to a Participant, such Lender shall report such sale of a participation to the Registrar and the Registrar shall, acting solely for this purpose as a non-fiduciary agent of Borrower, maintain a register on which it enters the name and the address of each Participant and the principal amounts of each Participant's participation interest in the Loan (or other rights or obligations) held by it (the "**Participant Register**"). The entries in the Participant Register shall be conclusive, absent manifest error, and each Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation interest as the owner thereof for all purposes notwithstanding any notice to the contrary. In maintaining the Participant Register, the Registrar shall be acting as the agent of Borrower solely for purposes of applicable United States federal income tax law and undertakes no duty, responsibility or obligation to Borrower and, without limitation, in no event shall the Registrar be a fiduciary of Borrower for any purpose, except that the Registrar shall maintain the Participant Register and, upon reasonable prior notice from Borrower, shall make the Participant Register available for inspection by Borrower at any reasonable time and from time to time.

[The Remainder of the Page is Intentionally Blank]

IN WITNESS WHEREOF, Borrower has duly executed this Promissory Note as of the day and year first above written.

BORROWER:

Alan Investments III, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of Alan Investments III, LLC

Signature Page – Promissory Note

LOAN AGREEMENT

Dated as of August 26, 2020

among

THE ENTITIES SET FORTH ON SCHEDULE 1 ATTACHED HERETO,

individually and collectively, as Borrower

and

DLP LENDING FUND LLC,

as Lender

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LOAN AGREEMENT

This LOAN AGREEMENT, dated as of August 26, 2020 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this “*Agreement*”), between DLP LENDING FUND LLC, a Delaware limited liability company (“*Lender*”), having an address at 95 Highland Avenue, St. Augustine, FL 32095, and THE ENTITIES SET FORTH ON SCHEDULE 1 ATTACHED HERETO, jointly and severally (individually and collectively, “*Borrower*”), having its principal place of business at 16 Berryhill Road, Suite 200 Columbia, SC 29210

WITNESSETH:

WHEREAS, Borrower desires to obtain a loan in the original principal amount of EIGHT MILLION TWO HUNDRED FIFTY SIX THOUSAND NINE HUNDRED SEVENTY FIVE and 00/100 Dollars (\$8,256,975.00) from Lender pursuant to this Agreement (the “*Loan*”); and

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

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

ARTICLE I

DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1 Definitions. For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

“*Accrued Interest*” shall mean all accrued and unpaid interest on the outstanding principal balance of the Loan from time to time.

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

“*Agreement*” shall mean this Loan Agreement, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“*Allocated Loan Amount*” shall mean, with respect to each Individual Property, the amount set forth on Schedule 1.1(a) hereof.

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

“*Approved Plans*” means complete plans, drawings, specifications and scope of work, that comply with applicable Legal Requirements and have been approved in writing by Lender, for the Project.

“*Assignment of Management Agreement*” shall mean individually and collectively as applicable, an Assignment of Management Agreement and Subordination of Management Fees, dated as of the date hereof or thereafter, as applicable, among Lender, Borrower and Manager, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

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

“Bankruptcy Action” shall mean with respect to any Person (a) such Person filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (b) the filing of an involuntary petition against such Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition against such Person; (c) such Person filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition from any Person; (d) such Person consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, assignee, sequestrator (or similar official), liquidator, or examiner for such Person or any portion of the Property; (e) the filing of a petition against a Person seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code or any other applicable law, (f) under the provisions of any other law for the relief or aid of debtors, an action taken by any court of competent jurisdiction that allows such court to assume custody or Control of a Person or of the whole or any substantial part of its property or assets or (g) such Person making an assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due.

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

“Basic Carrying Costs” shall mean, for any period, the sum of the following costs: (a) Taxes, (b) Other Charges and (c) Insurance Premiums.

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

“Business Day” shall mean any day other than a Saturday, Sunday or any other day on which any of the following institutions is not open for business: (i) banks and savings and loan institutions in New York or Pennsylvania, (ii) the financial institution that maintains any collection account for or on behalf of any Reserve Funds, (iii) the New York Stock Exchange or (iv) the Federal Reserve Bank of New York.

“Casualty” shall have the meaning set forth in Section 6.2 hereof.

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

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

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

“Collateral” shall have the meaning ascribed to such term in the Security Instrument.

“Completion” or **“Complete”** shall mean one hundred percent (100%) completion of construction, renovation, rehabilitation of a Project, as applicable, subject to usual and customary punch list items, in a good and workmanlike manner and in compliance with all Legal Requirements, and in a manner consistent and compliant in all material respects with the applicable Project Documents as approved by Lender, and free and clear of all liens, claims, encumbrances and rights of others, other than Permitted Encumbrances, as evidenced by the issuance of certificates of completion by Lender’s consultant or inspecting architect or engineer, if any, in each case in form and substance acceptable to Lender and, if available or required under applicable Legal Requirements, a final or partial certificate of occupancy and, as applicable, acceptance of completion by the applicable tenant.

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

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

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

“**Debt**” shall mean the Outstanding Principal Balance together with all interest accrued and unpaid thereon and all other sums due to Lender in respect of the Loan under the Note, this Agreement, the Security Instrument or any other Loan Document.

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

“**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 twenty-four percent (24%) per annum.

“**Distribution**” means (i) any dividend, distribution or other payment of any kind on any shares of capital stock or other securities or partnership, membership, economic or other interests, or (ii) any fee, payment, bonus or other remuneration of any kind, or (iii) any repayment of or debt service on loans or other indebtedness other than the Loan.

“**Dollars**” and the sign “\$” shall mean lawful money of the United States of America.

“**Embargoed Person**” shall mean any person, entity or government subject to trade restrictions under U.S. law, including, but not limited to, The USA Patriot Act (including the anti-terrorism provisions thereof), the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701, et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder including those related to Specially Designated Nationals and Specially Designated Global Terrorists, with the result that the investment in Borrower or any Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan made by Lender is in violation of law.

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

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

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

“**ERISA Affiliate**” shall mean each person (as defined in section 3(9) of ERISA) that together with Borrower would be deemed to be a “single employer” within the meaning of Section 414(b), (c), (m) or (o) of the Code.

“**Event of Default**” shall have the meaning set forth in Section 8.1.1(a) hereof.

“**Exchange Act**” shall mean the Securities Exchange Act of 1934, as the same may be amended, modified or replaced, from time to time.

“**Exchange Act Filing**” shall have the meaning set forth in Section 5.1.11(f) hereof.

“**Extended Maturity Date**” shall have the meaning set forth in Section 2.6.1 hereof.

“**Extension Notice**” shall have the meaning set forth in Section 2.6.1 hereof.

“**First Extension Option**” shall have the meaning set forth in Section 2.6.1 hereof.

“**First Payment Date**” shall have the meaning set forth in Section 2.3.2 hereof.

“**Fiscal Year**” shall mean each twelve (12) month period commencing on January 1 and ending on December 31 during each year of the term of the Loan.

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

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

“**Guarantor**” shall mean, jointly and severally, and, as the context requires, individually and collectively, Alexander Szkaradek, Antoni Szkaradek, Michael P. Beys each an individual; US Home Rentals, LLC, a Delaware limited liability company and FTE Networks, Inc., a Delaware corporation.

“**Guaranty**” shall mean that certain Guaranty dated as of the date hereof, from Guarantor in favor of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

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

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

“In Balance” means, with respect to each Project, no Deficiency then exists with respect to such Project.

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

“Indemnified Parties” shall mean Lender and any of its Affiliates and any of their officers, directors, members, partners, employees, representatives and consultants.

“Indemnifying Person” shall mean Borrower and each Guarantor, on a joint and several basis.

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

“Interest Period” shall mean (i) initially, the period commencing on and including the date of the funding of the Loan and ending on and including the last day of the calendar month of the Closing Date, and (ii) thereafter, for any specified Payment Date including the Maturity Date, the period commencing on and including the first (1st) day of the calendar month prior to such Payment Date and ending on the last day of the calendar month in which such Payment Date occurs.

“Interest Rate” shall mean a fixed rate of Eleven and Ninety-Nine Hundredths percent (11.99%) per annum.

“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 Property by or on behalf of Borrower, and (a) every modification, amendment or other agreement relating to such lease, sublease, subsublease, or other agreement entered into in connection with such lease, sublease, subsublease, or other agreement, and (b) every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto.

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

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

“Lien” shall mean any mortgage, deed of trust, deed to secure debt, indemnity deed of trust, lien (statutory or otherwise), pledge, hypothecation, easement, restrictive covenant, preference, assignment, security interest, or any other encumbrance, charge or transfer of, or any agreement to enter into or create any of the foregoing, on or affecting Borrower, the Property, or any portion thereof or any interest therein, or any direct or indirect 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 have the meaning set forth in the recitals hereof.

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

“**Management Agreement**” shall mean any property management agreement or similar agreement entered into by and between Borrower and Manager, pursuant to which Manager is to provide management and other services with respect to the Property, and any successor property management approved by Lender, in writing, in Lender’s sole discretion.

“**Manager**” shall mean, the individual or entity who provides management and other services with respect to the Property pursuant to a Management Agreement.

“**Material Adverse Change**” or “**Materially Adverse Effect**” shall mean that the business, operations, property, assets, liabilities or financial condition of any applicable Person and each of their subsidiaries, taken as a whole, or the ability of any such Person to perform its obligations under the Loan Documents, has changed in a manner which could materially impair the value of Lender’s security for the Loan or prevent timely repayment of the Loan or otherwise prevent the applicable person or entity from timely performing any of its material obligations under the Loan Documents or any Lease, as the case may be, as determined by Lender.

“**Material Agreements**” shall have the meaning set forth in Section 15.20 hereof.

“**Maturity Date**” shall mean the Stated Maturity Date, provided that (a) in the event of the exercise by Borrower of the First Extension Option pursuant to Section 2.6, the Maturity Date shall be the First Extended Maturity Date, and (b) in the event of the exercise by Borrower of the Second Extension Option pursuant to Section 2.6, the Maturity Date shall be the Second Extended Maturity Date, or such earlier date on which the final payment of principal of the Note becomes due and payable as herein or therein provided, whether at the Stated Maturity Date, by declaration of acceleration, or otherwise.

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

“**Multiemployer Plan**” shall mean a multiemployer plan, as defined in Section 4001(a)(3) of ERISA to which Borrower or any ERISA Affiliate is making or accruing an obligation to make contributions or has within any of the preceding three plan years made or accrued an obligation to make contributions.

“**Multiple Employer Plan**” shall mean an employee benefit plan, other than a Multiemployer Plan, to which Borrower or any ERISA Affiliate, and one or more employers other than Borrower or an ERISA Affiliate, is making or accruing an obligation to make contributions or, in the event that any such plan has been terminated, to which Borrower or an ERISA Affiliate made or accrued an obligation to make contributions during any of the five plan years preceding the date of termination of such plan.

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

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

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

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

“**Obligations**” shall mean, collectively, Borrower’s obligations for the payment of the Debt and the performance of the Other Obligations.

“**OFAC**” shall mean the Office of Foreign Asset Control of the Department of the Treasury of the United States of America.

“**Officer’s Certificate**” shall mean a certificate delivered to Lender by Borrower which is signed by an authorized officer of (i) Borrower, or (ii) any direct or indirect general partner or member of Borrower with authority to act on behalf of and bind Borrower.

“**Operations Agreements**” shall mean any covenants, restrictions, easements, declarations or agreements of record relating to the construction, operation or use of the Property, together with all amendments, modifications or supplements thereto.

“**Other Charges**” shall mean all ground rents, maintenance charges, impositions other than Taxes, any “common expenses” or expenses allocated to and required to be paid by Borrower under any Operations Agreements and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property, now or hereafter levied or assessed or imposed against the Property or any part thereof.

“**Other Obligations**” shall mean (a) the performance of all obligations of Borrower contained herein; (b) the performance of each obligation of Borrower or any Guarantor contained in any other Loan Document; (c) the payment of all costs, expenses, legal fees and liabilities incurred by Lender in connection with the enforcement of any of Lender’s rights or remedies under the Loan Documents, or any other instrument, agreement or document which evidences or secures any other Obligations or collateral therefor, whether now in effect or hereafter executed; and (d) the payment, performance, discharge and satisfaction of all other liabilities and obligations of Borrower and/or Guarantor to Lender, whether now existing or hereafter arising, direct or indirect, absolute or contingent, and including, without limitation, each liability and obligation of Borrower and each Guarantor under any one or more of the Loan Documents and any amendment, extension, modification, replacement or recasting of any one or more of the instruments, agreements and documents referred to herein or therein or executed in connection with the transactions contemplated hereby or thereby.

“**Outstanding Principal Balance**” shall mean, as of any date, the outstanding principal balance of the Loan. For the avoidance of doubt, the outstanding principal balance of the Loan shall include Project Reserve Funds and all other funds held by lender or escrow agent.

“**Payment Date**” shall mean, commencing with the First Payment Date, the first (1st) day of each calendar month during the term of the Loan until and including the Maturity Date or, for purposes of making payments hereunder, but not for purposes of calculating Interest Periods, if such day is not a Business Day, the immediately preceding Business Day.

“**Permitted Encumbrances**” shall mean, collectively (a) the Liens and security interests created by the Loan Documents, (b) all Liens, encumbrances and other matters disclosed in “Schedule B-I” of the Title Insurance Policy, (c) Liens, if any, for Taxes imposed by any Governmental Authority which are not yet due or delinquent, and (d) such other title and survey exceptions as Lender has approved or may approve in writing in Lender’s sole discretion, which Permitted Encumbrances in the aggregate do not materially adversely affect the value or use of the Property or Borrower’s ability to repay the Loan.

“**Permitted Transfer**” means any of the following: (a) any Transfer, directly as a result of the death of a natural person, of stock, membership interests, partnership interests or other ownership interests previously held by the decedent in question to the Person or Persons lawfully entitled thereto; (b) any Transfer, directly as a result of the legal incapacity of a natural person, of stock, membership interests, partnership interests or other ownership interests previously held by such natural person to the Person or Persons lawfully entitled thereto; and (c) any Transfer expressly permitted by and completed strictly in accordance with [Section 5.2.10](#).

“**Person**” shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any Governmental Authority, and any fiduciary acting in such capacity on behalf of any of the foregoing.

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

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

“**Prohibited Transaction**” shall mean any action or 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.

“**Project**” shall mean and refer to, individually and collectively as applicable, the rehabilitation improvements to each Individual Property more particularly described on Schedule 1.1(b) hereto, that will be funded, in whole or in part, with disbursements of Project Reserve Funds.

“**Project Budget**” shall mean a budget for construction of each Project approved by Lender in its sole discretion and any modifications thereof approved by Lender in writing in its sole and absolute discretion.

“**Project Contracts**” shall mean each contract or agreement to which Borrower or any agent of Borrower is a party, providing for the provision of construction services (including architect’s or engineering services), labor or material in connection with a Project.

“**Project Costs**” shall mean all costs and expenses of every kind and nature whatsoever to be incurred by Borrower in connection with the Completion of a Project, including such reserves and contingencies as Lender shall reasonably require.

“**Project Documents**” shall mean each of the following as approved by Lender with respect to each Project: the Approved Plans and the applicable Project Contracts.

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

“**Project Reserve Funds**” shall have the meaning set forth in Section 7.4.1 hereof.

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

“**Release Amount**” shall mean, for an Individual Property, the lesser of:

(a) the Debt; or

(b) an amount equal to the Allocated Loan Amount for such Individual Property set forth on Schedule 1.1(a) (as adjusted pursuant to Sections 2.4.1(c) and 2.4.2(a) if applicable) multiplied by one hundred and ten percent (110%).

“**Release Property**” shall have the meaning set forth in Section 2.7 hereof.

“**Rents**” shall mean all rents (including additional rents of any kind and percentage rents), rent equivalents, moneys payable as damages (including payments by reason of the rejection of a Lease in a Bankruptcy Action) or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other payments and consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower or any of their agents or employees from any and all sources arising from or attributable to the Property, and the Improvements, including charges for oil, gas, water, steam, heat, ventilation, air-conditioning, electricity, license fees, maintenance fees, charges for Taxes, operating expenses or other amounts payable to Borrower (or for the account of Borrower), revenues from telephone services, vending and all receivables, customer obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of the Property or rendering of services by Borrower, or any of its agents or employees and proceeds, if any, from business interruption or other loss of income insurance.

“**Reserve Accounts**” shall mean, collectively, the Project Reserve Account, the Net Proceeds Account, and any other escrow or reserve account established pursuant to the Loan Documents

“**Reserve Funds**” shall mean, collectively, the Project Reserve Funds and any other escrow or reserve funds established pursuant to the Loan Documents.

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

“**Retention Amount**” shall have the meaning set forth in Section 6.4(b)(iv) hereof.

“**Second Extension Option**” shall have the meaning set forth in Section 2.6.1 hereof.

“**Securities**” shall have the meaning set forth in Section 9.1 hereof.

“**Security Instrument**” shall mean those certain first priority Deeds of Trust, Security Agreements, Assignment of Leases and Fixture Filings of even date herewith, made by Borrower for the benefit of Lender as security for the Obligations and encumbering the Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Servicer**” shall have the meaning set forth in Section 9.3 hereof.

“**Servicing Agreement**” shall have the meaning set forth in Section 9.3 hereof.

“**Severed Loan Documents**” shall have the meaning set forth in Section 9.2 hereof.

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

“**Stated Maturity Date**” shall mean August 31, 2021.

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

“**Taxes**” shall mean all taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against (a) the Property or part thereof, together with all interest and penalties thereon and (b) against the rents, issues, income or profits thereof or upon the lien or estate hereby created, whether any or all of said taxes, assessments or charges be levied directly or indirectly or as excise taxes or ad valorem real estate or personal property taxes or as income taxes.

“**Tenant**” shall mean the lessee of all or any portion of the Property under a Lease.

“**Title Company**” shall mean the title insurance company which issued the Title Insurance Policy.

“**Title Insurance Policy**” shall mean an ALTA mortgagee title insurance policy in a form acceptable to Lender (or, if the State does not permit the issuance of such ALTA policy, such form as shall be permitted in the State and acceptable to Lender) with respect to the Property and insuring the Lien of any of the Security Instrument encumbering the Property.

“**Transfer**” shall mean means the sale, transfer, hypothecation, pledge, encumbrance, mortgage, conveyance, lease, alienation, assignment, disposition, divestment, or leasing with option to purchase, or assignment of the Property, or any portion thereof or interest therein or in Borrower (whether direct or indirect, legal or equitable including the issuance, sale, assignment, alienation, conveyance, divestment, transfer, disposition, hypothecation, pledge, mortgage or encumbrance of any ownership interest in Borrower or in any entity having an ownership interest in Borrower, whether direct or indirect); or entering into any agreement or contract to do any of the foregoing which is not conditioned on compliance with the terms of the Loan Documents with respect to Transfers, or undertaking, suffering or causing any of the foregoing to occur voluntarily, involuntarily or by operation of law.

“**UCC**” shall mean the Uniform Commercial Code as in effect in the State in which the Property is located, as the same may be amended from time to time *provided, however*, that if by reason of mandatory provisions of law, the perfection or the effect of perfection or non-perfection or priority of the security interest in any item or portion of the collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State in which the Property is located (“**Other UCC State**”), “**UCC**” means the Uniform Commercial Code as in effect in such Other UCC State, as the same may be amended from time to time, for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection or priority.

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

Section 1.2 Principles of Construction. All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All uses of the word “including” shall mean “including, without limitation” unless the context shall indicate otherwise. Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined.

ARTICLE II

GENERAL TERMS

Section 2.1 Loan Commitment; Disbursement to Borrower.

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

2.1.2 Single Disbursement to Borrower. Borrower may request and receive only one disbursement hereunder in respect of the Loan and any amount borrowed and repaid in respect of the Loan may not be re-borrowed. Borrower acknowledges and agrees that the Loan has been fully funded as of the Closing Date.

2.1.3 The Note, Security Instrument and Loan Documents. The Loan shall be evidenced by the Note and secured by the Security Instrument, and the other Loan Documents.

2.1.4 Use of Proceeds. Borrower shall use the proceeds of the Loan to (a) refinance the Property, (b) make deposits of Reserve Funds into the Reserve Accounts on the Closing Date in the amounts provided herein (Borrower hereby authorizing Lender to reserve a portion of the proceeds of the Loan in the amount of the Reserve Funds from disbursement of the proceeds of the Loan on the date hereof), (c) pay costs and expenses incurred in connection with the closing of the Loan, as approved by Lender, and (d) pay for Project Costs.

2.1.5 Upfront Payment. At Closing, Borrower shall pay to Lender an upfront fee (the "*Upfront Payment*") in an amount equal to Seventy-Five Thousand and No/100 Dollars (\$75,000.00), less any portion of the Upfront Fee paid to Lender prior to the Closing. The Upfront Payment is fully earned and non-refundable.

Section 2.2 Interest Rate.

2.2.1 Interest Rate. Subject to Section 2.2.4 hereof, interest on the Outstanding Principal Balance shall accrue from the date of the funding of the Loan to but excluding the Maturity Date at the Interest Rate.

2.2.2 Interest Calculation. With respect to any applicable period, interest on the Outstanding Principal Balance 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 the Interest Rate and a three hundred sixty (360) day year by (c) the average Outstanding Principal Balance in effect for the applicable period as calculated by Lender.

2.2.3 Default Rate. In the event that, and for so long as, any Event of Default shall have occurred and be continuing, the Outstanding Principal Balance and, to the extent permitted by law, all accrued and unpaid interest in respect thereof and any other amounts due pursuant to the Loan Documents, shall accrue interest at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained herein.

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

Section 2.3 Debt Service Payments.

2.3.1 Payments Generally. For purposes of making payments hereunder, but not for purposes of calculating Interest Periods, if the day on which such payment is due is not a Business Day, then amounts due on such date shall be due on the immediately succeeding Business Day. All amounts due pursuant to this Agreement and the other Loan Documents shall be payable without setoff, counterclaim, defense or any other deduction whatsoever.

2.3.2 Monthly Debt Service Payment. On the Closing Date, Borrower shall make a payment of interest only for the period commencing on and including the date of the funding of the Loan through and including September 30, 2020. Beginning on October 1, 2020 (the "*First Payment Date*") and each subsequent Payment Date up to and including the Maturity Date, Borrower shall make a payment to Lender of principal (if any) and interest in an amount equal to the Monthly Debt Service Payment Amount, which payments shall be applied to accrued and unpaid interest.

2.3.3 Payment on Maturity Date. Borrower shall pay to Lender not later than 3:00 P.M., Philadelphia city time, on the Maturity Date the Outstanding Principal Balance, all accrued and unpaid interest and all other amounts due hereunder and under the Note, the Security Instrument and the other Loan Documents.

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

2.3.5 Method and Place of Payment Except as otherwise specifically provided herein, all payments and prepayments under this Agreement and the Note shall be made to Lender not later than 2:00 P.M., Philadelphia city time, on the date when due and shall be made in Dollars in immediately available funds at Lender's office or as otherwise directed by Lender, 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. Any prepayments required to be made hereunder shall be deemed to have been timely made for purposes of this Section 2.3.5.

2.3.6 ACH Payment All payments due and owing under this Agreement or any other Loan Documents shall be made by wire transfer to an account designated by Lender to Borrower from time to time, or at Lender's election, shall be made through automated clearing house ("**ACH**") transfers from the Borrower directly to Lender. In this regard, if Lender elects to receive payments through ACH, shall execute and deliver to Lender an authorization agreement for direct payments whereby, among other things, Lender shall be irrevocably authorized to initiate ACH transfers from the a payment account designated by Borrower to Lender in the amounts required or permitted under this Agreement and all other Loan Documents. Lender's authorization for direct ACH transfers as hereby provided shall be irrevocable and such ACH transfers shall continue until all Obligations are paid in full. For so long as any Obligations remain outstanding, Borrower shall: (i) not revoke Lender's authority to initiate ACH transfers as hereby contemplated; (ii) not change, modify, close or otherwise affect the designated payment account; (iii) deposit all revenues of any nature or kind whatsoever relating to Borrower or its business only into the designated payment account; and (iv) be responsible for all costs, expenses or other fees and charges incurred by Lender as a result of any failed or returned ACH transfers, whether resulting from insufficient sums being available in the designated payment account, or otherwise. Borrower shall undertake any and all required actions, execute any required documents, instruments or agreements, or to otherwise do any other thing required or requested by Lender in order to effectuate the requirements of this Section 2.3.6.

Section 2.4 Prepayments.

2.4.1 Voluntary Prepayments.

(a) Except as otherwise provided in this Section 2.4, Borrower shall not have the right to prepay the Loan in whole or in part. Provided no Event of Default has occurred and is continuing, Borrower may prepay the Loan in whole upon the satisfaction of the following conditions:

(b) Borrower shall provide a written notice to Lender of such prepayment no less than thirty (30) days, and no more than sixty (60) days, prior to the date of such prepayment, specifying the Business Day on which a prepayment of the Debt (the "**Prepayment Date**") is to be made; and

(c) Borrower shall pay to Lender on the Prepayment Date, together with any portion of the Outstanding Principal Balance being repaid:

(i) all accrued and unpaid interest on the amount of the Outstanding Principal Balance being prepaid, which, for the avoidance of doubt, shall include interest on such amount calculated at the applicable Interest Rate through the end of the Interest Period in which such prepayment occurs; and

(ii) without duplication of any of the foregoing, all other sums, then due under the Note, this Agreement, the Security Instrument, and the other Loan Documents.

(d) If for any reason Borrower fails to prepay the Loan on the Prepayment Date (including if such notice is revoked), Borrower shall pay to Lender any actual out-of-pocket losses, costs, damages or expenses (including reasonable attorneys' fees and expenses) incurred by Lender in connection therewith.

(e) Upon receipt by Lender of a voluntary prepayment permitted pursuant to the terms of this Agreement, except for a prepayment made (i) in connection with a release of any Individual Property from the Lien of any of the Security Instruments or (ii) any Casualty/Condemnation Prepayment up to the Allocated Loan Amount of the applicable Individual Property, the Allocated Loan Amount for each Individual Property that is then subject to the Lien of any of the Security Instruments shall be reduced on a pro rata basis by such amount.

2.4.2 Mandatory Prepayments.

(a) 90-Day Principal Payments. On December 1, 2020, Borrower shall make a payment to Lender (the “**Initial 90-Day Principal Payment**”) in an amount equal to five percent (5%) of the Outstanding Principal Balance. Beginning on March 1, 2021 and on each third (3rd) Payment Date thereafter (i.e., on June 1, September 1, December 1 and March 1 of each calendar year), Borrower shall make a payment to Lender (each such payment, and together with the Initial 90-Day Principal Payment, collectively the “**90-Day Principal Payments**”) in an amount (but not less than zero) equal to (a) ten percent (10%) of the Outstanding Principal Balance, less (b) all Release Amounts paid to Lender pursuant to and in accordance with Section 2.7 hereof and applied to pay down the Outstanding Principal Balance but only to the extent such Release Amounts have not been applied to reduce any prior 90-Day Principal Payments. Provided no Event of Default exists, Lender shall apply the 90-Day Principal Payments to the Outstanding Principal Balance.

(b) Net Proceeds Payments. On the Payment Date immediately succeeding the date on which Lender actually receives any Net Proceeds, and if Lender is not required to make such Net Proceeds available to Borrower for a Restoration in accordance with the terms of this Agreement, Borrower shall prepay or authorize Lender to apply the Net Proceeds as a prepayment of the Outstanding Principal Balance in an amount equal to one hundred percent (100%) of such Net Proceeds provided that Borrower shall simultaneously therewith pay to Lender all accrued and unpaid interest on the principal amount being repaid (which, for the avoidance of doubt, shall include interest accruing on such amounts through the last day of the Interest Period in which such repayment occurs). Notwithstanding anything herein to the contrary, so long as no Event of Default has then occurred and is continuing, no or any other prepayment premium, penalty or fee shall be due in connection with any prepayment made pursuant to this Section 2.4.2.

2.4.3 Prepayments After Default. If, during the continuance of an Event of Default, payment of all or any part of the Debt is tendered by Borrower and accepted by Lender or is otherwise recovered by Lender (including through application of any Reserve Funds), such tender or recovery shall be deemed to be a voluntary prepayment by Borrower in violation of the prohibition against prepayment set forth in Section 2.4.1 hereof, and Borrower shall pay, as part of the Debt, all of the interest calculated at the Interest Rate on the amount of principal being prepaid through and including the end of the Interest Period in which such prepayment occurs.

Section 2.5 Release of Property. Except as set forth in Section 2.7 below, no repayment, prepayment 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 of the Security Instruments. Lender shall, upon the written request and at the expense of Borrower, upon payment in full of the Debt in accordance with the terms of this Agreement and the other Loan Documents, release the Lien of the Security Instruments.

Section 2.6 Extension Option(s).

2.6.1 Extension Option(s). Subject to the provisions of this Section 2.6.1, Borrower shall have the option (the “**First Extension Option**”), by irrevocable written notice (the “**First Extension Notice**”) delivered to Lender no later than thirty (30) days prior to the Stated Maturity Date, to extend the Maturity Date to August 31, 2022 (the “**First Extended Maturity Date**”). Borrower’s right to so extend the Maturity Date shall be subject to the satisfaction of the following conditions precedent prior to the effectiveness of any such extension:

(a) (i) no Event of Default shall have occurred and be continuing on the date Borrower delivers the First Extension Notice or the Second Extension Notice, as applicable, and (ii) no Default or Event of Default shall have occurred and be continuing on the Stated Maturity Date and the First Extended Maturity Date, as applicable;

(b) All amounts due and payable by Borrower and any other Person pursuant to this Agreement or the other Loan Documents as of the Stated Maturity Date or the First Maturity Date, as applicable, and all costs and expenses of Lender, including fees and expenses of Lender’s counsel, in connection with the Loan and/or the extension shall have been paid in full;

(c) Borrower shall deliver an Officer's Certificate to Lender (i) certifying that all representations and warranties set forth in this Agreement remain true, correct and complete in all material respects as of the commencement of the applicable Extension Option, and (ii) waiving any claims, counterclaims, rights of rescission, set-offs or defenses, known or unknown, against Lender as of the commencement of the applicable Extension Option.

If Borrower is unable to satisfy all of the foregoing conditions within the applicable time frames for each, Lender shall have no obligation to extend the Stated Maturity Date hereunder.

2.6.2 Extension Documentation. If requested by Lender, Borrower shall execute and deliver an agreement in form and substance reasonably acceptable to Lender commemorating the extension of the Maturity Date upon the exercise of an Extension Option and satisfaction of all applicable conditions to such extension as provided in Section 2.6.1; provided that no such agreement shall materially increase or alter the obligations of Borrower pursuant to the Loan Documents (it being acknowledged that a ratification by Borrower or any Guarantor of its respective obligations under the Loan Documents to which it is a party or a certification by Borrower and/or any Guarantor that its respective representations and warranties set forth in the Loan Documents to which it is a party remain true and correct in all material respects as of the first day of any extension term shall not constitute an increase in Borrower's obligations for such purpose).

2.7 Release of Individual Property. At any time Borrower may obtain the release of an Individual Property from the Lien of the applicable Security Instrument thereon and related Loan Documents (each such Individual Property, a "**Release Property**") and the release of Borrower's obligations under the Loan Documents with respect to such Release Property (other than those expressly stated to survive), upon the satisfaction of each of the following conditions:

(a) Not more than ninety (90) calendar days and not less than ten (10) calendar days prior to the date of the release, Borrower delivers a notice to Lender setting forth (i) the date of the proposed release and (ii) a description of the Release Property that will be subject to the release;

(b) no Event of Default shall be continuing on the date that the Release Property is released from the Lien of the Security Instrument thereon other than as expressly permitted below;

(c) Borrower shall have paid to Lender the applicable Release Amount;

(d) Borrower shall submit to Lender, not less than ten (10) days prior to the date of such release, a release of Lien (and related Loan Documents) for such Release Property for execution by Lender. Such release shall be in a form appropriate in each jurisdiction in which such Release Property is located and that would be reasonably satisfactory to a prudent lender. In addition, Borrower shall provide all documentation Lender reasonably requires to be delivered by Borrower in connection with such release, together with an Officer's Certificate certifying that such documentation (A) will effect such release in accordance with the terms of this Agreement, and (B) will not impair or otherwise adversely affect the Liens, security interests and other rights of Lender under the Loan Documents not being released (or as to the parties to the Loan Documents and Individual Properties subject to the Loan Documents not being released);

(e) Borrower shall have paid or reimbursed Lender for all reasonable out of pocket costs and expenses incurred by Lender (including, without limitation, reasonable attorneys' fees and disbursements) in connection with any release effectuated pursuant to this Section 2.7, and Borrower shall have paid all third-party fees, costs and expenses incurred in connection with any such release, including but not limited to, the payment of all recording charges, filing fees, taxes or other similar expenses incurred in the reasonable judgment of Lender in order to effectuate the release;

(f) [Intentionally omitted]

(g) At Lender's request, Borrower shall deliver to Lender (i) an endorsement to the Title Insurance Policy for the remaining Property (to the extent reasonably available in the State in which the remaining Property is located) insuring the Security Instrument, which endorsement (A) extends the effective date of such Title Insurance Policy for the remaining Property to the effective date of the release, (B) confirms no change in the priority of the Security Instrument on the balance of the Property (exclusive of the Release Parcel); and (C) lists any Permitted Encumbrances; and (ii) at Lender's request, a survey in form and substance reasonably acceptable to Lender of the remaining portion of the Property; and

(h) Notwithstanding the foregoing provisions of this Section 2.7, if the Loan is included in a REMIC Trust, as a condition to such release, Borrower shall have established to Lender's reasonable satisfaction that the loan-to-value ratio of the Loan (expressed as a percentage) based upon valuations obtained by Borrower at its sole cost and expense using (i) an existing appraisal (if such release occurs within twenty-four (24) months of the Closing Date), (ii) a new appraisal or (iii) a broker's price opinion or other written determination of value using a commercially reasonable valuation method (provided, in each case, that such appraisal, opinion or other determination constitutes a commercially reasonable method permitted to a REMIC Trust, and provided, further, that such valuation shall be based solely on the value of real property and shall exclude personal property and going-concern value) does not exceed 125% immediately after the release of the Release Property, no such release will be permitted unless the Borrower pays down the principal balance of the Loan by an amount not less than the greater of (A) the Release Amount or (B) the least of one of the following amounts: (i) if the Individual Property is sold, the net proceeds of an arm's-length sale of the Release Property to an unrelated Person, (ii) the fair market value of the Release Property at the time of the release, or (iii) an amount such that the loan-to-value ratio of the Loan as so determined by Lender after the release is not greater than the loan-to-value ratio of the Loan immediately prior to the release, unless the Lender receives an opinion of counsel that, if (B) is not followed, the Securitization will not fail to maintain its status as a REMIC Trust as a result of the release.

ARTICLE III

[**Intentionally Omitted**]

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

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

4.1.1 Organization. Borrower has been duly organized and is validly existing and in good standing with requisite power and authority to own its properties and to transact the business in which it is now engaged and as contemplated by this Agreement, including, without limitation, the power and authority to do business in the State. Borrower is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations. Borrower possesses all rights, licenses, permits and authorizations, governmental or otherwise, necessary to entitle it to own its properties and to transact the businesses in which it is now engaged. The sole business of Borrower is the ownership, management and operation of the Property. The ownership interests of Borrower are as set forth on the organizational chart attached hereto as Schedule 4.1.1. Borrower (a) has complied in all respects with its articles of organization or limited liability company agreement; (b) has maintained complete books and records and bank accounts separate from those of its Affiliates; and (c) has obeyed all formalities required to maintain its status as, and at all times has held itself out to the public as, a legal entity separate and distinct from any other entity (including, but not limited to, any Affiliate thereof). The signatory hereto has all necessary power, authority and legal right to execute this Agreement, the Note and the other Loan Documents on Borrower's behalf to which Borrower is a party. Guarantor has the necessary power, authority and legal right to execute, deliver and perform its obligations under the Guaranty.

4.1.2 Proceedings. Borrower has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents. This Agreement and the other Loan Documents to which it is a party have been duly executed and delivered by or on behalf of Borrower and constitute the legal, valid and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

4.1.3 No Conflicts. The execution, delivery and performance of this Agreement and the other Loan Documents by Borrower and/or Guarantor, as applicable, will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any Lien, charge or encumbrance (other than pursuant to the Loan Documents) upon any of the property or assets of Borrower pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, partnership agreement, management agreement or other agreement or instrument to which Borrower is a party or by which any of Borrower's property or assets is subject, nor will such action result in any violation of the provisions of any Legal Requirements of any Governmental Authority having jurisdiction over Borrower or any of Borrower's properties or assets, and any consent, approval, authorization, order, registration or qualification of or with any court or any such Governmental Authority required for the execution, delivery and performance by Borrower and/or any Guarantor, as applicable, of this Agreement or any other Loan Documents has been obtained and is in full force and effect.

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

4.1.5 Agreements. Borrower is not a party to any agreement or instrument or subject to any restriction which might materially and adversely affect Borrower or the Property, or Borrower's business, properties or assets, operations or condition, financial or otherwise. Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party or by which Borrower or the Property are bound. Borrower has no material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower is a party or by which Borrower or the Property is otherwise bound, other than as permitted by this Agreement.

4.1.6 Title. Borrower has good, marketable and insurable fee simple title to the real property comprising part of the Property and good title to the balance of the Property, free and clear of all Liens whatsoever except the Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. The Security Instrument, when properly recorded in the appropriate records, together with any UCC-1 financing statements required to be filed in connection therewith, will create (a) a valid, perfected first priority lien on the Property, subject only to Permitted Encumbrances and the Liens created by the Loan Documents, and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty, solely to the extent such security interests can be perfected by the filing of a UCC-1 financing statement, all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. There are no claims for payment for work, labor or materials affecting the Property which are or may become a Lien prior to, or of equal priority with, the Liens created by the Loan Documents.

4.1.7 Solvency. Borrower has (a) not entered into the transaction contemplated by this Agreement or executed the Note, this Agreement or any other Loan Documents with the actual intent to hinder, delay or defraud any creditor and (b) received reasonably equivalent value in exchange for its obligations under such Loan Documents. After 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 liabilities (including contingent liabilities, if any), 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 incur debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debts 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 the obligations of Borrower). No Bankruptcy Action exists against Borrower and Borrower has never been a debtor party in a Bankruptcy Action. No Bankruptcy Action exists against any Guarantor, and neither Borrower nor has any Guarantor has ever been a debtor party in a Bankruptcy Action. Neither Borrower nor any Guarantor is contemplating either a Bankruptcy Action or the liquidation of all or a major portion of Borrower's or Guarantor's respective assets or properties, and Borrower has no knowledge of any Person contemplating the filing of any petition against Borrower or any Guarantor.

4.1.8 Full and Accurate Disclosure. No statement of fact made by or on behalf of Borrower in this Agreement or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no material information that has not been disclosed to Lender which adversely affects, nor as far as Borrower can reasonably foresee, might materially adversely affect, the Property or the business, operations or condition (financial or otherwise) of Borrower or any Guarantor.

4.1.9 No Plan Assets. Borrower is not an “employee benefit plan,” as defined in Section 3(3) of ERISA, subject to Title I of ERISA or Section 4975 of the Code, and none of the assets of Borrower constitutes or will constitute “plan assets” of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101. Compliance by Borrower and each Guarantor with the provisions hereof will not involve any Prohibited Transaction. Neither Guarantor nor Borrower has any pension, profit sharing, stock option, insurance or other arrangement or plan for employees covered by Title IV of ERISA, and no “Reportable Event” as defined in ERISA has occurred and is now continuing with respect to any such plan. The performance by Borrower of its obligations under the Loan Documents and Borrower’s conducting of its operations do not violate any provisions of ERISA. In addition, (a) Borrower is not a “governmental plan” within the meaning of Section 3(32) of ERISA, (b) transactions by or with Borrower are not subject to any state statute or regulation regulating investments of, or fiduciary obligations with respect to, governmental plans within the meaning of Section 2(32) of ERISA which is similar to the provisions of Section 406 of ERISA or Section 4975 of the Code currently in effect, which prohibit or otherwise restrict the transactions contemplated by this Agreement, and (c) none of Borrower, Guarantor or ERISA Affiliate is at the date hereof, or has been at any time within the two years preceding the date hereof, an employer required to contribute to any Multiemployer Plan or Multiple Employer Plan, or a “contributing sponsor” (as such term is defined in Section 4001 of ERISA) in any Multiemployer Plan or Multiple Employer Plan; and none of Borrower, Guarantor or any ERISA Affiliate has any contingent liability with respect to any post-retirement “welfare benefit plan” (as such term is defined in ERISA) except as disclosed to Lender in writing.

4.1.10 Compliance. Borrower and the Property (including the use thereof) comply in all material respects with all applicable Legal Requirements, including, without limitation, building and zoning ordinances and codes. Borrower is not in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority, including, without limitation, any order of a bankruptcy court or plan approved thereby. There has not been committed by Borrower (or any other Person), any act or omission affording any Governmental Authority the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower’s obligations under any of the Loan Documents. Neither the Improvements, if any, as constructed, nor the use of the Property or any contemplated accessory uses, will violate (a) any Legal Requirements (including subdivision, zoning, building, environmental protection and wetland protection Legal Requirements), or (b) any building permits, restrictions or records, or agreements affecting the Property or any part thereof. Neither the zoning authorizations, approvals or variances nor any other right to construct or to use the Property is to any extent dependent upon or related to any real estate other than the Property.

4.1.11 Financial Information. All financial data with respect to the Property and Guarantor, including, without limitation, the statements of cash flow and income and operating expense, that have been delivered to Lender in connection with the Loan (a) are true, complete and correct in all material respects, (b) fairly and accurately represent the financial condition of the Property and each Guarantor as of the date of such reports, and (c) to the extent prepared or audited by an independent certified public accounting firm, have been prepared in accordance with GAAP (or such other accounting basis acceptable to Lender) throughout the periods covered, except as disclosed therein. Except for Permitted Encumbrances, Borrower does not have any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and reasonably likely to have a Materially Adverse Effect on the Property or the Project. Since the date of such financial statements, there has been no Material Adverse Change (or any other material change) in the financial condition, operation or business of Borrower or any Guarantor from that set forth in said financial statements.

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

4.1.13 Federal Reserve Regulations. No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulation U or any other Regulations of such Board of Governors, or for any purposes prohibited by any Legal Requirements or by the terms and conditions of this Agreement or the other Loan Documents.

4.1.14 Public Access. The Property has rights of access to public ways and, upon construction thereon, will be served by water, sewer, sanitary sewer and storm drain facilities adequate to service the Property for its intended uses. All public utilities necessary or convenient to the full use and enjoyment of the Property are located either in the public right-of-way abutting the Property (which will be connected so as to serve the Property without passing over other property) or in recorded easements serving the Property and such easements are set forth in and insured by the Title Insurance Policy. All roads necessary for the use of the Property for its current purpose have been completed and dedicated to public use and accepted by all Governmental Authorities. There is no on-site sewage disposal system and, upon construction thereon, the Property will be served by a sewer system maintained by a Governmental Authority or property owners association.

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

4.1.16 Separate Lots. The Property is comprised of multiple parcels more particularly described on Schedule 1.1(a) which each constitute(s) a separate tax lot or lots and does not constitute a portion of any other tax lot not a part of the Property.

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

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

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

4.1.20 Insurance. Borrower has obtained and has delivered to Lender evidence of all Policies, with all premiums paid thereunder, reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. No claims have been made or are currently pending, outstanding or otherwise remain unsatisfied under any such Policies, and neither Borrower nor any other Person, has done, by act or omission, anything which would impair the coverage of any such Policies.

4.1.21 Flood Zone. None of the Improvements on the Property are located in an area as identified by the Federal Emergency Management Agency as an area having special flood hazards or, if so located, the flood insurance required pursuant to Section 6.1(a)(i) hereof is in full force and effect with respect to the Property.

4.1.22 Leases. Any and all Leases at the Property (a) provide for rental rates comparable to existing local market rates, contain reasonable market rate terms and do not contain any terms which would materially adversely affect Lender's rights under the Loan Documents, (b) are for a lease term not exceeding one year, including all extensions, (c) are with individual, residential, non-commercial tenants, and (d) have been entered into by Borrower in its ordinary course of business. No Person has any possessory interest in the Property or right to occupy the same other than tenants pursuant to the express terms of the Leases.

4.1.23 Survey. Each Survey for the Property delivered to Lender is accurate.

4.1.24 Principal Place of Business; State of Organization. Borrower's principal place of business as of the date hereof is the address set forth in the introductory paragraph of this Agreement. Borrower is organized under the laws of the State of Delaware and is qualified to do business in the all states in which Borrower is required to be qualified.

4.1.25 Filing and Recording Taxes. All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the transfer of the Property to Borrower have been paid. All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Security Instrument, have been paid or are being paid simultaneously with the disbursement of the proceeds of the Loan to Borrower.

4.1.26 [Intentionally omitted].

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

4.1.28 No Change in Facts or Circumstances; Disclosure. All information submitted by Borrower and any Guarantor to Lender including, but not limited to, all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan or in satisfaction of the terms thereof and all statements of fact made by Borrower and each Guarantor in this Agreement or in any other Loan Document, are accurate, complete and correct in all material respects. There has been no Material Adverse Change in any condition, fact, circumstance or event that would make any such information inaccurate, incomplete or otherwise misleading in any material respect or that otherwise materially and adversely affects or might materially and adversely affect the use, operation or value of the Property or the business operations and/or the financial condition of Borrower or any Guarantor. Borrower and each Guarantor have disclosed to Lender all material facts and have not failed to disclose any material fact that could cause any information provided to Lender or representation or warranty made herein to be materially misleading.

4.1.29 Investment Company Act. Borrower is not (a) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; (b) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 2005, as amended; or (c) subject to any other Federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

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

4.1.31 Filing of Returns. Borrower and each Guarantor have filed all Federal income tax returns and all other material tax returns, domestic and foreign, or extensions, as the case may be, required to be filed by it and have paid all material taxes and assessments payable by it that have become due, other than those not yet delinquent and except for those being contested in good faith. Borrower and each Guarantor have each established on its books such charges, accruals and reserves in respect of taxes, assessments, fees and other governmental charges for all fiscal periods as are required by sound accounting principles consistently applied. Neither Borrower, nor any Guarantor knows of any proposed assessment for additional Federal, foreign or state taxes for any period, or of any basis therefor, that, individually or in the aggregate, taking into account such charges, accruals and reserves in respect thereof as such Person has made, could reasonably be expected to cause a Material Adverse Change with respect to Borrower, Guarantor or the Property.

4.1.32 Operations Agreements. Each Operations Agreement is in full force and effect and neither Borrower nor, to the best of Borrower's knowledge, any other party to any such Operations Agreement, 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.

Section 4.2 Survival of Representations. Borrower agrees that all of the representations and warranties of Borrower set forth in Section 4.1 and elsewhere in this Agreement and in the other Loan Documents shall survive for so long as any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

ARTICLE V

BORROWER COVENANTS

Section 5.1 Affirmative Covenants. From the date hereof and until payment and performance in full of all Obligations, Borrower hereby covenants and agrees with Lender that:

5.1.1 Existence; Compliance with Legal Requirements. Borrower shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, licenses, permits and franchises and comply with all Legal Requirements applicable to Borrower and the Property. There shall never be committed by Borrower, and Borrower shall not permit any other Person in occupancy of or involved with the operation or use of the Property to commit, any act or omission affording any Governmental Authority the right of forfeiture against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. Borrower shall not commit, permit or suffer to exist any act or omission affording such right of forfeiture. Borrower shall at all times maintain, preserve and protect all franchises and trade names, preserve all the remainder of its property used or useful in the conduct of its business, and shall keep the Property in good working order and repair, and from time to time make, or cause to be made, all reasonably necessary repairs, renewals, replacements, betterments and improvements thereto, all as more fully provided in the Security Instrument. Borrower shall keep the Property insured at all times by financially sound and reputable insurers, to such extent and against such risks, and maintain liability and such other insurance, as is more fully provided in this Agreement. After prior notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding promptly initiated and conducted in good faith and with due diligence, the validity of any Legal Requirement, the applicability of any Legal Requirement to Borrower or the Property or any alleged violation of any Legal Requirement, provided, that: (a) no Default or Event of Default has occurred and is continuing; (b) such proceeding shall be permitted under, and be conducted in accordance with, the provisions of any instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances; (c) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (d) Borrower shall, upon final determination thereof, promptly comply with any such Legal Requirement determined to be valid or applicable or cure any violation of any Legal Requirement; (e) such proceeding shall suspend the enforcement of the contested Legal Requirement against Borrower and the Property; and (f) Borrower shall furnish such security as may be required in the proceeding, or as may be requested by Lender, to insure compliance with such Legal Requirement, together with all interest and penalties payable in connection therewith. Lender may apply any such security, as necessary to cause compliance with such Legal Requirement at any time when, in the judgment of Lender, the validity, applicability or violation of such Legal Requirement is finally established or the Property (or any part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost.

5.1.2 Taxes and Other Charges. Borrower shall pay, all Taxes and Other Charges now or hereafter levied or assessed or imposed against the Property, or any part thereof, as the same become due and payable. Borrower will deliver or cause to be delivered to Lender receipts for payment or other evidence satisfactory to Lender that the Taxes and Other Charges have been so paid or are not then delinquent no later than ten (10) days prior to the date on which the Taxes and/or Other Charges would otherwise be delinquent if not paid. Borrower shall not suffer and shall promptly pay or cause to be paid and discharged any Lien or charge whatsoever which may be or become a Lien or charge against the Property, and shall promptly pay or cause to be paid all utility services provided to the Property. After prior notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Taxes or Other Charges, provided that (a) no Default or Event of Default has occurred and remains uncured; (b) such proceeding shall be permitted under, and be conducted in accordance with, the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances; (c) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (d) Borrower shall promptly upon final determination thereof pay or cause to be paid the amount of any such Taxes or Other Charges, together with all costs, interest and penalties which may be payable in connection therewith; (e) such proceeding shall suspend the collection of such contested Taxes or Other Charges from the Property (except that if such Taxes or Other Charges must be paid sooner in order to avoid being delinquent, then Borrower shall pay or cause the same to be paid prior to delinquency, and upon making such payment or causing such payment to be made prior to delinquency Borrower may continue such contest); and (f) Borrower shall furnish such security as may be required in the proceeding, or as may be requested by Lender, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon. Lender may pay over any such cash deposit or part thereof held by Lender to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established or the Property (or part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost or there shall be any danger of the Lien of the Security Instrument being primed by any related Lien.

5.1.3 Litigation. Borrower shall give prompt notice to Lender of any litigation or proceedings by any Governmental Authority pending or threatened against Borrower and/or any Guarantor which might have a Materially Adverse Effect on Borrower's or any Guarantor's condition (financial or otherwise) or business or the Property.

5.1.4 Access to Property. Borrower shall permit agents, representatives and employees of Lender to inspect the Property or any part thereof at reasonable hours upon reasonable advance notice (which may be given verbally).

5.1.5 Notice of Default. Borrower shall promptly advise Lender of any Material Adverse Change in Borrower's or any Guarantor's condition, financial or otherwise, or of the occurrence of any Default or Event of Default of which Borrower has knowledge.

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

5.1.7 Perform Loan Documents. Borrower shall observe, perform and satisfy all the terms, provisions, covenants and conditions of, and shall pay when due all costs, fees and expenses to the extent required under the Loan Documents. Payment of the costs and expenses associated with any of the foregoing shall be in accordance with the terms and provisions of this Agreement, including, without limitation, the provisions of Section 10.13 hereof.

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

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

(a) furnish to Lender all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements, and each and every other document, certificate, agreement and instrument required to be furnished by Borrower pursuant to the terms of the Loan Documents or which are reasonably requested by Lender in connection therewith;

(b) authorize the filing or recording of or execute and deliver to Lender such documents, instruments, certificates, assignments, financing statements 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 under the Loan Documents, as Lender may reasonably require; and

(c) 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. In furtherance hereof, Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of protecting, perfecting, preserving and realizing upon the interests granted pursuant to this Agreement and to effect the intent hereof, all as fully and effectually as Borrower might or could do; and Borrower hereby ratifies all that Lender shall lawfully do or cause to be done by virtue hereof. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other applicable Loan Document, and in the case of the Note, receipt of an indemnity from Lender, Borrower will issue, in lieu thereof, a replacement Note or other applicable Loan Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Loan Document in the same principal amount thereof and otherwise of like tenor. Borrower hereby authorizes Lender to file an "all assets" financing statement with respect to the Collateral.

5.1.10 Mortgage Taxes. Borrower shall simultaneously with the disbursement of the proceeds of the Loan pay all state, county and municipal recording and all other taxes imposed upon the execution and recordation of the Security Instrument.

5.1.11 Financial Reporting.

(a) Borrower will keep and maintain or will cause to be kept and maintained on a Fiscal Year basis in accordance with GAAP (or such other accounting basis selected by Borrower and reasonably acceptable to Lender), proper and accurate books, records and accounts reflecting all of the financial affairs of Borrower and all items of income and expense in connection with the operation of the Property. Lender shall have the right from time to time at all times during normal business hours upon reasonable notice (which may be verbal) to examine such books, records and accounts at the office of Borrower or any other Person maintaining such books, records and accounts and to make such copies or extracts thereof as Lender shall desire. After the occurrence of an Event of Default, Borrower shall pay any costs and expenses incurred by Lender to examine Borrower's accounting records with respect to the Property, as Lender shall reasonably determine to be necessary or appropriate in the protection of Lender's interest. Upon Lender's request, Borrower shall furnish to Lender such other information reasonably necessary and sufficient to fairly represent the financial condition of Borrower and the Property.

(b) Borrower will furnish to Lender annually, within one hundred twenty (120) days following the end of each Fiscal Year of Borrower, and within thirty (30) days of the end of each calendar quarter, a complete copy of Borrower's and each Guarantor's annual (or quarterly, as applicable) financial statements certified as true and correct by the party providing such statements (and, for the annual of statements of Borrower prepared by an independent certified public accountant acceptable to Lender) in accordance with GAAP (or such other accounting basis acceptable to Lender, consistently applied) covering the Property for such Fiscal Year (or calendar quarter) and containing statements of profit and loss for Borrower, Guarantor and the Property and a balance sheet for Borrower and each Guarantor. Such statements of Borrower shall set forth the financial condition and the results of operations for the Property for such Fiscal Year (or calendar quarter), and an Officer's Certificate certifying that each annual financial statement of Borrower fairly presents the financial condition and the results of operations of Borrower and the Property subject to such reporting, and that such financial statements have been prepared in accordance with GAAP and as of the date thereof whether 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. Guarantor's annual financial statements shall be accompanied by a certificate executed and delivered by Guarantor (if such Guarantor is a natural person) or an officer or other duly authorized representative of Guarantor (if such Guarantor is an entity) certifying that each annual financial statement presents fairly the financial condition and the results of operations of Guarantor being reported upon and that such financial statements have been prepared in accordance with GAAP (or such other accounting basis acceptable to Lender, and, for Guarantors, Lender hereby approves sound and prudent cash based financial statements consistently applied) and as of the date thereof whether there exists an event or circumstance which constitutes a Default or Event of Default by Guarantor under the Loan Documents, and if such Default or an 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 shall also provide such monthly reports and statements as are reasonably required by Lender within twenty (20) days after the end of each calendar month.

(d) Borrower shall furnish to Lender, within twenty (20) days after request (or as soon thereafter as may be reasonably possible), such further detailed information with respect to the operation of the Property and the financial affairs of Borrower as may be reasonably requested by Lender.

(e) Any reports, statements or other information required to be delivered under this Agreement shall be delivered in electronic form (or such other form as required by Lender) and Borrower agrees that Lender may disclose information regarding the Property and Borrower that is provided to Lender pursuant to this Section 5.1.11 in connection with any Lender Assignment to such parties requesting such information in connection with such Lender Assignment.

(f) Without limitation on other requirements of this Agreement, Lender may require, at Borrower's cost and expense, quarterly valuations of the Loan and Borrower shall cooperate in connection therewith; provided, however, so long as no Event of Default exists, Borrower shall not be required to reimburse Lender more than \$2,500 for the cost of any such quarterly valuation.

5.1.12 Business and Operations. Borrower will continue to engage in the businesses presently conducted by it as and to the extent the same are necessary for the ownership, maintenance, management and operation of the 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, maintenance, management and operation of the Property or ownership and management of an interest in Borrower (as applicable).

5.1.13 Title to the Property. Borrower will warrant and defend (a) the title to the Property and every part thereof, subject only to Permitted Encumbrances, and (b) the validity and priority of the Lien of each of the Security Instruments, subject only to Permitted Encumbrances, in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any losses, costs, damages or expenses (including attorneys' fees and expenses, and court costs) incurred by Lender if an interest in the Property, other than as permitted hereunder, is claimed by another Person.

5.1.14 Costs of Enforcement. In the event (a) that the Security Instrument is foreclosed in whole or in part or that the Security Instrument is put into the hands of an attorney for collection, suit, action or foreclosure, (b) of the foreclosure of any mortgage prior to or subsequent to the Security Instrument in which proceeding Lender is made a party, or (c) of a Bankruptcy Action related to Borrower or an assignment by Borrower for the benefit of its creditors, Borrower, on behalf of itself and its successors and assigns, agrees that it/they shall be chargeable with and shall pay all costs of collection and defense, including attorneys' fees and expenses, and court costs, incurred by Lender or Borrower in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, together with all required service or use taxes.

5.1.15 Estoppel Statement.

(a) After request by Lender, Borrower shall within ten (10) days furnish Lender with a statement, duly acknowledged and certified, setting forth (i) the original principal amount of the Loan, (ii) the Outstanding Principal Balance, (iii) the Interest Rate of the Loan, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the performance of the Obligations, if any, and (vi) that the Note, this Agreement, the Security Instrument and the other Loan Documents are valid, legal and binding obligations of Borrower and have not been modified or if modified, giving particulars of such modification.

(b) Borrower shall use commercially reasonable efforts to deliver to Lender upon request, tenant estoppel certificates from each commercial Tenant, if any, in form and substance reasonably satisfactory to Lender provided that Borrower shall not be required to deliver such certificates more frequently than once in any calendar year.

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

5.1.17 Performance by Borrower. Borrower shall in a timely manner observe, perform and fulfill each and every covenant, term and provision of each Loan Document executed and delivered by, or applicable to, Borrower and shall not enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Loan Document without the prior written consent of Lender.

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

5.1.19 Leasing Matters. Any Lease executed after the date hereof (and any amendment or termination thereof) shall require the prior written consent of Lender, which consent shall be in Lender's sole and absolute discretion. Borrower shall furnish Lender with true, correct and complete executed copies of all Leases, amendments thereof and any related agreements. Without limitation, and as applicable, Lender shall be deemed to have approved all renewals of Leases and all proposed Leases so long as the same (a) provide for rental rates comparable to existing local market rates, contain reasonable market rate terms and do not contain any terms which would materially adversely affect Lender's rights under the Loan Documents, (b) are for a lease term not exceeding one year, including all extensions, (c) are with individual, residential, non-commercial tenants, and (d) have been entered into by Borrower in its ordinary course of business. All Leases executed after the date hereof shall provide that they are subordinate to the Security Instrument and the Liens created thereby and that the Tenant thereunder agrees to attorn to Lender or any other purchaser of the Property at a sale by foreclosure (or deed in lieu thereof) or power of sale. Borrower (a) shall observe and perform the obligations imposed upon the lessor under the Leases in a commercially reasonable manner; (b) shall enforce the terms, covenants and conditions contained in the Leases upon the part of the Tenant thereunder to be observed or performed in a commercially reasonable manner and in a manner which does not impair the value of the Property involved, provided that in no event shall Borrower terminate or accept the surrender of any Lease by a Tenant unless by reason of a Tenant default and then only in a commercially reasonable manner to preserve and protect the Property; *provided, however,* that no such termination or surrender of any Lease will be permitted without the prior written consent of Lender or unless such termination or surrender is specifically provided for in the Lease; (c) shall not collect any of the Rents more than one (1) month in advance (other than security deposits required pursuant to such Lease); (d) shall not execute any other assignment of the lessor's interest in the Leases or the Rents (except to Lender pursuant to the Loan Documents); (e) shall not alter, modify or change the terms of the Leases; and (f) shall execute and deliver at the request of Lender all such further assurances, confirmations and assignments in connection with the Leases as Lender shall from time to time reasonably require. Lender shall have the right to require each new Tenant to execute and deliver to Lender a subordination, non-disturbance of possession and attornment agreement in form, content and manner of execution reasonably acceptable to Lender.

5.1.20 Operation of Property.

(a) Borrower shall: (i) promptly perform and/or observe in all material respects all of the covenants and agreements required to be performed and observed by it under any of the Operations Agreements and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Lender of any material default under any Operations Agreement of which it is aware; and (iii) enforce the performance and observance of all of the covenants and agreements required to be performed and/or observed by any party (other than Borrower) under the Operations Agreements, in a commercially reasonable manner.

(b) All Material Agreements shall be subject to the prior review and approval, not to be unreasonably withheld, of Lender. As used herein, “**Material Agreements**” shall mean each contract and agreement relating to the ownership, management, development, use, operation, leasing, maintenance, repair or improvement of the Property, as to which either (a) there is an obligation of Borrower to pay more than \$50,000 in the aggregate, or (b) the term thereof extends beyond one year (unless cancelable on thirty (30) days or less notice without requiring the payment of termination fees or payments of any kind).

5.1.21 Changes in the Legal Requirements Regarding Taxation. If any Legal Requirement or other law, order, requirement or regulation of any Governmental Authority is enacted or adopted or amended after the date the Loan is funded which imposes a tax, either directly or indirectly, on the Obligations or Lender’s interest in the Property, Borrower must pay or cause to be paid such tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of such tax or interest and penalties by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then in any such event, Lender may, by written notice to Borrower of not less than ninety (90) days, declare the Obligations immediately due and payable.

5.1.22 No Credits on Account of the Obligations. Borrower will not claim or demand or be entitled to any credit or credits on account of the Obligations for any payment of Taxes assessed against the Property and no deduction shall otherwise be made or claimed from the assessed value of the Property for real estate tax purposes because of the Loan Documents or the Obligations. If Legal Requirements or other laws, orders, requirements or regulations require such claim, credit or deduction, Lender may, by written notice to Borrower of not less than ninety (90) days, declare the Obligations immediately due and payable.

5.1.23 Personal Property. Borrower shall cause all of its personal property, fixtures, attachments and equipment delivered upon, attached to or used in connection with the operation of the Property to always be located at the Property and shall be kept free and clear of all Liens, encumbrances and security interests, except Permitted Encumbrances.

5.1.24 Rehabilitation Project.

(a) Project Documents. Borrower shall diligently and continuously undertake to Complete each Project in conformance with the applicable Project Documents. Borrower will perform its obligations under the Project Documents and will enforce the terms of the Project Documents.

(b) Permits. Borrower shall pay for and obtain or cause to be paid for and obtained all permits, licenses and approvals required by applicable Legal Requirements with regard to each Project.

(c) Lender Consultants. At Borrower’s expense, Lender shall have the right to employ an inspecting architect, engineer or consultant with respect to a Project. Borrower shall pay immediately upon demand the fees and expenses of any architect, engineer or consultant employed by Lender for the purpose of reviewing plans or otherwise engaged by Lender with respect to any Project.

(d) Performance by Lender. Upon the occurrence of an Event of Default, Lender shall have the right, without limitation of Lender’s other remedies under the Loan Documents, upon written notice to Borrower, either before or after accelerating the Debt or commencing foreclosure, either directly or through Lender’s agents and contractors to (i) enter onto the Property, (ii) complete the Project, (iii) modify the Project as Lender deems necessary, (iv) hire or replace any contractor or vendor retained by Borrower in connection with the Project as Lender deems necessary, (v) expend such sums as Lender determines necessary to Complete such Project and (vi) purchase any insurance coverage deemed appropriate by Lender in its sole discretion relating to the Project or Lender’s exercise of its rights under this Section 5.1.24(d). Borrower hereby waives any right to contest any such costs or expenses incurred by Lender in the exercise of Lender’s rights under this Section 5.1.24(d), and such costs and expenses (a) shall be added to the Debt, (b) shall be secured by the Security Instrument, (c) shall accrue interest at the Default Rate, and (d) shall be payable to Lender upon demand. Borrower hereby agrees to indemnify and hold harmless Lender for any such costs or expenses. Borrower hereby grants Lender an irrevocable power of attorney, coupled with an interest, to exercise Lender’s rights under this Section 5.1.24(d). Lender does not have and shall not have any obligation to complete any Project.

Section 5.2 Negative Covenants. From the date hereof until payment and performance in full of the Obligations, Borrower covenants and agrees with Lender that it will not do, directly or indirectly, any of the following:

5.2.1 Operation of Property. Borrower shall not, without Lender's prior consent (which consent shall be in Lender's sole and absolute discretion): enter into, amend, surrender, terminate, waive any rights under or cancel any Management Agreement.

5.2.3 Liens. Borrower shall not create, incur, assume, permit or suffer to exist any Lien on any portion of the Property or permit any such action to be taken, except for Permitted Encumbrances.

5.2.4 Dissolution. Borrower shall not (a) engage in any dissolution, liquidation, consolidation or merger with or into any other business entity, (b) engage in any business activity not related to the ownership and operation of the Property, (c) transfer, lease or sell, in one transaction or any combination of transactions, the assets or all or substantially all of the properties or assets of Borrower except to the extent permitted by the Loan Documents, or (d) modify, amend, waive or terminate its organizational documents or its qualification and good standing in any jurisdiction.

5.2.5 Change in Business. Borrower shall not enter into any line of business other than the ownership and operation of the Property, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business.

5.2.6 Debt Cancellation. Borrower shall not cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to Borrower by any Person, except for adequate consideration and in the ordinary course of Borrower's business.

5.2.7 Zoning. Borrower shall not initiate or consent to any zoning reclassification of any portion of the Property or seek any variance under any existing zoning ordinance, or use or permit the use of any portion of the 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, in each case, without the prior written consent of Lender.

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

5.2.9 Principal Place of Business and Organization. Borrower shall not change its principal place of business set forth in the introductory paragraph of this Agreement without first giving Lender at least thirty (30) days prior notice. Borrower shall not change the place of its organization as set forth in Section 4.1.24 without the consent of Lender, which consent shall not be unreasonably withheld. Upon Lender's request, Borrower shall execute and deliver additional financing statements, security agreements and other instruments which may be necessary to effectively evidence or perfect Lender's security interest in the Property as a result of such change of principal place of business or place of organization.

5.2.10 ERISA.

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

(b) Borrower further covenants and agrees to 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 (1) Borrower is not an “employee benefit plan” as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a “governmental plan” within the meaning of Section 3(32) of ERISA; (2) Borrower is not subject to any state statute regulating investments of, or fiduciary obligations with respect to, governmental plans; and (3) one or more of the following circumstances is true: (i) Equity interests in Borrower are publicly offered securities, within the meaning of 29 C.F.R. §2510.3-101(b)(2); (ii) Less than twenty-five percent (25%) of each outstanding class of equity interests in Borrower is held by “benefit plan investors” within the meaning of 29 C.F.R. §2510.3-101(f)(2); (iii) Borrower qualifies as an “operating company” or a “real estate operating company” within the meaning of 29 C.F.R. §2510.3-101(c) or (e); or (iv) The Loan meets the requirements of PTE 95-60, 90-1, 84-14 or similar exemption.

5.2.11 Transfers; Assumptions.

(a) Without the prior written consent of Lender and except to the extent otherwise set forth in this Section 5.2.10, no Transfer may occur without the prior written consent of Lender in its sole and absolute discretion.

(b) Notwithstanding the provisions of this Section 5.2.10, Lender’s consent shall not be required in connection with a Permitted Transfer; *provided, however*, that all of the following conditions are satisfied with respect to any such Transfers: (1) Borrower shall provide Lender thirty (30) days’ prior written notice thereof (other than a Permitted Transfer for which notice shall occur within thirty (30) days’ after such Transfer), (2) such Transfer shall not result in a change in the day-to-day management and operations of the Property, (3) [intentionally omitted], and (4) such Transfer shall not result in a breach of Section 5.2.9 or 5.2.13. Notwithstanding anything set forth herein, and without limiting any restrictions on any Transfer set forth herein, if any proposed transfer of any direct or indirect interests in Borrower would otherwise be a Permitted Transfer or not require Lender’s consent but shall result in any Person owning more than twenty percent (20%) of the direct or indirect legal, beneficial or economic interest in Borrower (other than Persons currently owning more than twenty percent (20%) of the direct or indirect legal, beneficial or economic interest in Borrower), approval of such transferee is required so that Lender can confirm the transfer and transferee complies with all legal and regulatory requirements and Lender policies relating to such transfer and transferee, including, without limitation, the Patriot Act and federal regulations issued with respect thereto and to ensure compliance with the representations in Section 4.1.30 hereof.

(c) Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon a Transfer without Lender’s consent. This provision shall apply to every Transfer regardless of whether voluntary or not, or whether or not Lender has consented to any previous Transfer.

5.2.12 Operations Agreements. Borrower shall not, without the prior written consent of Lender, modify any of the Operations Agreements.

5.2.13 [Intentionally omitted].

5.2.14 Embargoed Person; OFAC. As of the date hereof and at all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower and any Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person; (b) no Embargoed Person has any interest of any nature whatsoever in Borrower or any Guarantor, as applicable, with the result that the investment in Borrower or any Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of Borrower or any Guarantor, as applicable, have been derived from any unlawful activity with the result that the investment in Borrower or any Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law. Neither Borrower nor any Guarantor is (or will be) a Person with whom Lender is restricted from doing business under OFAC regulations (including those persons named on OFAC’s Specially Designated and Blocked Persons list) or under any statute, executive order (including the September 24, 2001 #13224 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and shall not engage in any dealings or transactions or otherwise be associated with such Persons. In addition, to help the US Government fight the funding of terrorism and money laundering activities, The USA Patriot Act (and the regulations thereunder) requires Lender to obtain, verify and record information that identifies its customers. Borrower shall provide Lender with any additional information that Lender deems necessary from time to time in order to ensure compliance with The USA Patriot Act and any other applicable Legal Requirements concerning money laundering and similar activities.

5.2.15 Distributions. Borrower shall not make or permit any Distribution.

5.2.16 Affiliate Agreements. Borrower shall not enter into any agreement with an Affiliate without Lender's prior written consent, in its sole and absolute discretion.

ARTICLE VI

INSURANCE; CASUALTY; CONDEMNATION

Section 6.1 Insurance.

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

(i) comprehensive "All Risk" or "Special Form" insurance on the Improvements and the Personal Property (A) in an amount equal to one hundred percent (100%) of the "**Full Replacement Cost**," which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations) with no depreciation; (B) containing an agreed amount endorsement with respect to the Improvements and Personal Property waiving all co-insurance provisions, or confirmation that co-insurance does not apply; and (C) providing for no deductible in excess of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) for all such insurance coverage. In addition, Borrower shall obtain: (x) if any portion of the Improvements is currently, or at any time in the future, located in a Federally designated "special flood hazard area", flood hazard insurance in an amount equal to the Outstanding Principal Balance or such other amount as Lender shall require; (y) earthquake insurance in amounts and in form and substance satisfactory to Lender in the event the Property is located in an area with a high degree of seismic activity; and (z) windstorm insurance in amounts and in form and substance satisfactory to Lender in the event such windstorm coverage is excluded under the Special Form Coverage, provided that the insurance pursuant to clauses (x), (y) and (z) hereof shall be on terms consistent with the comprehensive "All Risk" or "Special Form" insurance policy required under this subsection (i);

(ii) commercial general liability insurance, including a broad form comprehensive general liability endorsement and coverage against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, such insurance (A) to be on the so-called "occurrence" form with a combined limit of not less than Two Million and No/100 Dollars (\$2,000,000.00) in the aggregate and One Million and No/100 Dollars (\$1,000,000.00) per occurrence (and, if on a blanket policy, containing an "Aggregate Per Location" endorsement); (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 insured contracts; and (5) contractual liability covering the indemnities contained in Article VIII of the Security Instrument to the extent the same is available;

(iii) if there are tenants of the Property, rental loss insurance (A) with loss payable to Lender; (B) covering all risks required to be covered by the insurance provided for in subsection (i) above; and (C) for loss of Rents in an amount equal to one hundred percent (100%) of the projected rents from ` for a period of twelve (12) months from the date of such Casualty (assuming such Casualty had not occurred) and notwithstanding that the policy may expire prior to or at the end of such period. The amount of such loss of Rents or business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on Borrower's reasonable estimate of income to be derived from the Property for the succeeding twelve (12) month period. Notwithstanding anything to the contrary set forth herein, all proceeds payable to Lender pursuant to this subsection shall be held by Lender and shall be applied at Lender's sole discretion to (I) the Debt, or (II) operating expenses for the Property approved by Lender in its sole discretion; *provided, however*, that nothing herein contained shall be deemed to relieve Borrower of its obligations to pay the Debt, 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 forms do not otherwise apply, (A) owner's and contractor's 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 Property, and (4) with an agreed amount endorsement waiving co-insurance provision, or confirmation that co-insurance does not apply;

(v) if Borrower ever has any direct employees, worker's compensation insurance with respect to any employees of Borrower, as required by any Governmental Authority or Legal Requirement;

(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) if Borrower ever has any direct employees or owns any motor vehicles, motor vehicle liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence of not less than One Million and No/100 Dollars (\$1,000,000.00);

(viii) umbrella or excess liability insurance in an amount not less than Five Million and No/100 Dollars (\$5,000,000.00) per occurrence on terms consistent with the commercial general liability insurance policy required under subsection (ii) above;

(ix) if the Property is or becomes a legal "non-conforming" use or structure, ordinance or law coverage to compensate for the value of the undamaged portion of the Property, the cost of demolition and increased cost of construction in amounts as requested by Lender;

(x) if applicable, the commercial property, business income, general liability and umbrella or excess liability insurance required under Sections 6.1(a)(i), (ii), (iii) and (viii) above shall cover perils of terrorism and acts of terrorism and Borrower shall maintain commercial property and business income insurance for loss resulting from perils and acts of terrorism on terms (including amounts) consistent with those required under Sections 6.1(a)(i), (ii), (iii) and (viii) above at all times during the term of the Loan so long as Lender determines that either (I) prudent owners of real estate comparable to the Property are maintaining same or (II) prudent institutional lenders (including, without limitation, investment banks) to such owners are requiring that such owners maintain such insurance; and

(xi) upon sixty (60) days' notice, such other insurance and in such amounts as Lender from time to time may request against such other insurable hazards which at the time are commonly insured against for properties similar to the Property located in or around the region in which the Property is located.

(b) All insurance provided for in Section 6.1(a) shall be obtained under valid and enforceable policies (collectively, the "**Policies**" or in the singular, the "**Policy**"), and shall be subject to the approval of Lender as to insurance companies, amounts, deductibles, loss payees and insureds. The Policies shall be issued by financially sound and responsible insurance companies authorized to do business in the State and having a claims paying ability rating of "A-" or better by S&P or "A-X" or better by AM Best or "A3" or better by Moody's Investor Service, Inc.. Prior to the expiration dates of the Policies theretofore furnished to Lender, certificates of insurance evidencing the renewal or successor Policies accompanied by evidence satisfactory to Lender of payment of the premiums due thereunder (the "**Insurance Premiums**"), shall be delivered by Borrower to Lender. Borrower shall supply an original or certified copy of the original policy within ten (10) days of request by Lender, provided that the policy is available.

(c) Any blanket insurance Policy shall specifically allocate to the 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 Property in compliance with the provisions of Section 6.1(a).

(d) All Policies provided for or contemplated by Section 6.1(a), except for the Policy referenced in Section 6.1(a)(v), shall name Borrower as the insured and Lender (and its successors and assigns) as Mortgagee, Loss Payee and Additional Insured, as its interests may appear, and in the case of property damage, boiler and machinery, flood and earthquake insurance, shall contain a standard non-contributing mortgagee clause in favor of Lender providing that the loss thereunder shall be payable to Lender.

(e) All Policies provided for in this Section 6.1 shall contain clauses or endorsements to the effect that: (i) no act or negligence of Borrower, or anyone acting for Borrower, or of any tenant or other occupant, or failure to comply with the provisions of any Policy, which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Lender is concerned; (ii) the Policies on which Lender is listed as a Mortgagee shall not be canceled without at least thirty (30) days' notice to Lender; (iii) Lender shall not be liable for any Insurance Premiums thereon or subject to any assessments thereunder; and (iv) shall contain a waiver of subrogation in favor of Lender.

(f) If at any time Lender is not in receipt of written evidence that all Policies are in full force and effect, Lender shall have the right, without notice to Borrower, to take such action as Lender deems necessary to protect its interest in the Property, including, without limitation, the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate. 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 Security Instrument and shall bear interest at the Default Rate. Provided no Event of Default exists, Lender shall promptly provide Borrower with notice of any such premiums incurred.

(g) Without limitation, Borrower shall continue to maintain all insurance that is in effect as of the date hereof.

Section 6.2 Casualty. If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (a "*Casualty*"), Borrower shall (a) give prompt notice of such damage to Lender, and (b) promptly commence and diligently prosecute the completion of Restoration so that the Property resembles, as nearly as possible, the condition the Property was in immediately prior to such Casualty, with such alterations as may be reasonably approved by Lender and otherwise in accordance with Section 6.4. Borrower shall pay all costs of such Restoration whether or not such costs are covered by insurance. Lender may, but shall not be obligated to make proof of loss if not made promptly by Borrower. In addition, Lender may participate in (and have approval rights over) any settlement discussions with any insurance companies with respect to any Casualty in which the Net Proceeds or the costs of completing Restoration are equal to or greater than five percent (5%) of the applicable Allocated Loan Amount for the affected Individual Property and Borrower shall deliver to Lender all instruments required by Lender to permit such participation.

Section 6.3 Condemnation. Borrower shall promptly give Lender notice of the actual or threatened commencement of any proceeding in respect of Condemnation, and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings, and Borrower shall from time to time deliver to Lender all instruments requested by 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 taking by any public or quasi-public authority through Condemnation or otherwise (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to perform the Obligations at the time and in the manner provided in this Agreement and the other Loan Documents and the Outstanding Principal Balance shall not be reduced until any Award shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Obligations. Lender shall not be limited to the interest paid on the Award by the applicable 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 Property or any portion thereof is taken by a Governmental Authority, Borrower shall promptly commence and diligently prosecute Restoration and otherwise comply with the provisions of Section 6.4. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the Award, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the Award, or a portion thereof sufficient to pay the Debt.

Section 6.4 Restoration. If there are any Improvements on the Property, the following provisions shall apply:

(a) If the Net Proceeds and the costs of completing Restoration shall each be less than five percent (5%) of the applicable Allocated Loan Amount for the affected Individual Property, then the Net Proceeds will be disbursed by Lender to Borrower upon receipt, provided that all of the conditions set forth in Section 6.4(b)(i) are met and Borrower delivers to Lender a written undertaking to expeditiously commence and to satisfactorily complete with due diligence Restoration in accordance with the terms of this Agreement.

(b) If the Net Proceeds are equal to or greater than five percent (5%) of the applicable Allocated Loan Amount for the affected Individual Property, but less than twenty percent (20%) of the applicable Allocated Loan Amount for the affected Individual Property, or the costs of completing Restoration are equal to or greater than five percent (5%) of the applicable Allocated Loan Amount for the affected Individual Property, but less than twenty percent (20%) of the applicable Allocated Loan Amount for the affected Individual Property, then, in either case, the Net Proceeds will be held by Lender and Lender shall make the Net Proceeds available for Restoration in accordance with the provisions of this Section 6.4. The term "*Net Proceeds*" for purposes of this Section 6.4 shall mean: (i) the net amount of all insurance proceeds received by Lender pursuant to Section 6.1 (a)(i), (iv), (vi), (ix) and (x) as a result of such damage or destruction, after deduction of Lender's reasonable costs and expenses (including, but not limited to, reasonable counsel costs and fees), if any, in collecting same ("*Insurance Proceeds*"), or (ii) the net amount of the Award, after deduction of Lender's reasonable costs and expenses (including, but not limited to, reasonable counsel costs and fees), if any, in collecting same ("*Condemnation Proceeds*"), whichever the case may be.

(i) The Net Proceeds shall be made available to Borrower for Restoration upon the determination of Lender in its sole discretion that the following conditions are met:

(A) no Event of Default shall have occurred and be continuing;

(B) in the event the Net Proceeds are Condemnation Proceeds, 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 Property, and no portion of the Improvements is located on such land;

(C) if applicable, Leases demising in the aggregate a percentage amount equal to or greater than ninety percent (90%) of the total rentable space in the affected Individual Property which has been demised under executed and delivered Leases in effect as of the date of the occurrence of such Casualty or Condemnation, whichever the case may be, shall remain in full force and effect during and after the completion of Restoration, notwithstanding the occurrence of any such Casualty or Condemnation, whichever the case may be, and will make all necessary repairs and restorations thereto at their sole cost and expense;

(D) Borrower shall commence Restoration as soon as reasonably practicable (but in no event later than sixty (60) days after such Casualty or Condemnation, whichever the case may be, occurs) and shall diligently pursue the same to satisfactory completion;

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

(F) Lender shall be satisfied that Restoration will be completed on or before the earliest to occur of (1) four (4) months prior to the Maturity Date, (2) the earliest date required for such completion under the terms of any Leases, (3) such time as may be required under all applicable Legal Requirements in order to repair and restore the affected Individual Property to the condition it was in immediately prior to such Casualty or to as nearly as possible the condition it was in immediately prior to such Condemnation, as applicable, or (4) the expiration of the insurance coverage referred to in Section 6.1(a)(iii);

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

(H) Restoration shall be done and completed by Borrower in an expeditious and diligent fashion and in compliance with all applicable Legal Requirements;

(I) such Casualty or Condemnation, as applicable, does not result in the loss of access to the affected Individual Property or the related Improvements;

(J) Borrower shall deliver, or cause to be delivered, to Lender a signed detailed budget approved in writing by Borrower's architect or engineer stating the entire cost of completing Restoration, which budget shall be acceptable to Lender; and

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

(ii) The Net Proceeds shall be paid directly to Lender for deposit in an interest-bearing account (the "**Net Proceeds Account**") and, until disbursed in accordance with the provisions of this Section 6.4(b), shall constitute additional security for the Debt and the Other Obligations. The Net Proceeds shall be disbursed by Lender to, or as directed by, Borrower from time to time during the course of Restoration, upon receipt of evidence satisfactory to Lender that (A) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with Restoration have been paid for in full, and (B) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Property which have not either been fully bonded to the satisfaction of Lender and discharged of record or in the alternative fully insured to the satisfaction of Lender by the Title Company.

(iii) All plans and specifications required in connection with Restoration shall be subject to prior review and acceptance in all respects by Lender in its discretion and by an independent consulting engineer selected by Lender (the "**Casualty Consultant**"). Lender shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with Restoration. The identity of the contractor engaged in Restoration, as well as the contracts under which it has been engaged, shall be subject to prior review and acceptance by Lender in its discretion and the Casualty Consultant. All costs and expenses incurred by Lender in connection with making the Net Proceeds available for Restoration including, without limitation, reasonable counsel fees and disbursements and the Casualty Consultant's fees, shall be paid by Borrower.

(iv) In no event shall 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 Restoration, as certified by the Casualty Consultant, minus the Retention Amount. The term "**Retention Amount**" shall mean, as to each contractor, subcontractor or materialman engaged in Restoration, an amount equal to ten percent (10%) of the costs actually incurred for work in place as part of Restoration, as certified by the Casualty Consultant, until Restoration has been completed. The Retention Amount shall in no event, and notwithstanding anything to the contrary set forth above in this Section 6.4(b), be less than the amount actually held back by Borrower from contractors, subcontractors and materialmen engaged in Restoration. The Retention Amount shall not be released until the Casualty Consultant certifies to Lender that Restoration has been completed in accordance with the provisions of this Section 6.4(b) and that all approvals necessary for the re-occupancy and use of the Property have been obtained from all appropriate Governmental Authorities, and Lender receives evidence satisfactory to Lender that the costs of Restoration have been paid in full or will be paid in full out of the Retention Amount; *provided, however*, that Lender will release the portion of the Retention Amount being held with respect to any contractor, subcontractor or materialman engaged in 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 Security Instrument and evidence of payment of any premium payable for such endorsement. If required by Lender, the release of any such portion of the Retention Amount shall be approved by the surety company, if any, which has issued a payment or performance bond with respect to the contractor, subcontractor or materialman.

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

(vi) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the 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 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 Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this Section 6.4(b) shall constitute additional security for the Debt and the Other Obligations.

(vii) The excess, if any, of the Net Proceeds and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Lender after the Casualty Consultant certifies to Lender that Restoration has been completed in accordance with the provisions of this Section 6.4(b), and the receipt by Lender of evidence satisfactory to Lender that all costs incurred in connection with Restoration have been paid in full, shall be remitted by Lender to Borrower, provided no Event of Default shall have occurred and shall be continuing.

(c) If Net Proceeds are (i) equal to or greater than twenty percent (20%) of the applicable Allocated Loan Amount for the affected Individual Property, (ii) not required to be made available for Restoration (due to Borrower's inability to satisfy the conditions set forth in Section 6.4(b)(i) or otherwise), or (iii) not to be returned to Borrower as excess Net Proceeds pursuant to Section 6.4(b)(vii), then in any such event all Net Proceeds may be retained and applied by Lender in accordance with Section 2.4.2 hereof toward reduction of the Outstanding Principal Balance whether or not then due and payable in such order, priority and proportions as Lender in its sole discretion shall deem proper, or, in the sole discretion of Lender, the same may be paid, either in whole or in part, to Borrower for such purposes as Lender shall approve, in its sole discretion. No prepayment charge shall be payable by Borrower by reason of a Casualty or Condemnation.

(d) In the event of foreclosure of the Security Instrument, or other transfer of title to the Property in extinguishment in whole or in part of the Debt all right, title and interest of Borrower in and to the Policies that are not blanket Policies then in force concerning the Property and all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure or Lender or other transferee in the event of such other transfer of title.

ARTICLE VII

RESERVE FUNDS

Section 7.1 [Intentionally Omitted]

Section 7.2 [Intentionally Omitted]

Section 7.3 Reserve Funds, Generally.

(a) Borrower (i) hereby grants to Lender a first priority security interest in all of the Reserve Funds and any and all monies now or hereafter deposited in each Reserve Account as additional security for payment and performance of the Obligations and (ii) will take all actions necessary to maintain in favor of Lender a perfected first priority security interest in the Reserve Funds, including, without limitation, filing or authorizing Lender to file UCC-1 financing statements and continuations thereof. Until expended or applied in accordance herewith, the Reserve Funds shall constitute additional security for the Obligations.

(b) Upon the occurrence of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in any or all of the Reserve Funds to the reduction of the Outstanding Principal Balance or the payment of any other amounts then due and owing under this Agreement or any of the other Loan Documents in any order in its sole discretion.

(c) Borrower shall not further pledge, assign or grant any security interest in any Reserve Fund or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 financing statements, except those naming Lender as the secured party, to be filed with respect thereto.

(d) The Reserve Funds shall not constitute trust funds and may be commingled with other monies held by Lender. No earnings or interest on the Reserve Funds shall be payable to Borrower. Lender shall not have any obligation to keep or maintain such Reserve Funds or any funds deposited therein in interest bearing accounts.

(e) Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys' fees and expenses) (collectively, "**Claims**") arising from or in any way connected with the Reserve Funds or the performance of the obligations for which the Reserve Funds were established; provided, however, Borrower shall not be obligated to indemnify Lender for any such Claims to the extent arising from Lender's gross negligence or willful misconduct. Borrower shall assign to Lender all rights and claims Borrower may have against all Persons supplying labor, materials or other services which are to be paid from or secured by the Reserve Funds; *provided, however*, that Lender may not pursue any such right or claim unless an Event of Default has occurred and remains uncured.

(f) Upon payment in full of the Debt in accordance with the terms of this Agreement and the other Loan Documents, Lender shall return any remaining Reserve Funds to Borrower.

Section 7.4 Project Reserve Funds.

7.4.1 Deposits of Project Reserve Funds. Borrower shall deposit with Lender (which amount may be net funded by Lender but deemed disbursed) an amount equal to \$1,735,713.00 on the Closing Date for the purpose of funding Project Costs, which amounts shall be deposited into a Reserve Account (the "**Project Reserve Account**"). Amounts deposited from time to time into the Project Reserve Account pursuant to this Section 7.4.1 are referred to herein as the "**Project Reserve Funds**". The allocated amount of Project Reserve Funds with respect to each Individual Property, are set forth on Schedule 1.1(a) hereof.

7.4.2 Disbursement of Project Reserve Funds.

(a) Disbursements Upon Completion of Project at Individual Property. Each disbursement of Project Reserve Funds shall be released subject to satisfaction of the following conditions, any of which may be waived by Lender in Lender's sole discretion:

(i) Any request for a disbursement of Project Reserve Funds shall be submitted to Lender on Lender's form of request, not less than ten (10) Business Days prior to the anticipated date for the disbursement of Project Reserve Funds, and shall be accompanied by all evidence required to be approved by Lender as a condition to such disbursement, including an Officer's Certificate stating that said conditions are then satisfied;

(ii) Disbursement of Project Reserve Funds shall only be used for the portion of the Project at the Individual Property to which the request for disbursement of Project Reserve Funds relates shall not exceed the amount of the Project Reserve Funds allocated to the applicable Individual Property;

(iii) Borrower shall be in compliance with the terms and conditions of Section 5.1.24;

(iv) The relevant portion of the Project at an Individual Property to which the requested disbursement of Project Reserve Funds relates shall be Complete;

(v) At Lender's election, Lender shall have received certificates of Lender's consultant, any Architect and the General Contractor that the such portion of the Project is Complete;

(vi) Evidence reasonably acceptable to Lender, together with all other appropriate certificates and other documentation that Lender may require from, and as are customarily issued by, applicable Governmental Authorities, evidencing (i) compliance with all applicable Legal Requirements, including final certificates of occupancy and all consents or approvals required from third parties or any Governmental Authority have been obtained, and (ii) that no petitions, actions or proceedings are pending or threatened which could reasonably be expected to materially alter or declare invalid any approvals, consents, permits or certificates for or relating to the Project, or any part thereof;

(vii) Final unconditional waivers of lien (and evidence of payment) from all other contractors, subcontractors and materialmen as required by Lender or the Title Company; and

(viii) Lender shall have received notices of title continuation showing that since the date of the last disbursement of Project Reserve Funds there has been no adverse change in the state of title to the applicable Individual Property not approved by Lender, and, to the extent that any new improvements have been constructed at the applicable Individual Property outside their footprint on the date of the most recent survey, no adverse survey exceptions with respect to the Property not theretofore approved by Lender, and Lender may, in its discretion, require an endorsement to the Title Insurance Policy, in form and content satisfactory to Lender, insuring, in effect, that such disbursement has the same priority as the initial disbursement of the Loan and that there has been no Material Adverse Change in the condition of title to the Property since the issuance of the Title Insurance Policy;

(ix) No actions, suits or proceedings shall then be pending nor have any been threatened against or which affect Borrower, any Guarantor or the Property which could have a Material Adverse Change on Borrower, Guarantor or the Property;

(x) No Default or Event of Default shall have occurred and be continuing and all representations and warranties set forth in this Agreement and in any other Loan Document shall be materially true and correct as of the date of Borrower's request for the disbursement, the date the disbursement is made, and immediately following the making of the disbursement;

(xi) No substantial unrepaired damage to any portion of the Property by fire or other casualty which is not in Lender's judgment adequately covered by collectible proceeds of insurance; and

(xii) Borrower shall have paid all of the costs and expenses incurred by Lender, including reasonable attorneys' fees and expenses, all title premiums and other title and survey charges in connection with the proposed disbursement and a nonrefundable rehabilitation management in the amount of Two Hundred Ninety-Five and No/100 Dollars (\$295.00) payable to Lender with respect to each disbursement of Project Reserve Funds.

(b) Disbursement by Wire Transfer. Disbursement of Project Reserve Funds shall be made at Lender's election by wire transfer, at Borrower's cost and expense, or by check. Lender may, in its election, make payments of the Project Reserve Funds directly to the contractor, subcontractor, or material supplier. Lender may also require, at Lender's election, in its sole discretion, at Borrower's sole cost and expense, that disbursements of Project Reserve Funds be made through (a) the Title Company pursuant to a construction loan disbursement escrow agreement or (b) a vending control company. Any such arrangement with the Title Company or a vending control company shall be in Lender's sole discretion

(c) Waiver of Conditions. Lender may from time to time, in its sole discretion, waive any condition or conditions to any disbursement of Project Reserve Funds without such waiver or series of waivers constituting a course of dealing or any amendment to this Agreement or a prohibition against subsequent imposition of such condition or conditions or a waiver of a default.

ARTICLE VIII

DEFAULTS

Section 8.1 Event of Default.

8.1.1 Generally.

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

(i) if any portion of the Debt is not paid when due (including, without limitation, the failure of Borrower to repay the entire outstanding principal balance of the Note in full on the Maturity Date);

(ii) if any of the Taxes or Other Charges are not paid when the same are due and payable without payment of a penalty;

(iii) if the Policies are not kept in full force and effect, or if copies of the certificates evidencing the Policies (or certified copies of the Policies if requested by Lender) are not delivered to Lender within thirty (30) days after written request therefor;

(iv) the occurrence of any Transfer (except a Permitted Transfer) or other encumbrance with respect to any portion of the Property or the Collateral in violation of the provisions of this Agreement or Article 6 of the Security Instrument, or the occurrence of any Transfer in violation of the provisions of Section 5.2.10 hereof;

(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 or deemed remade;

(vi) if Borrower or any Guarantor shall (i) make an assignment for the benefit of creditors or (ii) generally not be paying its debts as they become due;

(vii) if a receiver, liquidator or trustee shall be appointed for Borrower, or if Borrower shall be adjudicated bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to Federal bankruptcy law, or any similar Federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower, or if any proceeding for the dissolution or liquidation of Borrower shall be instituted; *provided, however*, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, upon the same not being discharged, stayed or dismissed within ninety (90) days;

(viii) if a receiver, liquidator or trustee shall be appointed for any Guarantor or if any 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 Guarantor, or if any proceeding for the dissolution or liquidation of any Guarantor shall be instituted; *provided, however*, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by the applicable Guarantor, upon the same not being discharged, stayed or dismissed within ninety (90) days; provided, further, however, it shall be at Lender’s option to determine whether any of the foregoing shall be an Event of Default;

(ix) 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;

(x) if Borrower breaches any representation, warranty or covenant contained in Section 4.1.26 or any of its respective negative covenants contained in Section 5.2;

(xi) with respect to any term, covenant or provision set forth herein which specifically contains a notice requirement or grace period, if Borrower shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

(xii) Borrower breaches any covenant contained in Section 5.1.11 and such breach continues for ten (10) days after notice from Lender;

(xiii) 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 (xi) 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 thirty (30) day period and provided further that Borrower shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed ninety (90) days; or

(xiv) if there shall be a Default under any of the other Loan Documents beyond any applicable cure periods contained in such documents, whether as to Borrower, Guarantor or the Property.

(b) Upon the occurrence of an Event of Default (other than an Event of Default described in clauses (vi), (vii) or (viii) above) and at any time thereafter, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, Lender may take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, without limitation, declaring the Obligations to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents against Borrower and the Property, including, without limitation, all rights or remedies available at law or in equity; 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.

8.1.2 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 (including, without limitation, Lender may accelerate the Loan and declare the Outstanding Principal Balance and all other amounts under the Loan Documents due and payable and institute foreclosure proceedings), 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. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by 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. To the fullest extent permitted by law or equity, without limiting the generality of the foregoing, Borrower agrees that if an Event of Default is continuing (i) Lender shall not be 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 Property and the Security Instrument has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Debt or the Obligations have been paid in full.

(b) With respect to Borrower and the Property, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to the Property for the satisfaction of any of the Debt in any preference or priority, and Lender may seek satisfaction out of the 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 Security Instrument in any manner and for any amounts secured by the Security Instrument then due and payable as determined by Lender in its sole discretion, including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose the Security Instrument to recover such delinquent payments or (ii) in the event Lender elects to accelerate less than the entire Outstanding Principal Balance, Lender may foreclose the Security Instrument to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by the Security Instrument as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to the Security Instrument to secure payment of sums secured by the Security Instrument and not previously recovered.

(c) Lender shall have the right from time to time to partially foreclose the Security Instrument in any manner and for any amounts secured by the Security Instrument then due and payable as determined by Lender in its sole discretion, including the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and/or interest, Lender may foreclose the Security Instrument to recover such delinquent payments, or (ii) in the event Lender elects to accelerate less than the entire Outstanding Principal Balance, Lender may foreclose the Security Instrument to recover so much of the Debt as Lender may accelerate and such other sums secured by the Security Instrument as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to the Security Instrument to secure payment of sums secured by the Security Instrument and not previously recovered.

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

(e) If an Event of Default exists, Lender may (directly or by its agents, employees, contractors, engineers, architects, nominees, attorneys or other representatives), but without any obligation to do so and without notice to Borrower and without releasing Borrower from any obligation hereunder, cure the Event of Default in such manner and to such extent as Lender may deem necessary to protect the security hereof. Subject to Tenants' rights under the Leases, Lender (and its agents, employees, contractors, engineers, architects, nominees, attorneys or other representatives) are authorized to enter upon the Property to cure such Event of Default, and Lender is authorized to appear in, defend, or bring any action or proceeding reasonably necessary to maintain, secure or otherwise protect the Property or the priority of the Lien granted by the Security Instrument.

(f) Lender may appear in and defend any action or proceeding brought with respect to the Property and may bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its sole discretion, decides should be brought to protect its interest in the Property. Lender shall, at its option, be subrogated to the Lien of any mortgage or other security instrument discharged in whole or in part by the Obligations, and any such subrogation rights shall constitute additional security for the payment of the Obligations.

(g) As used in this [Section 8.1.2](#), a "foreclosure" shall include, without limitation, a power of sale.

8.1.3 Remedies Cumulative; Waivers. The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or to impair any remedy, right or power consequent thereon.

8.1.4 CONFESSION OF JUDGMENT. THE FOLLOWING PARAGRAPH SETS FORTH A WARRANT OF AUTHORITY FOR ANY ATTORNEY TO CONFESS JUDGMENT AGAINST THE BORROWER. IN GRANTING THIS WARRANT OF ATTORNEY TO CONFESS JUDGMENT AGAINST THE BORROWER, BORROWER, FOLLOWING CONSULTATION WITH (OR DECISION NOT TO CONSULT) COUNSEL FOR BORROWER AND WITH KNOWLEDGE OF THE LEGAL EFFECT HEREOF, HEREBY KNOWINGLY, INTENTIONALLY, VOLUNTARILY AND UNCONDITIONALLY WAIVES ANY AND ALL RIGHTS BORROWER HAS OR MAY HAVE TO PRIOR NOTICE AND AN OPPORTUNITY OF REHEARING UNDER THE RESPECTIVE CONSTITUTIONS AND LAWS OF THE UNITED STATES OF AMERICA, THE COMMONWEALTH OF PENNSYLVANIA, OR ELSEWHERE. IT IS SPECIFICALLY ACKNOWLEDGED BY BORROWER THAT LENDER HAS RELIED ON THIS WARRANT OF ATTORNEY AS AN INDUCEMENT TO GRANT FINANCIAL ACCOMMODATIONS TO BORROWER. UPON AND FOLLOWING THE OCCURRENCE OF AN UNCURED EVENT OF DEFAULT, BORROWER HEREBY AUTHORIZES AND EMPOWERS ANY ATTORNEY OF ANY COURT OF RECORD OR THE PROTHONOTARY OR CLERK OF ANY COUNTY IN THE COMMONWEALTH OF PENNSYLVANIA, OR IN ANY JURISDICTION WHERE PERMITTED BY LAW OR THE CLERK OF ANY UNITED STATES DISTRICT COURT, TO APPEAR FOR BORROWER IN ANY AND ALL ACTIONS WHICH MAY BE BROUGHT HEREUNDER AND ENTER AND CONFESS JUDGMENT AGAINST BORROWER OR ANY OF THEM IN FAVOR OF LENDER FOR SUCH SUMS AS ARE DUE OR MAY BECOME DUE HEREUNDER OR UNDER ANY OTHER LOAN DOCUMENT, TOGETHER WITH COSTS OF SUIT AND ACTUAL COLLECTION COSTS INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES EQUAL TO FIVE PERCENT (5%) OF THE LIABILITIES THEN DUE AND OWING BUT IN NO EVENT LESS THAN \$5,000, WITH OR WITHOUT DECLARATION, WITHOUT PRIOR NOTICE, WITHOUT STAY OF EXECUTION AND WITH RELEASE OF ALL PROCEDURAL ERRORS AND THE RIGHT TO ISSUE EXECUTIONS FORTHWITH. IF A COPY OF THIS NOTE VERIFIED BY AFFIDAVIT OF ANY OFFICER OF LENDER SHALL HAVE BEEN FILED IN SUCH ACTION, IT SHALL NOT BE NECESSARY TO FILE THE ORIGINAL THEREOF AS A WARRANT OF ATTORNEY, ANY PRACTICE OR USAGE TO THE CONTRARY NOTWITHSTANDING. THE AUTHORITY HEREIN GRANTED TO CONFESS JUDGMENT SHALL NOT BE EXHAUSTED BY ANY SINGLE EXERCISE THEREOF, BUT SHALL CONTINUE AND MAY BE EXERCISED FROM TIME TO TIME AS OFTEN AS LENDER SHALL FIND IT NECESSARY AND DESIRABLE AND AT ALL TIMES UNTIL FULL PAYMENT OF ALL AMOUNTS DUE HEREUNDER AND UNDER THE OTHER LOAN DOCUMENTS. LENDER MAY CONFESS ONE OR MORE JUDGMENTS IN THE SAME OR DIFFERENT JURISDICTIONS FOR ALL OR ANY PART OF BORROWER'S OBLIGATIONS ARISING HEREUNDER OR UNDER ANY OTHER LOAN DOCUMENT TO WHICH BORROWER IS A PARTY, WITHOUT REGARD TO WHETHER JUDGMENT HAS THERETOFORE BEEN CONFESSED ON MORE THAN ONE OCCASION FOR THE SAME OBLIGATIONS. IN THE EVENT THAT ANY JUDGMENT CONFESSED AGAINST BORROWER IS STRICKEN OR OPENED UPON APPLICATION BY OR ON BEHALF OF BORROWER FOR ANY REASONS, LENDER IS HEREBY AUTHORIZED AND EMPOWERED TO AGAIN APPEAR FOR AND CONFESS JUDGMENT AGAINST BORROWER FOR ANY PART OR ALL OF THE LIABILITIES DUE AND OWING UNDER THIS NOTE AND THE OTHER LOAN DOCUMENTS, AS HEREIN PROVIDED.

ARTICLE IX

SPECIAL PROVISIONS

Section 9.1 Transfer of Loan. Lender may, at any time, sell, transfer or assign this Agreement, the Note, the Security Instrument and the other Loan Documents, and any or all servicing rights with respect thereto, or grant participations therein or issue mortgage pass-through certificates or other securities (the "**Securities**") evidencing a beneficial interest in a rated or unrated public offering or private placement (such sales, participation, offering and/or placement, collectively, a "**Lender Assignment**"). Lender may forward to each purchaser, transferee, assignee, servicer, participant or investor in such participations or Securities (collectively, the "**Investor**"), each prospective Investor, and any organization maintaining databases on the underwriting and performance of commercial mortgage loans, all documents and information which Lender now has or may hereafter acquire relating to the Loan or to Borrower, any Guarantor or the Property, whether furnished by Borrower, any Guarantor or otherwise, as Lender determines necessary or desirable, including, without limitation, financial statements relating to Borrower, Guarantor, the Property and any Tenant at the Property. Borrower irrevocably waives any and all rights it may have under law or in equity to prohibit such disclosure, including but not limited to any right of privacy.

Section 9.2 Severed Loan Documents. 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 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 (and cause other parties who executed any of the Loan Documents to execute and deliver) to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender may reasonably request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender and Borrower. 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 the parties thereto only as of the Closing Date.

Section 9.3 Servicer. At the option of Lender, the Loan may be serviced by a master servicer, primary servicer, special servicer and/or trustee (any such master servicer, primary servicer, special servicer, and trustee, together with its agents, nominees or designees, are collectively referred to as "**Servicer**") selected by Lender and Lender may delegate all or any portion of its responsibilities under this Agreement and the other Loan Documents to Servicer pursuant to a pooling and servicing agreement, servicing agreement, special servicing agreement or other agreement providing for the servicing of one or more mortgage loans (collectively, the "**Servicing Agreement**") between Lender and Servicer. Without limitation, Borrower shall promptly reimburse Lender on demand for (a) interest payable on advances made by Servicer with respect to delinquent debt service payments (to the extent interest at the Default Rate actually paid by Borrower in respect of such payments are insufficient to pay the same) or expenses paid by Servicer or trustee in respect of the protection and preservation of the Property (including, without limitation, on account of Basic Carrying Costs), (b) all costs and expenses, liquidation fees, workout fees, special servicing fees, operating advisor fees or any other similar fees payable by Lender to Servicer which may be due and payable under the Servicing Agreement (whether on a periodic or a continuing basis) as a result of an Event of Default under the Loan, the Loan becoming specially serviced, the commencement or continuance of any enforcement action of any kind with respect to the Loan or any of the Loan Documents, a refinancing or a restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" of the Loan Documents, or any Bankruptcy Action involving Borrower, Principal, Guarantor or any of their respective principals or Affiliates, (c) all costs and expenses of any Property inspections and/or appraisals (or any updates to any existing inspection or appraisal) that Servicer or the trustee may be required to obtain (but not more than one appraisal in any twelve months unless an Event of Default exists), and (d) all costs and expenses relating to or arising from any special requests made by Borrower or Guarantor during the term of the Loan including, without limitation, in connection with a prepayment, defeasance, assumption or modification of the Loan.

Section 9.4 Cooperation. Borrower and Guarantor agree to reasonably cooperate with Lender (and agree to cause their respective officers and representatives to cooperate) in connection with any Lender Assignment or potential Lender Assignment.

ARTICLE X

MISCELLANEOUS

Section 10.1 Survival. This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Obligations are outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the legal representatives, successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Lender.

Section 10.2 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 and absolute discretion of Lender and shall be final and conclusive.

Section 10.3 Governing Law. THIS AGREEMENT WAS NEGOTIATED IN THE COMMONWEALTH OF PENNSYLVANIA, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE COMMONWEALTH OF PENNSYLVANIA, AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE COMMONWEALTH OF PENNSYLVANIA, 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 COMMONWEALTH OF PENNSYLVANIA APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT TO THE SECURITY INSTRUMENT AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE COMMONWEALTH OF PENNSYLVANIA SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND/OR THE OTHER LOAN DOCUMENTS, AND THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA.

(a) EXCEPTIONS, NOTWITHSTANDING THE FOREGOING CHOICE OF LAW:

(i) THE PROCEDURES GOVERNING THE ENFORCEMENT BY LENDER OF ITS FORECLOSURE AND OTHER REMEDIES AGAINST BORROWER AND GUARANTOR UNDER THE SECURITY INSTRUMENT AND UNDER THE OTHER LOAN DOCUMENTS WITH RESPECT TO THE REAL PROPERTY ASSETS OF BORROWER, INCLUDING BY WAY OF ILLUSTRATION, BUT NOT IN LIMITATION, ACTIONS FOR FORECLOSURE, FOR INJUNCTIVE RELIEF OR FOR THE APPOINTMENT OF A RECEIVER SHALL BE GOVERNED BY THE LAWS OF THE STATE WHERE SUCH PROPERTY OR OTHER ASSETS ARE LOCATED;

(ii) LENDER SHALL COMPLY WITH APPLICABLE LAW IN THE STATE WHERE THE PROPERTY OR OTHER ASSETS ARE LOCATED TO THE EXTENT REQUIRED BY THE LAW OF SUCH JURISDICTION IN CONNECTION WITH THE FORECLOSURE OF THE SECURITY INTERESTS AND LIENS CREATED UNDER THE SECURITY INSTRUMENT;

(iii) PROVISIONS OF FEDERAL LAW AND THE LAW OF THE STATE WHERE THE PROPERTY IS LOCATED SHALL APPLY IN DEFINING THE TERMS HAZARDOUS SUBSTANCES, ENVIRONMENTAL STATUTES, AND LEGAL REQUIREMENTS AS SUCH TERMS ARE USED IN THIS LOAN AGREEMENT, AND THE OTHER LOAN DOCUMENTS, WITH RESPECT TO THE PROPERTY, BORROWER AND GUARANTOR;
AND

(iv) MATTERS OF REAL ESTATE, LANDLORD-TENANT AND PROPERTY LAW SHALL BE GOVERNED BY THE LAWS OF THE STATE WHERE THE PROPERTY IS SITUATED.

(b) **AGENT FOR SERVICE OF PROCESS.** ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY AT LENDER'S SOLE OPTION BE INSTITUTED IN ANY FEDERAL DISTRICT COURT OR STATE COURT IN THE COMMONWEALTH OF PENNSYLVANIA, COUNTY OF NORTHAMPTON, PURSUANT TO PENNSYLVANIA LAW, AND BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY OBJECTIONS WHICH BORROWER MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

FTE Networks, Inc.
237 West 35th Street, Suite 806
New York, NY 10001
Attn: CEO
Phone: 646-755-3605
Email: mbeyns@blmlp.com

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON BORROWER'S 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 THE COMMONWEALTH OF PENNSYLVANIA, AND BORROWER 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 CONCLUSIVELY BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE COMMONWEALTH OF PENNSYLVANIA. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN THE COMMONWEALTH OF PENNSYLVANIA (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN THE COMMONWEALTH OF PENNSYLVANIA OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR. NOTHING CONTAINED HEREIN SHALL AFFECT THE RIGHT OF AGENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST BORROWER IN ANY OTHER JURISDICTION.

Section 10.4 Modification, Waiver in Writing. No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Note, or of any other Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances.

Section 10.5 Delay Not a Waiver. Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

Section 10.6 Notices. All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested, (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, or (c) facsimile (with answer back acknowledged) or as a PDF or similar attachment to an e-mail, provided that such facsimile or email attachment shall be followed within one (1) business day by delivery of such notice pursuant to clause (a) or (b) above, in each case addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a notice to the other parties hereto in the manner provided for in this Section 10.6):

If to Lender: DLP Lending Fund LLC
95 Highland Avenue, Suite 300
Bethlehem, PA 28017
Attention: Barry W. DeGroot, Esq.
E-Mail: barry@dlpre.com

with a copy to: Pircher, Nichols & Meeks LLP
1901 Avenue of the Stars, Suite 1200
Los Angeles, California 90067
Attention: Real Estate Notices (WBT: 6004.2)
Facsimile No.: (310) 201-8922
E-Mail: realestatenotices@pircher.com

If to Borrower: FTE Legal
237 West 35th Street, Suite 806
New York, NY 10001
Attn: Corporate Counsel
Phone: (239) 315-3161
Email: legal@ftenet.com

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; in the case of expedited prepaid delivery, upon the first attempted delivery on a Business Day; or in the case of facsimile or PDF or similar attachment to an e-mail, upon sender's receipt of a machine-generated confirmation of successful transmission after advice by telephone to recipient that a facsimile or e-mail notice is forthcoming. Any failure to deliver a notice by reason of a change of address not given in accordance with this Section 10.6, or any refusal to accept a notice, shall be deemed to have been given when delivery was attempted. Any notice required or permitted to be given by any party hereunder or under any other Loan Document may be given by its respective counsel.

Section 10.7 Waiver of Trial by Jury. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER.

Section 10.8 Headings. The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 10.9 Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Section 10.10 Preferences. 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 Debt. 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 10.11 Waiver of Notice. Borrower hereby expressly waives, and 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.

Section 10.12 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, Borrower agrees that neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment. The parties hereto agree that any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment. Further, it is agreed Lender shall not be in default under this Agreement, or under any other Loan Document, unless a written notice specifically setting forth the claim of Borrower shall have been given to Lender within thirty (30) days after Borrower first had knowledge of the occurrence of the event which Borrower alleges gave rise to such claim and Lender does not remedy or cure the default, if any there be, promptly thereafter. Failure to give such notice shall constitute a waiver of such claim.

Section 10.13 Expenses; Indemnity.

(a) Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender upon receipt of notice from Lender for all costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Lender in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including without limitation any opinions requested by Lender as to any legal matters arising under this Agreement or the other Loan Documents with respect to the Property); (ii) Borrower's ongoing performance of and compliance with Borrower's respective agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date, including, without limitation, confirming compliance with environmental and insurance requirements; (iii) Lender's ongoing performance and compliance with all agreements and conditions contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date; (iv) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters requested by Lender; (v) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement; (vi) the filing and recording fees and expenses, title insurance and 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; (vii) enforcing or preserving any rights, either in response to third party claims or in prosecuting or defending any action or proceeding or other litigation, in each case against, under or affecting Borrower, this Agreement, the other Loan Documents, the Property, or any other security given for the Loan; and (viii) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the 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 or any other amounts required under Section 9.3; *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 cost and expenses due and payable to Lender may be paid by Lender from any Reserve Account.

(b) Borrower shall indemnify, defend and hold harmless the Indemnified Parties from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for Lender in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not Lender shall be designated a party thereto), that may be imposed on, incurred by, or asserted against any Indemnified Party in any manner relating to or arising out of (i) any breach by Borrower of its Obligations under, or any 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 (the liabilities, losses, costs, expenses and other matters described in this subparagraph (b), collectively, the “**Indemnified Liabilities**”); *provided, however*, that Borrower shall not have any obligation to an Indemnified Party hereunder to the extent that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of such Indemnified Party. To the extent that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall pay the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by the Indemnified Parties.

Section 10.14 Exhibits and Schedules Incorporated. Any Exhibits and Schedules annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

Section 10.15 Offsets, Counterclaims and Defenses. Any assignee of Lender’s interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses solely to the extent such offsets, counterclaims or defenses are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

Section 10.16 No Joint Venture or Partnership; No Third Party Beneficiaries.

(a) Borrower 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 Property other than that of mortgagee, beneficiary or lender.

(b) This Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the Obligations contained herein or therein. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender’s sole discretion, Lender deems it advisable or desirable to do so.

Section 10.17 Publicity. All news releases, publicity or advertising by Borrower or its Affiliates through any media intended to reach the general public which refers to the Loan Documents or the financing evidenced by the Loan Documents, to Lender or any of its Affiliates shall be subject to the prior approval of Lender.

Section 10.18 Waiver of Marshalling of Assets; Homestead Waiver. 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 Property, or to a sale in inverse order of alienation in the event of foreclosure of the Security Instrument, 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 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 Property in preference to every other claimant whatsoever. To the extent permitted by applicable law, Borrower hereby waives any Homestead protections that may be available to Borrower under the law of the state in which the Property is located.

Section 10.19 Waiver of Counterclaim. Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents.

Section 10.20 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 its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any 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 10.21 Brokers and Financial Advisors. Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement other than Direct Lending Partners LLC, which arranged the Loan. Borrower hereby agrees to 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 10.21 shall survive the expiration and termination of this Agreement and the payment of the Debt.

Section 10.22 Prior Agreements. This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, including, without limitation, the Term Sheet dated April 13, 2020 between Borrower (or an agent or representative of Borrower) and Lender, are superseded by the terms of this Agreement and the other Loan Documents.

Section 10.23 Cumulative Rights. All of the rights of Lender under this Agreement hereunder and under each of the other Loan Documents and any other agreement now or hereafter executed in connection herewith or therewith, shall be cumulative and may be exercised singly, together, or in such combination as Lender may determine in its sole judgment.

Section 10.24 Counterparts; Electronic Delivery. This Agreement and all of the other Loan Documents may be executed in several counterparts, each of which when executed and delivered is an original, but all of which together shall constitute one instrument. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart which is executed by the party against whom enforcement of this Agreement is sought. The delivery of an executed counterpart of this Agreement or any other Loan Document (other than Note) by facsimile or as a PDF or similar attachment to an email shall constitute effective delivery of such counterpart for all purposes with the same force and effect as the delivery of an original, executed counterpart.

Section 10.25 Time is of the Essence. Time is of the essence of each provision of this Agreement and the other Loan Documents.

Section 10.26 Consent of Holder. Wherever this Agreement refers to Lender's consent or discretion or other rights, such references to Lender shall be deemed to refer to any holder of the Loan. The holder of the Loan may from time to time appoint a trustee or servicer, and Borrower shall be entitled to rely upon written instructions executed by a purported officer of the holder of the Loan as to the extent of authority delegated to any such trustee or from time to time and determinations made by such trustee or servicer to the extent identified as within the delegated authority of such trustee or servicer, unless and until such instructions are superseded by further written instructions from the holder of the Loan.

Section 10.27 Successor Laws. Any reference in this Agreement to any statute or regulation shall be deemed to include any successor statute or regulation.

Section 10.28 Reliance on Third Parties. Lender may perform any of its responsibilities hereunder through one or more agents, attorneys or independent contractors. In addition, Lender may conclusively rely upon the advice or determinations of any such agents, attorneys or independent contractors in performing any discretionary function under the terms of this Agreement.

Section 10.29 Joint Borrower. The representations, covenants, warranties and obligations of Borrower shall be joint and several. Each entity that constitutes Borrower acknowledges and agrees that it shall be jointly and severally liable for the Loan and all other Obligations arising under this Agreement and/or any of the other Loan Documents. In furtherance thereof, each Borrower acknowledges and agrees as follows:

(a) For the purpose of implementing the joint borrower provisions of the Loan Documents, each Borrower hereby irrevocably appoints each other Borrower as its agent and attorney-in-fact for all purposes of the Loan Documents, including the giving and receiving of notices and other communications.

(b) To induce Lender to make the Loan, and in consideration thereof, each Borrower hereby agrees to indemnify Lender against, and hold Lender harmless from, any and all liabilities, expenses, losses, damages and/or claims of damage or injury asserted against Lender by any Borrower or by any other Person arising from or incurred by reason of (i) reliance by Lender on any requests or instructions from any Borrower, or (ii) any other action taken by Lender in good faith with respect to this Agreement or the other Loan Documents.

(c) Each Borrower acknowledges that the liens and security interests created or granted herein and by the other Loan Documents will secure the Obligations of all Borrowers under the Loan Documents and, in full recognition of that fact, each Borrower consents and agrees that Lender may, at any time and from time to time, without notice or demand, and without affecting the enforceability or security hereof or of any other Loan Document:

(i) agree with any Borrower to supplement, modify, amend, extend, renew, accelerate, or otherwise change the time for payment or the terms of the Obligations or any part thereof, including any increase or decrease of the rate(s) of interest thereon;

(ii) agree with any Borrower to supplement, modify, amend or waive, or enter into or give any agreement, approval or consent with respect to, the Obligations or any part thereof or any of the Loan Documents or any additional security or guaranties, or any condition, covenant, default, remedy, right, representation or term thereof or thereunder;

(iii) accept new or additional instruments, documents or agreements in exchange for or relative to any of the Loan Documents or the Obligations or any part thereof;

(iv) accept partial payments on the Obligations;

(v) receive and hold additional security or guaranties for the Obligations or any part thereof;

(vi) release, reconvey, terminate, waive, abandon, subordinate, exchange, substitute, transfer and enforce any security for or guaranties of the Obligations, and apply any security and direct the order or manner of sale thereof as Lender, in its sole and absolute discretion may determine;

(vii) release any Person or any guarantor from any personal liability with respect to the Obligations or any part thereof; or

(viii) settle, release on terms satisfactory to Lender or by operation of applicable laws or otherwise liquidate or enforce any Obligations and any security therefor or guaranty thereof in any manner, consent to the transfer of any such security and bid and purchase at any sale; and consent to the merger, change or any other restructuring or termination of the corporate existence of any Borrower or any other Person, and correspondingly restructure the obligations of such Borrower or other Person, and any such merger, change, restructuring or termination shall not affect the liability of any Borrower or the continuing existence of any lien or security interest hereunder, under any other Loan Document to which any Borrower is a party or the enforceability hereof or thereof with respect to all or any part of the Obligations.

(d) Upon the occurrence of and during the continuance of any Event of Default, Lender may enforce this Agreement and the other Loan Documents independently as to each Borrower and independently of any other remedy or security Lender at any time may have or hold in connection with the Obligations, and in collecting on the Loan it shall not be necessary for Lender to marshal assets in favor of any Borrower or any other Person or to proceed upon or against and/or exhaust any other security or remedy before proceeding to enforce this Agreement and the other Loan Documents. Each Borrower expressly waives any right to require Lender, in connection with Lender's efforts to obtain repayment of the Loan and Other Obligations, to marshal assets in favor of any Borrower or any other Person or to proceed against any other Person or any collateral provided by any other Person, and agrees that Lender may proceed against any Persons and/or collateral in such order as it shall determine in its sole and absolute discretion in connection with Lender's efforts to obtain repayment of the Loan and other Obligations. Lender may file a separate action or actions against each Borrower to enforce the Obligations, whether action is brought or prosecuted with respect to any other security or against any other Person, or whether any other Person is joined in any such action or actions. Each Borrower agrees that Lender, each Borrower and/or any other Person may deal with each other in connection with the Obligations or otherwise, or alter any contracts or agreements now or hereafter existing between any of them, in any manner whatsoever, all without in any way altering or affecting the security of this Agreement or the other Loan Documents. The rights of Lender hereunder and under the other Loan Documents shall be reinstated and revived, and the enforceability of this Agreement and the other Loan Documents shall continue, with respect to any amount at any time paid on account of the Obligations which thereafter shall be required to be restored or returned by Lender as a result of the bankruptcy, insolvency or reorganization of any Borrower or any other Person, or otherwise, all as though such amount had not been paid. The enforceability of this Agreement and the other Loan Documents at all times shall remain effective even though any or all Obligations, or any other security or guaranty therefor, may be or hereafter may become invalid or otherwise unenforceable as against any Borrower or any other Person and whether or not any Borrower or any other Person shall have any personal liability with respect thereto. Each Borrower expressly waives any and all defenses to the enforcement of its Obligations under the Loan Documents now or hereafter arising or asserted by reason of (i) any disability or other defense of any Borrower or any other Person with respect to the Obligations, (ii) the unenforceability or invalidity of any security or guaranty for the Obligations or the lack of perfection or continuing perfection or failure of priority of any security for the Obligations, (iii) the cessation for any cause whatsoever of the liability of any Borrower or any other Person (other than by reason of the full and final payment and performance of all Obligations), (iv) any failure of Lender to marshal assets in favor of any of the Borrowers or any other Person, (v) any failure of Lender to give notice of sale or other disposition of any Collateral for the Obligations to any Borrower or to any other Person or any defect in any notice that may be given in connection with any such sale or disposition, (vi) any failure of Lender to comply in any non-material respect with applicable laws in connection with the sale or other disposition of any collateral or other security for any Obligation, (vii) any act or omission of Lender or others that directly or indirectly results in or aids the discharge or release of any Borrower or of any other Person or of any of the Obligations or any other security or guaranty therefor by operation of law or otherwise, (viii) any law which provides that the obligation of a surety or guarantor must neither be larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety's or guarantor's obligation in proportion to the principal obligation, (ix) any failure of Lender to file or enforce a claim in any bankruptcy or similar proceeding with respect to any Person, (x) the election by Lender, in any bankruptcy or similar proceeding of any Person, of the application or non-application of Section 1111(b)(2) of the Bankruptcy Code, (xi) any extension of credit or the grant of any lien under Section 364 of the Bankruptcy Code except to the extent otherwise provided in this Agreement, (xii) any use of cash collateral under Section 363 of the Bankruptcy Code, (xiii) any agreement or stipulation with respect to the provision of adequate protection in any bankruptcy or similar proceeding of any Person, (xiv) the avoidance of any lien or security interest in favor of Lender securing the Obligations for any reason, or (xv) any bankruptcy or similar proceeding commenced by or against any Person, including any discharge of, or bar or stay against collecting, all or any of the Obligations (or any interest thereon) in or as a result of any such proceeding. Without in any way limiting the foregoing, with respect to the Loan Documents and the Obligations, Borrower: (A) waives all rights and defenses arising out of an election of remedies by Lender even though that election of remedies, such as non-judicial foreclosure with respect to security for Borrowers' obligations, has destroyed each of their rights of subrogation and reimbursement against the other; and (B) waives any right to a fair value hearing or similar proceeding following a non-judicial foreclosure of the Obligations.

(e) Borrowers represent and warrant to Lender that they have established adequate means of obtaining from each other, on a continuing basis, financial and other information pertaining to their respective businesses, operations and condition (financial and otherwise) and their respective properties, and each now is and hereafter will be completely familiar with the businesses, operations and condition (financial and otherwise) of the other and their respective properties. Each Borrower hereby expressly waives and relinquishes any duty on the part of Lender to disclose to such Borrower any matter, fact or thing related to the businesses, operations or condition (financial or otherwise) of the other Borrowers or the other Borrowers' properties, whether now known or hereafter known by Lender during the life of this Agreement. With respect to any of the Obligations, Lender need not inquire into the powers of any Borrower or the officers, employees or other Persons acting or purporting to act on such Borrower's behalf.

(f) Without limiting the foregoing, or anything else contained in this Agreement, each Borrower waives all rights and defenses that it may have because the Obligations are secured by real property. This means, among other things:

(i) Lender may collect on the Obligations from any Borrower without first foreclosing on any real or personal property collateral pledged by the other Borrowers; and

(ii) If Lender foreclose on any real property collateral pledged by any Borrower for the Obligations: (A) the amount of the indebtedness owed by the other Borrowers may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; and (B) Lender may collect from any Borrower even if Lender, by foreclosing on the real property collateral, has destroyed any right any Borrower may have to collect from the other Borrowers.

(iii) This is an unconditional and irrevocable waiver of any rights and defenses each Borrower may have because the Obligations are secured by real property. Each Borrower expressly waives any right to receive notice of any judicial or nonjudicial foreclosure or sale of any real property collateral provided by the other Borrowers to secure the Obligations and failure to receive any such notice shall not impair or affect such Borrower's obligations hereunder or the enforceability of this Agreement or the other Loan Documents or any liens created or granted hereby or thereby.

(iv) Notwithstanding anything to the contrary elsewhere contained herein or in any other Loan Document to which any Borrower is a party, with respect to the Loan and all other Obligations, each Borrower hereby waives with respect to the other Borrowers and their successors and assigns (including any surety) and any other Person any and all rights at law or in equity, to subrogation, to reimbursement, to exoneration, to contribution, to set-off, to any other rights and defenses available to it or to any other rights that could accrue to a surety against a principal, to a guarantor against a maker or obligor, to an accommodation party against the party accommodated, or to a holder or transferee against a maker and which each of them may have or hereafter acquire against the other or any other Person in connection with or as a result of such Borrower's execution, delivery and/or performance of this Agreement or any other Loan Document to which it is a party until the Obligations are paid and performed in full. Each Borrower agrees that it shall not have or assert any such rights against any other Borrower or any other Borrower's successors and assigns or any other Person (including any surety), either directly or as an attempted set-off to any action commenced against such Borrower by any other Borrower (as borrower or in any other capacity) or any other Person until all the Obligations are paid and performed in full. Each Borrower hereby acknowledges and agrees that this waiver is intended to benefit Lender and shall not limit or otherwise affect any Borrower's liability under this Agreement or any other Loan Document to which it is a party, or the enforceability hereof or thereof.

EACH BORROWER WARRANTS AND AGREES THAT EACH OF THE WAIVERS AND CONSENTS SET FORTH HEREIN IS MADE WITH FULL KNOWLEDGE OF ITS SIGNIFICANCE AND CONSEQUENCES, WITH THE UNDERSTANDING THAT EVENTS GIVING RISE TO ANY DEFENSE WAIVED MAY DIMINISH, DESTROY OR OTHERWISE ADVERSELY AFFECT RIGHTS WHICH EACH OTHERWISE MAY HAVE AGAINST THE OTHER, AGAINST LENDER OR OTHERS, OR AGAINST ANY COLLATERAL. IF ANY OF THE WAIVERS OR CONSENTS HEREIN IS DETERMINED TO BE CONTRARY TO ANY APPLICABLE LAW OR PUBLIC POLICY, SUCH WAIVERS AND CONSENTS SHALL BE EFFECTIVE TO THE MAXIMUM EXTENT PERMITTED BY LAW.

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

BORROWER:

Kaja Holdings 2, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of Kaja Holdings 2, LLC

(Signatures continue on following page)

LENDER:

DLP Lending Fund LLC,
a Delaware limited liability company

By: /s/ Donald Wenner
Donald Wenner
President

SCHEDULE 1
Borrower Entities

[to be inserted]

Schedule 1 - 1

SCHEDULE 1.1(a)
Allocated Loan Amounts

Attached.

Schedule 1.1(a) - 1

SCHEDULE 1.1(b)
List of Projects

[to be inserted]

Schedule 1.1(b) - 1

SCHEDULE 4.1.1

Organizational Chart

[to be inserted]

Schedule 4.1.1 - 1

PROMISSORY NOTE

\$8,256,975

August 26, 2020

FOR VALUE RECEIVED, the undersigned, jointly and severally (individually and collectively, "**Borrower**"), as maker, having its principal place of business at 16 Berryhill Road, Suite 200 Columbia, SC 29210, hereby unconditionally promises to pay to the order of DLP LENDING FUND LLC, a Delaware limited liability company, as lender, having an address at 95 Highland Avenue, St. Augustine, FL 32095 (together with its successors and assigns, collectively, "**Lender**"), or at such other place as the holder hereof may from time to time designate in writing, the principal sum of EIGHT MILLION TWO HUNDRED FIFTY SIX THOUSAND NINE HUNDRED SEVENTY FIVE and 00/100 Dollars (\$8,256,975.00), or so much thereof as is advanced pursuant to that certain Loan Agreement, dated the date hereof, between Borrower and Lender (as the same may be amended, modified, restated, replaced, supplemented or otherwise modified from time to time, the "**Loan Agreement**"), in lawful money of the United States of America, with interest thereon to be computed from the date of this Promissory Note (as the same may be amended, supplemented, restated, replaced or otherwise modified from time to time, this "**Note**") at the Interest Rate (as defined in the Loan Agreement), and to be paid in accordance with the terms of this Note and the Loan Agreement. All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement.

ARTICLE 1 – PAYMENT TERMS

Borrower agrees to pay the principal sum of this Note and interest on the unpaid principal sum of this Note and all other amounts due under the Loan Agreement and other Loan Documents from time to time outstanding without relief from valuation and appraisal laws at the rates and at the times specified in the Loan Agreement and the outstanding balance of the principal sum of this Note and all accrued and unpaid interest thereon and all other amounts due under the Loan Agreement and other Loan Documents shall be due and payable, in all events, on the Maturity Date. The obligations of each Borrower or party under this Note shall be joint and several.

ARTICLE 2 – DEFAULT AND ACCELERATION

The Debt shall without notice become immediately due and payable at the option of Lender, if any payment required in this Note is not paid (a) on or prior to the date when due, (b) on the Maturity Date or (c) on the happening of any other Event of Default.

ARTICLE 3 – LOAN DOCUMENTS

This Note is secured by the Security Instrument and the other Loan Documents. All of the terms, covenants and conditions contained in the Loan Agreement, the Security Instrument and the other Loan Documents are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. In the event of a conflict or inconsistency between the terms of this Note and the Loan Agreement, the terms and provisions of the Loan Agreement shall govern.

ARTICLE 4 – SAVINGS CLAUSE

Notwithstanding anything to the contrary contained herein, (a) all agreements and communications between Borrower and Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed interest, the interest contracted for, charged or received by Lender shall never exceed the Maximum Legal Rate or amount, (b) in calculating whether any interest exceeds the Maximum Legal Rate, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Borrower to Lender, and (c) if through any contingency or event Lender receives or is deemed to receive interest in excess of the Maximum Legal Rate, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Borrower to Lender.

ARTICLE 5 – NO ORAL CHANGE

This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

ARTICLE 6 – WAIVERS

Borrower and all others who may become liable for the payment of all or any part of the Debt do hereby jointly and severally waive presentment and demand for payment, notice of dishonor, notice of intention to accelerate, notice of acceleration, protest and notice of protest and non-payment and all other notices of any kind. No release of any security for the Debt or extension of time for payment, of this Note or any installment hereof, and no alteration, amendment or waiver of any provision of this Note, the Loan Agreement or the other Loan Documents made by agreement between Lender or any other Person shall release, modify, amend, waive, extend, change, discharge, terminate or affect the liability of Borrower, and any other Person who may become liable for the payment of all or any part of the Debt, under this Note, the Loan Agreement or the other Loan Documents. No notice to or demand on Borrower shall be deemed to be a waiver of the obligation of Borrower or of the right of Lender to take further action without further notice or demand as provided for in this Note, the Loan Agreement or the other Loan Documents. If Borrower is a partnership or limited liability company, the agreements herein contained shall remain in force and be applicable, notwithstanding any changes in the individuals or entities comprising the partnership or limited liability company, and the term "Borrower," as used herein, shall include any alternate or successor partnership or limited liability company, but any predecessor partnership or limited liability company and their partners or members shall not thereby be released from any liability. If Borrower is a corporation, the agreements contained herein shall remain in full force and be applicable notwithstanding any changes in the shareholders comprising, or the officers and directors relating to, the corporation, and the term "Borrower" as used herein, shall include any alternative or successor corporation, but any predecessor corporation shall not be relieved of liability hereunder. Nothing in the foregoing two sentences shall be construed as a consent to, or a waiver of, any prohibition or restriction on transfers of interests in such partnership, limited liability company or corporation, as applicable, which may be set forth in the Loan Agreement, the Security Instrument or any other Loan Document.

ARTICLE 7 – TRANSFER

Upon the transfer of this Note in whole or in part, Borrower hereby waiving notice of or consent to any such transfer, Lender may deliver all the collateral mortgaged, granted, pledged or assigned pursuant to the Loan Documents, or any part thereof, to the transferee who shall thereupon become vested with all the rights (and liabilities arising thereafter) herein or under Legal Requirements of and given to Lender with respect thereto, and Lender shall thereafter forever be relieved and fully discharged from any liability or responsibility in the matter; but Lender shall retain all rights hereby given to it with respect to any liabilities and the collateral not so transferred.

ARTICLE 8 – GOVERNING LAW AND WAIVER OF TRIAL BY JURY

This Note shall be governed in accordance with the terms and provisions of Section 10.3 and Section 10.7 of the Loan Agreement.

ARTICLE 9 – NOTICES

All notices or other written communications hereunder shall be delivered in accordance with Section 10.6 of the Loan Agreement.

ARTICLE 10 TRANSACTION ASSIGNMENT AND REGISTRAR

I. ASSIGNMENTS, PARTICIPATIONS

A. Assignments by Lender, etc. Subject to compliance with this Article 10, any Lender may on or after the date hereof sell and assign, or pledge, hypothecate or encumber, all or any portion of its Loans and all other Obligations with respect thereto, to or with Persons as may be selected by such Lender in its sole and absolute discretion (each an “*Assignee*”) and on terms and conditions satisfactory to in its sole and absolute discretion (which shall include the execution and delivery by the Assignee of assignment documentation in form and substance satisfactory to such assigning Lender). Borrower shall cooperate in all reasonable respects with such Lender in connection with the sale and assignment, or pledge, hypothecation or encumbrance, of all or any portion of such Lender’s interest in the Loan, and shall, in connection therewith, promptly execute and deliver such documents as may be reasonably requested by such Lender; provided, that such cooperation shall not include reimbursement of any Lender or any Assignee for any costs incurred in connection with such assignment or related documents.

A. Effect of Assignment. Pursuant to any assignment or participation of all or any portion of a Lender’s Loan as contemplated in this Article 10 to any Assignee, such Lender (a) may, subject to compliance with this Article 10, transfer its obligations hereunder and under the other Loan Documents (or may transfer the portion thereof corresponding to the transferred portion of the Obligations) and, except as otherwise specified herein, any Assignee shall succeed to the rights and obligations of Lender hereunder in respect of the transferred portion, and (b) shall relinquish its rights and be released from its obligations hereunder and under this Agreement and the other Loan Documents as to the transferred portion of its interest in the Loan.

B. Assignments by Borrower. No Borrower shall have any right to assign its rights or obligations hereunder or under the other Loan Documents or any interest herein or therein without the prior written consent of Lender and each of its successors and assigns, which consent may be withheld by in their sole and absolute discretion. Any attempted or purported assignment in contravention of this Article 10 shall be null and void ab initio.

C. Participations. Subject to compliance with this Article 10, any Lender may at any time, without the consent of, or notice to, Borrower, sell to one or more Persons as may be selected by such Lender in its sole and absolute discretion a participation (each a “*Participant*”) in all or a portion of such Lender’s rights and/or obligations under this Agreement (including all or a portion of the interest in the Loan owing to it); provided that (a) such Lender’s obligations under this Agreement shall remain unchanged, (b) such Lender shall remain solely responsible to the other Parties hereto for the performance of such obligations, (c) Borrower shall continue to deal solely and directly with Lender in connection with such Lender’s rights and obligations under this Agreement and the other Loan Documents, and (d) no Participant shall have any right to approve any amendment or waiver of any provision of any Loan Document, or any consent to any departure by Borrower or any other party therefrom, except to the extent that such amendment, waiver or consent would reduce the principal of, or interest on, the Loan or any fees or other amounts payable hereunder, in each case to the extent subject to such participation, or postpone any date fixed for any payment of any amount hereunder, to the extent subject to such participation.

II. REGISTRATION

A. Registered Obligation. Borrower hereby acknowledges and makes this Note (if any) a registered obligation for United States withholding tax purposes. DLP Lending Fund LLC, as Borrower's non-fiduciary agent for this purpose, shall be the registrar for this Note (if any) (the "**Registrar**") with full power of substitution. In the event the Registrar becomes unable or unwilling to act as registrar under this Agreement, Borrower shall reasonably designate a successor Registrar.

B. Register. The Registrar shall maintain, or cause to be maintained, a register (the "**Register**") for the recordation of the names and addresses of each Lender and any Assignee of all or any portion of such Lender's interest in the Loan and the principal amount outstanding of the Loan (and stated interest accrued but unpaid thereon) (the "**Registered Loan**") held by Lender and each Assignee from time to time. Borrower, each Lender and each Assignee shall treat each Person whose name is recorded in the Register as a "Lender" hereunder for all purposes of this Agreement. The Register shall be available for inspection by Borrower at any reasonable time and from time to time upon reasonable prior notice.

C. Registration of Assignment. A Registered Loan (and the registered Note evidencing the same, if any) may be assigned or sold in whole or in part only by registration of such assignment or sale on the Register (and each registered Note, if any, shall expressly so provide), which registration the Registrar shall effect immediately upon receipt of assignment documentation. Any assignment or sale of all or part of such Registered Loan (and the registered Note evidencing the same, if any) may be effected only by registration of such assignment or sale on the Register, together with the surrender of the registered Note evidencing the same, if any, duly endorsed by (or accompanied by a written instrument of assignment or sale duly executed by) the holder of such registered Note, if any, whereupon, at the request of the designated assignee(s) or transferee(s), one or more new registered Notes in the same aggregate principal amount shall be issued to the designated assignee(s) or transferee(s). Prior to the registration of assignment or sale of any Registered Loan (and the registered Note evidencing the same, if any), Borrower shall treat the Person in whose name such Registered Loan (and the registered Note evidencing the same, if any) is registered as the owner thereof for the purpose of receiving all payments thereon and for all other purposes, notwithstanding notice to the contrary.

D. Participant Register. If any Lender sells a participation or participations in the Loan to a Participant, such Lender shall report such sale of a participation to the Registrar and the Registrar shall, acting solely for this purpose as a non-fiduciary agent of Borrower, maintain a register on which it enters the name and the address of each Participant and the principal amounts of each Participant's participation interest in the Loan (or other rights or obligations) held by it (the "**Participant Register**"). The entries in the Participant Register shall be conclusive, absent manifest error, and each Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation interest as the owner thereof for all purposes notwithstanding any notice to the contrary. In maintaining the Participant Register, the Registrar shall be acting as the agent of Borrower solely for purposes of applicable United States federal income tax law and undertakes no duty, responsibility or obligation to Borrower and, without limitation, in no event shall the Registrar be a fiduciary of Borrower for any purpose, except that the Registrar shall maintain the Participant Register and, upon reasonable prior notice from Borrower, shall make the Participant Register available for inspection by Borrower at any reasonable time and from time to time.

[The Remainder of the Page is Intentionally Blank]

IN WITNESS WHEREOF, Borrower has duly executed this Promissory Note as of the day and year first above written.

BORROWER:

Kaja Holdings 2, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of Kaja Holdings 2, LLC

Signature Page – Promissory Note

LOAN AGREEMENT

Dated as of August 26, 2020

among

THE ENTITIES SET FORTH ON SCHEDULE 1 ATTACHED HERETO,

individually and collectively, as Borrower

and

DLP LENDING FUND LLC,

as Lender

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LOAN AGREEMENT

This LOAN AGREEMENT, dated as of August 26, 2020 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this “*Agreement*”), between DLP LENDING FUND LLC, a Delaware limited liability company (“*Lender*”), having an address at 95 Highland Avenue, St. Augustine, FL 32095, and THE ENTITIES SET FORTH ON SCHEDULE 1 ATTACHED HERETO, jointly and severally (individually and collectively, “*Borrower*”), having its principal place of business at 16 Berryhill Road, Suite 200 Columbia, SC 29210

WITNESSETH:

WHEREAS, Borrower desires to obtain a loan in the original principal amount of ONE MILLION SIX HUNDRED FIVE THOUSAND and 00/100 Dollars (\$1,605,000.00) from Lender pursuant to this Agreement (the “*Loan*”); and

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

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

ARTICLE I

DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1 Definitions. For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

“*Accrued Interest*” shall mean all accrued and unpaid interest on the outstanding principal balance of the Loan from time to time.

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

“*Agreement*” shall mean this Loan Agreement, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“*Allocated Loan Amount*” shall mean, with respect to each Individual Property, the amount set forth on Schedule 1.1(a) hereof.

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

“*Approved Plans*” means complete plans, drawings, specifications and scope of work, that comply with applicable Legal Requirements and have been approved in writing by Lender, for the Project.

“*Assignment of Management Agreement*” shall mean individually and collectively as applicable, an Assignment of Management Agreement and Subordination of Management Fees, dated as of the date hereof or thereafter, as applicable, among Lender, Borrower and Manager, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

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

“Bankruptcy Action” shall mean with respect to any Person (a) such Person filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (b) the filing of an involuntary petition against such Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition against such Person; (c) such Person filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition from any Person; (d) such Person consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, assignee, sequestrator (or similar official), liquidator, or examiner for such Person or any portion of the Property; (e) the filing of a petition against a Person seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code or any other applicable law, (f) under the provisions of any other law for the relief or aid of debtors, an action taken by any court of competent jurisdiction that allows such court to assume custody or Control of a Person or of the whole or any substantial part of its property or assets or (g) such Person making an assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due.

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

“Basic Carrying Costs” shall mean, for any period, the sum of the following costs: (a) Taxes, (b) Other Charges and (c) Insurance Premiums.

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

“Business Day” shall mean any day other than a Saturday, Sunday or any other day on which any of the following institutions is not open for business: (i) banks and savings and loan institutions in New York or Pennsylvania, (ii) the financial institution that maintains any collection account for or on behalf of any Reserve Funds, (iii) the New York Stock Exchange or (iv) the Federal Reserve Bank of New York.

“Casualty” shall have the meaning set forth in Section 6.2 hereof.

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

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

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

“Collateral” shall have the meaning ascribed to such term in the Security Instrument.

“Completion” or **“Complete”** shall mean one hundred percent (100%) completion of construction, renovation, rehabilitation of a Project, as applicable, subject to usual and customary punch list items, in a good and workmanlike manner and in compliance with all Legal Requirements, and in a manner consistent and compliant in all material respects with the applicable Project Documents as approved by Lender, and free and clear of all liens, claims, encumbrances and rights of others, other than Permitted Encumbrances, as evidenced by the issuance of certificates of completion by Lender’s consultant or inspecting architect or engineer, if any, in each case in form and substance acceptable to Lender and, if available or required under applicable Legal Requirements, a final or partial certificate of occupancy and, as applicable, acceptance of completion by the applicable tenant.

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

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

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

“**Debt**” shall mean the Outstanding Principal Balance together with all interest accrued and unpaid thereon and all other sums due to Lender in respect of the Loan under the Note, this Agreement, the Security Instrument or any other Loan Document.

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

“**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 twenty-four percent (24%) per annum.

“**Distribution**” means (i) any dividend, distribution or other payment of any kind on any shares of capital stock or other securities or partnership, membership, economic or other interests, or (ii) any fee, payment, bonus or other remuneration of any kind, or (iii) any repayment of or debt service on loans or other indebtedness other than the Loan.

“**Dollars**” and the sign “\$” shall mean lawful money of the United States of America.

“**Embargoed Person**” shall mean any person, entity or government subject to trade restrictions under U.S. law, including, but not limited to, The USA Patriot Act (including the anti-terrorism provisions thereof), the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701, et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder including those related to Specially Designated Nationals and Specially Designated Global Terrorists, with the result that the investment in Borrower or any Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan made by Lender is in violation of law.

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

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

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

“**ERISA Affiliate**” shall mean each person (as defined in section 3(9) of ERISA) that together with Borrower would be deemed to be a “single employer” within the meaning of Section 414(b), (c), (m) or (o) of the Code.

“**Event of Default**” shall have the meaning set forth in Section 8.1.1(a) hereof.

“**Exchange Act**” shall mean the Securities Exchange Act of 1934, as the same may be amended, modified or replaced, from time to time.

“**Exchange Act Filing**” shall have the meaning set forth in Section 5.1.11(f) hereof.

“**Extended Maturity Date**” shall have the meaning set forth in Section 2.6.1 hereof.

“**Extension Notice**” shall have the meaning set forth in Section 2.6.1 hereof.

“**First Extension Option**” shall have the meaning set forth in Section 2.6.1 hereof.

“**First Payment Date**” shall have the meaning set forth in Section 2.3.2 hereof.

“**Fiscal Year**” shall mean each twelve (12) month period commencing on January 1 and ending on December 31 during each year of the term of the Loan.

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

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

“**Guarantor**” shall mean, jointly and severally, and, as the context requires, individually and collectively, Alexander Szkaradek, Antoni Szkaradek, Michael P. Beys each an individual; US Home Rentals, LLC, a Delaware limited liability company and FTE Networks, Inc., a Delaware corporation.

“**Guaranty**” shall mean that certain Guaranty dated as of the date hereof, from Guarantor in favor of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

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

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

“**In Balance**” means, with respect to each Project, no Deficiency then exists with respect to such Project.

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

“**Indemnified Parties**” shall mean Lender and any of its Affiliates and any of their officers, directors, members, partners, employees, representatives and consultants.

“**Indemnifying Person**” shall mean Borrower and each Guarantor, on a joint and several basis.

“**Individual Property**” shall mean all parcels of land, the Improvements thereon and all personal property owned by the Borrower and encumbered by a Security Instrument, together with all rights pertaining to such property and Improvements, as more particularly described in the granting clauses of each such Security Instrument and referred to therein as the “Property”.

“**Interest Period**” shall mean (i) initially, the period commencing on and including the date of the funding of the Loan and ending on and including the last day of the calendar month of the Closing Date, and (ii) thereafter, for any specified Payment Date including the Maturity Date, the period commencing on and including the first (1st) day of the calendar month prior to such Payment Date and ending on the last day of the calendar month in which such Payment Date occurs.

“**Interest Rate**” shall mean a fixed rate of Eleven and Ninety-Nine Hundredths percent (11.99%) per annum.

“**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 Property by or on behalf of Borrower, and (a) every modification, amendment or other agreement relating to such lease, sublease, subsublease, or other agreement entered into in connection with such lease, sublease, subsublease, or other agreement, and (b) every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto.

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

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

“**Lien**” shall mean any mortgage, deed of trust, deed to secure debt, indemnity deed of trust, lien (statutory or otherwise), pledge, hypothecation, easement, restrictive covenant, preference, assignment, security interest, or any other encumbrance, charge or transfer of, or any agreement to enter into or create any of the foregoing, on or affecting Borrower, the Property, or any portion thereof or any interest therein, or any direct or indirect 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 have the meaning set forth in the recitals hereof.

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

“**Management Agreement**” shall mean any property management agreement or similar agreement entered into by and between Borrower and Manager, pursuant to which Manager is to provide management and other services with respect to the Property, and any successor property management approved by Lender, in writing, in Lender’s sole discretion.

“**Manager**” shall mean, the individual or entity who provides management and other services with respect to the Property pursuant to a Management Agreement.

“**Material Adverse Change**” or “**Materially Adverse Effect**” shall mean that the business, operations, property, assets, liabilities or financial condition of any applicable Person and each of their subsidiaries, taken as a whole, or the ability of any such Person to perform its obligations under the Loan Documents, has changed in a manner which could materially impair the value of Lender’s security for the Loan or prevent timely repayment of the Loan or otherwise prevent the applicable person or entity from timely performing any of its material obligations under the Loan Documents or any Lease, as the case may be, as determined by Lender.

“**Material Agreements**” shall have the meaning set forth in Section 15.20 hereof.

“**Maturity Date**” shall mean the Stated Maturity Date, provided that (a) in the event of the exercise by Borrower of the First Extension Option pursuant to Section 2.6, the Maturity Date shall be the First Extended Maturity Date, and (b) in the event of the exercise by Borrower of the Second Extension Option pursuant to Section 2.6, the Maturity Date shall be the Second Extended Maturity Date, or such earlier date on which the final payment of principal of the Note becomes due and payable as herein or therein provided, whether at the Stated Maturity Date, by declaration of acceleration, or otherwise.

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

“**Multiemployer Plan**” shall mean a multiemployer plan, as defined in Section 4001(a)(3) of ERISA to which Borrower or any ERISA Affiliate is making or accruing an obligation to make contributions or has within any of the preceding three plan years made or accrued an obligation to make contributions.

“**Multiple Employer Plan**” shall mean an employee benefit plan, other than a Multiemployer Plan, to which Borrower or any ERISA Affiliate, and one or more employers other than Borrower or an ERISA Affiliate, is making or accruing an obligation to make contributions or, in the event that any such plan has been terminated, to which Borrower or an ERISA Affiliate made or accrued an obligation to make contributions during any of the five plan years preceding the date of termination of such plan.

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

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

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

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

“**Obligations**” shall mean, collectively, Borrower’s obligations for the payment of the Debt and the performance of the Other Obligations.

“**OFAC**” shall mean the Office of Foreign Asset Control of the Department of the Treasury of the United States of America.

“**Officer’s Certificate**” shall mean a certificate delivered to Lender by Borrower which is signed by an authorized officer of (i) Borrower, or (ii) any direct or indirect general partner or member of Borrower with authority to act on behalf of and bind Borrower.

“**Operations Agreements**” shall mean any covenants, restrictions, easements, declarations or agreements of record relating to the construction, operation or use of the Property, together with all amendments, modifications or supplements thereto.

“**Other Charges**” shall mean all ground rents, maintenance charges, impositions other than Taxes, any “common expenses” or expenses allocated to and required to be paid by Borrower under any Operations Agreements and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property, now or hereafter levied or assessed or imposed against the Property or any part thereof.

“**Other Obligations**” shall mean (a) the performance of all obligations of Borrower contained herein; (b) the performance of each obligation of Borrower or any Guarantor contained in any other Loan Document; (c) the payment of all costs, expenses, legal fees and liabilities incurred by Lender in connection with the enforcement of any of Lender’s rights or remedies under the Loan Documents, or any other instrument, agreement or document which evidences or secures any other Obligations or collateral therefor, whether now in effect or hereafter executed; and (d) the payment, performance, discharge and satisfaction of all other liabilities and obligations of Borrower and/or Guarantor to Lender, whether now existing or hereafter arising, direct or indirect, absolute or contingent, and including, without limitation, each liability and obligation of Borrower and each Guarantor under any one or more of the Loan Documents and any amendment, extension, modification, replacement or recasting of any one or more of the instruments, agreements and documents referred to herein or therein or executed in connection with the transactions contemplated hereby or thereby.

“**Outstanding Principal Balance**” shall mean, as of any date, the outstanding principal balance of the Loan. For the avoidance of doubt, the outstanding principal balance of the Loan shall include Project Reserve Funds and all other funds held by lender or escrow agent.

“**Payment Date**” shall mean, commencing with the First Payment Date, the first (1st) day of each calendar month during the term of the Loan until and including the Maturity Date or, for purposes of making payments hereunder, but not for purposes of calculating Interest Periods, if such day is not a Business Day, the immediately preceding Business Day.

“**Permitted Encumbrances**” shall mean, collectively (a) the Liens and security interests created by the Loan Documents, (b) all Liens, encumbrances and other matters disclosed in “Schedule B-I” of the Title Insurance Policy, (c) Liens, if any, for Taxes imposed by any Governmental Authority which are not yet due or delinquent, and (d) such other title and survey exceptions as Lender has approved or may approve in writing in Lender’s sole discretion, which Permitted Encumbrances in the aggregate do not materially adversely affect the value or use of the Property or Borrower’s ability to repay the Loan.

“**Permitted Transfer**” means any of the following: (a) any Transfer, directly as a result of the death of a natural person, of stock, membership interests, partnership interests or other ownership interests previously held by the decedent in question to the Person or Persons lawfully entitled thereto; (b) any Transfer, directly as a result of the legal incapacity of a natural person, of stock, membership interests, partnership interests or other ownership interests previously held by such natural person to the Person or Persons lawfully entitled thereto; and (c) any Transfer expressly permitted by and completed strictly in accordance with Section 5.2.10.

“**Person**” shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any Governmental Authority, and any fiduciary acting in such capacity on behalf of any of the foregoing.

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

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

“**Prohibited Transaction**” shall mean any action or 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.

“**Project**” shall mean and refer to, individually and collectively as applicable, the rehabilitation improvements to each Individual Property more particularly described on Schedule 1.1(b) hereto, that will be funded, in whole or in part, with disbursements of Project Reserve Funds.

“**Project Budget**” shall mean a budget for construction of each Project approved by Lender in its sole discretion and any modifications thereof approved by Lender in writing in its sole and absolute discretion.

“**Project Contracts**” shall mean each contract or agreement to which Borrower or any agent of Borrower is a party, providing for the provision of construction services (including architect’s or engineering services), labor or material in connection with a Project.

“**Project Costs**” shall mean all costs and expenses of every kind and nature whatsoever to be incurred by Borrower in connection with the Completion of a Project, including such reserves and contingencies as Lender shall reasonably require.

“**Project Documents**” shall mean each of the following as approved by Lender with respect to each Project: the Approved Plans and the applicable Project Contracts.

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

“**Project Reserve Funds**” shall have the meaning set forth in Section 7.4.1 hereof.

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

“**Release Amount**” shall mean, for an Individual Property, the lesser of:

(a) the Debt; or

(b) an amount equal to the Allocated Loan Amount for such Individual Property set forth on Schedule 1.1(a) (as adjusted pursuant to Sections 2.4.1(c) and 2.4.2(a) if applicable) multiplied by one hundred and ten percent (110%).

“**Release Property**” shall have the meaning set forth in Section 2.7 hereof.

“**Rents**” shall mean all rents (including additional rents of any kind and percentage rents), rent equivalents, moneys payable as damages (including payments by reason of the rejection of a Lease in a Bankruptcy Action) or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other payments and consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower or any of their agents or employees from any and all sources arising from or attributable to the Property, and the Improvements, including charges for oil, gas, water, steam, heat, ventilation, air-conditioning, electricity, license fees, maintenance fees, charges for Taxes, operating expenses or other amounts payable to Borrower (or for the account of Borrower), revenues from telephone services, vending and all receivables, customer obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of the Property or rendering of services by Borrower, or any of its agents or employees and proceeds, if any, from business interruption or other loss of income insurance.

“Reserve Accounts” shall mean, collectively, the Project Reserve Account, the Net Proceeds Account, and any other escrow or reserve account established pursuant to the Loan Documents

“Reserve Funds” shall mean, collectively, the Project Reserve Funds and any other escrow or reserve funds established pursuant to the Loan Documents.

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

“Retention Amount” shall have the meaning set forth in Section 6.4(b)(iv) hereof.

“Second Extension Option” shall have the meaning set forth in Section 2.6.1 hereof.

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

“Security Instrument” shall mean those certain first priority Deeds of Trust, Security Agreements, Assignment of Leases and Fixture Filings of even date herewith, made by Borrower for the benefit of Lender as security for the Obligations and encumbering the Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Servicer” shall have the meaning set forth in Section 9.3 hereof.

“Servicing Agreement” shall have the meaning set forth in Section 9.3 hereof.

“Severed Loan Documents” shall have the meaning set forth in Section 9.2 hereof.

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

“Stated Maturity Date” shall mean August 31, 2021.

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

“Taxes” shall mean all taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against (a) the Property or part thereof, together with all interest and penalties thereon and (b) against the rents, issues, income or profits thereof or upon the lien or estate hereby created, whether any or all of said taxes, assessments or charges be levied directly or indirectly or as excise taxes or ad valorem real estate or personal property taxes or as income taxes.

“Tenant” shall mean the lessee of all or any portion of the Property under a Lease.

“Title Company” shall mean the title insurance company which issued the Title Insurance Policy.

“Title Insurance Policy” shall mean an ALTA mortgagee title insurance policy in a form acceptable to Lender (or, if the State does not permit the issuance of such ALTA policy, such form as shall be permitted in the State and acceptable to Lender) with respect to the Property and insuring the Lien of any of the Security Instrument encumbering the Property.

“**Transfer**” shall mean means the sale, transfer, hypothecation, pledge, encumbrance, mortgage, conveyance, lease, alienation, assignment, disposition, divestment, or leasing with option to purchase, or assignment of the Property, or any portion thereof or interest therein or in Borrower (whether direct or indirect, legal or equitable including the issuance, sale, assignment, alienation, conveyance, divestment, transfer, disposition, hypothecation, pledge, mortgage or encumbrance of any ownership interest in Borrower or in any entity having an ownership interest in Borrower, whether direct or indirect); or entering into any agreement or contract to do any of the foregoing which is not conditioned on compliance with the terms of the Loan Documents with respect to Transfers, or undertaking, suffering or causing any of the foregoing to occur voluntarily, involuntarily or by operation of law.

“**UCC**” shall mean the Uniform Commercial Code as in effect in the State in which the Property is located, as the same may be amended from time to time *provided, however*, that if by reason of mandatory provisions of law, the perfection or the effect of perfection or non-perfection or priority of the security interest in any item or portion of the collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State in which the Property is located (“**Other UCC State**”), “**UCC**” means the Uniform Commercial Code as in effect in such Other UCC State, as the same may be amended from time to time, for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection or priority.

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

Section 1.2 Principles of Construction. All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All uses of the word “including” shall mean “including, without limitation” unless the context shall indicate otherwise. Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined.

ARTICLE II

GENERAL TERMS

Section 2.1 Loan Commitment; Disbursement to Borrower.

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

2.1.2 Single Disbursement to Borrower. Borrower may request and receive only one disbursement hereunder in respect of the Loan and any amount borrowed and repaid in respect of the Loan may not be re-borrowed. Borrower acknowledges and agrees that the Loan has been fully funded as of the Closing Date.

2.1.3 The Note, Security Instrument and Loan Documents. The Loan shall be evidenced by the Note and secured by the Security Instrument, and the other Loan Documents.

2.1.4 Use of Proceeds. Borrower shall use the proceeds of the Loan to (a) refinance the Property, (b) make deposits of Reserve Funds into the Reserve Accounts on the Closing Date in the amounts provided herein (Borrower hereby authorizing Lender to reserve a portion of the proceeds of the Loan in the amount of the Reserve Funds from disbursement of the proceeds of the Loan on the date hereof), (c) pay costs and expenses incurred in connection with the closing of the Loan, as approved by Lender, and (d) pay for Project Costs.

2.1.5 Upfront Payment. At Closing, Borrower shall pay to Lender an upfront fee (the "*Upfront Payment*") in an amount equal to Seventy-Five Thousand and No/100 Dollars (\$75,000.00), less any portion of the Upfront Fee paid to Lender prior to the Closing. The Upfront Payment is fully earned and non-refundable.

Section 2.2 Interest Rate.

2.2.1 Interest Rate. Subject to Section 2.2.4 hereof, interest on the Outstanding Principal Balance shall accrue from the date of the funding of the Loan to but excluding the Maturity Date at the Interest Rate.

2.2.2 Interest Calculation. With respect to any applicable period, interest on the Outstanding Principal Balance 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 the Interest Rate and a three hundred sixty (360) day year by (c) the average Outstanding Principal Balance in effect for the applicable period as calculated by Lender.

2.2.3 Default Rate. In the event that, and for so long as, any Event of Default shall have occurred and be continuing, the Outstanding Principal Balance and, to the extent permitted by law, all accrued and unpaid interest in respect thereof and any other amounts due pursuant to the Loan Documents, shall accrue interest at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained herein.

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

Section 2.3 Debt Service Payments.

2.3.1 Payments Generally. For purposes of making payments hereunder, but not for purposes of calculating Interest Periods, if the day on which such payment is due is not a Business Day, then amounts due on such date shall be due on the immediately succeeding Business Day. All amounts due pursuant to this Agreement and the other Loan Documents shall be payable without setoff, counterclaim, defense or any other deduction whatsoever.

2.3.2 Monthly Debt Service Payment. On the Closing Date, Borrower shall make a payment of interest only for the period commencing on and including the date of the funding of the Loan through and including September 30, 2020. Beginning on October 1, 2020 (the "*First Payment Date*") and each subsequent Payment Date up to and including the Maturity Date, Borrower shall make a payment to Lender of principal (if any) and interest in an amount equal to the Monthly Debt Service Payment Amount, which payments shall be applied to accrued and unpaid interest.

2.3.3 Payment on Maturity Date. Borrower shall pay to Lender not later than 3:00 P.M., Philadelphia city time, on the Maturity Date the Outstanding Principal Balance, all accrued and unpaid interest and all other amounts due hereunder and under the Note, the Security Instrument and the other Loan Documents.

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

2.3.5 Method and Place of Payment Except as otherwise specifically provided herein, all payments and prepayments under this Agreement and the Note shall be made to Lender not later than 2:00 P.M., Philadelphia city time, on the date when due and shall be made in Dollars in immediately available funds at Lender's office or as otherwise directed by Lender, 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. Any prepayments required to be made hereunder shall be deemed to have been timely made for purposes of this Section 2.3.5.

2.3.6 ACH Payment All payments due and owing under this Agreement or any other Loan Documents shall be made by wire transfer to an account designated by Lender to Borrower from time to time, or at Lender's election, shall be made through automated clearing house ("**ACH**") transfers from the Borrower directly to Lender. In this regard, if Lender elects to receive payments through ACH, shall execute and deliver to Lender an authorization agreement for direct payments whereby, among other things, Lender shall be irrevocably authorized to initiate ACH transfers from the a payment account designated by Borrower to Lender in the amounts required or permitted under this Agreement and all other Loan Documents. Lender's authorization for direct ACH transfers as hereby provided shall be irrevocable and such ACH transfers shall continue until all Obligations are paid in full. For so long as any Obligations remain outstanding, Borrower shall: (i) not revoke Lender's authority to initiate ACH transfers as hereby contemplated; (ii) not change, modify, close or otherwise affect the designated payment account; (iii) deposit all revenues of any nature or kind whatsoever relating to Borrower or its business only into the designated payment account; and (iv) be responsible for all costs, expenses or other fees and charges incurred by Lender as a result of any failed or returned ACH transfers, whether resulting from insufficient sums being available in the designated payment account, or otherwise. Borrower shall undertake any and all required actions, execute any required documents, instruments or agreements, or to otherwise do any other thing required or requested by Lender in order to effectuate the requirements of this Section 2.3.6.

Section 2.4 Prepayments.

2.4.1 Voluntary Prepayments.

(a) Except as otherwise provided in this Section 2.4, Borrower shall not have the right to prepay the Loan in whole or in part. Provided no Event of Default has occurred and is continuing, Borrower may prepay the Loan in whole upon the satisfaction of the following conditions:

(b) Borrower shall provide a written notice to Lender of such prepayment no less than thirty (30) days, and no more than sixty (60) days, prior to the date of such prepayment, specifying the Business Day on which a prepayment of the Debt (the "**Prepayment Date**") is to be made; and

(c) Borrower shall pay to Lender on the Prepayment Date, together with any portion of the Outstanding Principal Balance being repaid:

(i) all accrued and unpaid interest on the amount of the Outstanding Principal Balance being prepaid, which, for the avoidance of doubt, shall include interest on such amount calculated at the applicable Interest Rate through the end of the Interest Period in which such prepayment occurs; and

(ii) without duplication of any of the foregoing, all other sums, then due under the Note, this Agreement, the Security Instrument, and the other Loan Documents.

(d) If for any reason Borrower fails to prepay the Loan on the Prepayment Date (including if such notice is revoked), Borrower shall pay to Lender any actual out-of-pocket losses, costs, damages or expenses (including reasonable attorneys' fees and expenses) incurred by Lender in connection therewith.

(e) Upon receipt by Lender of a voluntary prepayment permitted pursuant to the terms of this Agreement, except for a prepayment made (i) in connection with a release of any Individual Property from the Lien of any of the Security Instruments or (ii) any Casualty/Condemnation Prepayment up to the Allocated Loan Amount of the applicable Individual Property, the Allocated Loan Amount for each Individual Property that is then subject to the Lien of any of the Security Instruments shall be reduced on a pro rata basis by such amount.

2.4.2 Mandatory Prepayments.

(a) 90-Day Principal Payments. On December 1, 2020, Borrower shall make a payment to Lender (the “**Initial 90-Day Principal Payment**”) in an amount equal to five percent (5%) of the Outstanding Principal Balance. Beginning on March 1, 2021 and on each third (3rd) Payment Date thereafter (i.e., on June 1, September 1, December 1 and March 1 of each calendar year), Borrower shall make a payment to Lender (each such payment, and together with the Initial 90-Day Principal Payment, collectively the “**90-Day Principal Payments**”) in an amount (but not less than zero) equal to (a) ten percent (10%) of the Outstanding Principal Balance, less (b) all Release Amounts paid to Lender pursuant to and in accordance with Section 2.7 hereof and applied to pay down the Outstanding Principal Balance but only to the extent such Release Amounts have not been applied to reduce any prior 90-Day Principal Payments. Provided no Event of Default exists, Lender shall apply the 90-Day Principal Payments to the Outstanding Principal Balance.

(b) Net Proceeds Payments. On the Payment Date immediately succeeding the date on which Lender actually receives any Net Proceeds, and if Lender is not required to make such Net Proceeds available to Borrower for a Restoration in accordance with the terms of this Agreement, Borrower shall prepay or authorize Lender to apply the Net Proceeds as a prepayment of the Outstanding Principal Balance in an amount equal to one hundred percent (100%) of such Net Proceeds provided that Borrower shall simultaneously therewith pay to Lender all accrued and unpaid interest on the principal amount being repaid (which, for the avoidance of doubt, shall include interest accruing on such amounts through the last day of the Interest Period in which such repayment occurs). Notwithstanding anything herein to the contrary, so long as no Event of Default has then occurred and is continuing, no or any other prepayment premium, penalty or fee shall be due in connection with any prepayment made pursuant to this Section 2.4.2.

2.4.3 Prepayments After Default. If, during the continuance of an Event of Default, payment of all or any part of the Debt is tendered by Borrower and accepted by Lender or is otherwise recovered by Lender (including through application of any Reserve Funds), such tender or recovery shall be deemed to be a voluntary prepayment by Borrower in violation of the prohibition against prepayment set forth in Section 2.4.1 hereof, and Borrower shall pay, as part of the Debt, all of the interest calculated at the Interest Rate on the amount of principal being prepaid through and including the end of the Interest Period in which such prepayment occurs.

Section 2.5 Release of Property. Except as set forth in Section 2.7 below, no repayment, prepayment 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 of the Security Instruments. Lender shall, upon the written request and at the expense of Borrower, upon payment in full of the Debt in accordance with the terms of this Agreement and the other Loan Documents, release the Lien of the Security Instruments.

Section 2.6 Extension Option(s).

2.6.1 Extension Option(s). Subject to the provisions of this Section 2.6.1, Borrower shall have the option (the “**First Extension Option**”), by irrevocable written notice (the “**First Extension Notice**”) delivered to Lender no later than thirty (30) days prior to the Stated Maturity Date, to extend the Maturity Date to August 31, 2022 (the “**First Extended Maturity Date**”). Borrower’s right to so extend the Maturity Date shall be subject to the satisfaction of the following conditions precedent prior to the effectiveness of any such extension:

(a) (i) no Event of Default shall have occurred and be continuing on the date Borrower delivers the First Extension Notice or the Second Extension Notice, as applicable, and (ii) no Default or Event of Default shall have occurred and be continuing on the Stated Maturity Date and the First Extended Maturity Date, as applicable;

(b) All amounts due and payable by Borrower and any other Person pursuant to this Agreement or the other Loan Documents as of the Stated Maturity Date or the First Maturity Date, as applicable, and all costs and expenses of Lender, including fees and expenses of Lender’s counsel, in connection with the Loan and/or the extension shall have been paid in full;

(c) Borrower shall deliver an Officer's Certificate to Lender (i) certifying that all representations and warranties set forth in this Agreement remain true, correct and complete in all material respects as of the commencement of the applicable Extension Option, and (ii) waiving any claims, counterclaims, rights of rescission, set-offs or defenses, known or unknown, against Lender as of the commencement of the applicable Extension Option.

If Borrower is unable to satisfy all of the foregoing conditions within the applicable time frames for each, Lender shall have no obligation to extend the Stated Maturity Date hereunder.

2.6.2 Extension Documentation. If requested by Lender, Borrower shall execute and deliver an agreement in form and substance reasonably acceptable to Lender commemorating the extension of the Maturity Date upon the exercise of an Extension Option and satisfaction of all applicable conditions to such extension as provided in Section 2.6.1; provided that no such agreement shall materially increase or alter the obligations of Borrower pursuant to the Loan Documents (it being acknowledged that a ratification by Borrower or any Guarantor of its respective obligations under the Loan Documents to which it is a party or a certification by Borrower and/or any Guarantor that its respective representations and warranties set forth in the Loan Documents to which it is a party remain true and correct in all material respects as of the first day of any extension term shall not constitute an increase in Borrower's obligations for such purpose).

2.7 Release of Individual Property. At any time Borrower may obtain the release of an Individual Property from the Lien of the applicable Security Instrument thereon and related Loan Documents (each such Individual Property, a "**Release Property**") and the release of Borrower's obligations under the Loan Documents with respect to such Release Property (other than those expressly stated to survive), upon the satisfaction of each of the following conditions:

(a) Not more than ninety (90) calendar days and not less than ten (10) calendar days prior to the date of the release, Borrower delivers a notice to Lender setting forth (i) the date of the proposed release and (ii) a description of the Release Property that will be subject to the release;

(b) no Event of Default shall be continuing on the date that the Release Property is released from the Lien of the Security Instrument thereon other than as expressly permitted below;

(c) Borrower shall have paid to Lender the applicable Release Amount;

(d) Borrower shall submit to Lender, not less than ten (10) days prior to the date of such release, a release of Lien (and related Loan Documents) for such Release Property for execution by Lender. Such release shall be in a form appropriate in each jurisdiction in which such Release Property is located and that would be reasonably satisfactory to a prudent lender. In addition, Borrower shall provide all documentation Lender reasonably requires to be delivered by Borrower in connection with such release, together with an Officer's Certificate certifying that such documentation (A) will effect such release in accordance with the terms of this Agreement, and (B) will not impair or otherwise adversely affect the Liens, security interests and other rights of Lender under the Loan Documents not being released (or as to the parties to the Loan Documents and Individual Properties subject to the Loan Documents not being released);

(e) Borrower shall have paid or reimbursed Lender for all reasonable out of pocket costs and expenses incurred by Lender (including, without limitation, reasonable attorneys' fees and disbursements) in connection with any release effectuated pursuant to this Section 2.7, and Borrower shall have paid all third-party fees, costs and expenses incurred in connection with any such release, including but not limited to, the payment of all recording charges, filing fees, taxes or other similar expenses incurred in the reasonable judgment of Lender in order to effectuate the release;

(f) [Intentionally omitted]

(g) At Lender's request, Borrower shall deliver to Lender (i) an endorsement to the Title Insurance Policy for the remaining Property (to the extent reasonably available in the State in which the remaining Property is located) insuring the Security Instrument, which endorsement (A) extends the effective date of such Title Insurance Policy for the remaining Property to the effective date of the release, (B) confirms no change in the priority of the Security Instrument on the balance of the Property (exclusive of the Release Parcel); and (C) lists any Permitted Encumbrances; and (ii) at Lender's request, a survey in form and substance reasonably acceptable to Lender of the remaining portion of the Property; and

(h) Notwithstanding the foregoing provisions of this Section 2.7, if the Loan is included in a REMIC Trust, as a condition to such release, Borrower shall have established to Lender's reasonable satisfaction that the loan-to-value ratio of the Loan (expressed as a percentage) based upon valuations obtained by Borrower at its sole cost and expense using (i) an existing appraisal (if such release occurs within twenty-four (24) months of the Closing Date), (ii) a new appraisal or (iii) a broker's price opinion or other written determination of value using a commercially reasonable valuation method (provided, in each case, that such appraisal, opinion or other determination constitutes a commercially reasonable method permitted to a REMIC Trust, and provided, further, that such valuation shall be based solely on the value of real property and shall exclude personal property and going-concern value) does not exceed 125% immediately after the release of the Release Property, no such release will be permitted unless the Borrower pays down the principal balance of the Loan by an amount not less than the greater of (A) the Release Amount or (B) the least of one of the following amounts: (i) if the Individual Property is sold, the net proceeds of an arm's-length sale of the Release Property to an unrelated Person, (ii) the fair market value of the Release Property at the time of the release, or (iii) an amount such that the loan-to-value ratio of the Loan as so determined by Lender after the release is not greater than the loan-to-value ratio of the Loan immediately prior to the release, unless the Lender receives an opinion of counsel that, if (B) is not followed, the Securitization will not fail to maintain its status as a REMIC Trust as a result of the release.

ARTICLE III

[**Intentionally Omitted**]

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

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

4.1.1 Organization. Borrower has been duly organized and is validly existing and in good standing with requisite power and authority to own its properties and to transact the business in which it is now engaged and as contemplated by this Agreement, including, without limitation, the power and authority to do business in the State. Borrower is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations. Borrower possesses all rights, licenses, permits and authorizations, governmental or otherwise, necessary to entitle it to own its properties and to transact the businesses in which it is now engaged. The sole business of Borrower is the ownership, management and operation of the Property. The ownership interests of Borrower are as set forth on the organizational chart attached hereto as Schedule 4.1.1. Borrower (a) has complied in all respects with its articles of organization or limited liability company agreement; (b) has maintained complete books and records and bank accounts separate from those of its Affiliates; and (c) has obeyed all formalities required to maintain its status as, and at all times has held itself out to the public as, a legal entity separate and distinct from any other entity (including, but not limited to, any Affiliate thereof). The signatory hereto has all necessary power, authority and legal right to execute this Agreement, the Note and the other Loan Documents on Borrower's behalf to which Borrower is a party. Guarantor has the necessary power, authority and legal right to execute, deliver and perform its obligations under the Guaranty.

4.1.2 Proceedings. Borrower has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents. This Agreement and the other Loan Documents to which it is a party have been duly executed and delivered by or on behalf of Borrower and constitute the legal, valid and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

4.1.3 No Conflicts. The execution, delivery and performance of this Agreement and the other Loan Documents by Borrower and/or Guarantor, as applicable, will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any Lien, charge or encumbrance (other than pursuant to the Loan Documents) upon any of the property or assets of Borrower pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, partnership agreement, management agreement or other agreement or instrument to which Borrower is a party or by which any of Borrower's property or assets is subject, nor will such action result in any violation of the provisions of any Legal Requirements of any Governmental Authority having jurisdiction over Borrower or any of Borrower's properties or assets, and any consent, approval, authorization, order, registration or qualification of or with any court or any such Governmental Authority required for the execution, delivery and performance by Borrower and/or any Guarantor, as applicable, of this Agreement or any other Loan Documents has been obtained and is in full force and effect.

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

4.1.5 Agreements. Borrower is not a party to any agreement or instrument or subject to any restriction which might materially and adversely affect Borrower or the Property, or Borrower's business, properties or assets, operations or condition, financial or otherwise. Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party or by which Borrower or the Property are bound. Borrower has no material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower is a party or by which Borrower or the Property is otherwise bound, other than as permitted by this Agreement.

4.1.6 Title. Borrower has good, marketable and insurable fee simple title to the real property comprising part of the Property and good title to the balance of the Property, free and clear of all Liens whatsoever except the Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. The Security Instrument, when properly recorded in the appropriate records, together with any UCC-1 financing statements required to be filed in connection therewith, will create (a) a valid, perfected first priority lien on the Property, subject only to Permitted Encumbrances and the Liens created by the Loan Documents, and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty, solely to the extent such security interests can be perfected by the filing of a UCC-1 financing statement, all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. There are no claims for payment for work, labor or materials affecting the Property which are or may become a Lien prior to, or of equal priority with, the Liens created by the Loan Documents.

4.1.7 Solvency. Borrower has (a) not entered into the transaction contemplated by this Agreement or executed the Note, this Agreement or any other Loan Documents with the actual intent to hinder, delay or defraud any creditor and (b) received reasonably equivalent value in exchange for its obligations under such Loan Documents. After 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 liabilities (including contingent liabilities, if any), 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 incur debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debts 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 the obligations of Borrower). No Bankruptcy Action exists against Borrower and Borrower has never been a debtor party in a Bankruptcy Action. No Bankruptcy Action exists against any Guarantor, and neither Borrower nor has any Guarantor has ever been a debtor party in a Bankruptcy Action. Neither Borrower nor any Guarantor is contemplating either a Bankruptcy Action or the liquidation of all or a major portion of Borrower's or Guarantor's respective assets or properties, and Borrower has no knowledge of any Person contemplating the filing of any petition against Borrower or any Guarantor.

4.1.8 Full and Accurate Disclosure. No statement of fact made by or on behalf of Borrower in this Agreement or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no material information that has not been disclosed to Lender which adversely affects, nor as far as Borrower can reasonably foresee, might materially adversely affect, the Property or the business, operations or condition (financial or otherwise) of Borrower or any Guarantor.

4.1.9 No Plan Assets. Borrower is not an “employee benefit plan,” as defined in Section 3(3) of ERISA, subject to Title I of ERISA or Section 4975 of the Code, and none of the assets of Borrower constitutes or will constitute “plan assets” of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101. Compliance by Borrower and each Guarantor with the provisions hereof will not involve any Prohibited Transaction. Neither Guarantor nor Borrower has any pension, profit sharing, stock option, insurance or other arrangement or plan for employees covered by Title IV of ERISA, and no “Reportable Event” as defined in ERISA has occurred and is now continuing with respect to any such plan. The performance by Borrower of its obligations under the Loan Documents and Borrower’s conducting of its operations do not violate any provisions of ERISA. In addition, (a) Borrower is not a “governmental plan” within the meaning of Section 3(32) of ERISA, (b) transactions by or with Borrower are not subject to any state statute or regulation regulating investments of, or fiduciary obligations with respect to, governmental plans within the meaning of Section 2(32) of ERISA which is similar to the provisions of Section 406 of ERISA or Section 4975 of the Code currently in effect, which prohibit or otherwise restrict the transactions contemplated by this Agreement, and (c) none of Borrower, Guarantor or ERISA Affiliate is at the date hereof, or has been at any time within the two years preceding the date hereof, an employer required to contribute to any Multiemployer Plan or Multiple Employer Plan, or a “contributing sponsor” (as such term is defined in Section 4001 of ERISA) in any Multiemployer Plan or Multiple Employer Plan; and none of Borrower, Guarantor or any ERISA Affiliate has any contingent liability with respect to any post-retirement “welfare benefit plan” (as such term is defined in ERISA) except as disclosed to Lender in writing.

4.1.10 Compliance. Borrower and the Property (including the use thereof) comply in all material respects with all applicable Legal Requirements, including, without limitation, building and zoning ordinances and codes. Borrower is not in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority, including, without limitation, any order of a bankruptcy court or plan approved thereby. There has not been committed by Borrower (or any other Person), any act or omission affording any Governmental Authority the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower’s obligations under any of the Loan Documents. Neither the Improvements, if any, as constructed, nor the use of the Property or any contemplated accessory uses, will violate (a) any Legal Requirements (including subdivision, zoning, building, environmental protection and wetland protection Legal Requirements), or (b) any building permits, restrictions or records, or agreements affecting the Property or any part thereof. Neither the zoning authorizations, approvals or variances nor any other right to construct or to use the Property is to any extent dependent upon or related to any real estate other than the Property.

4.1.11 Financial Information. All financial data with respect to the Property and Guarantor, including, without limitation, the statements of cash flow and income and operating expense, that have been delivered to Lender in connection with the Loan (a) are true, complete and correct in all material respects, (b) fairly and accurately represent the financial condition of the Property and each Guarantor as of the date of such reports, and (c) to the extent prepared or audited by an independent certified public accounting firm, have been prepared in accordance with GAAP (or such other accounting basis acceptable to Lender) throughout the periods covered, except as disclosed therein. Except for Permitted Encumbrances, Borrower does not have any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and reasonably likely to have a Materially Adverse Effect on the Property or the Project. Since the date of such financial statements, there has been no Material Adverse Change (or any other material change) in the financial condition, operation or business of Borrower or any Guarantor from that set forth in said financial statements.

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

4.1.13 Federal Reserve Regulations. No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulation U or any other Regulations of such Board of Governors, or for any purposes prohibited by any Legal Requirements or by the terms and conditions of this Agreement or the other Loan Documents.

4.1.14 Public Access. The Property has rights of access to public ways and, upon construction thereon, will be served by water, sewer, sanitary sewer and storm drain facilities adequate to service the Property for its intended uses. All public utilities necessary or convenient to the full use and enjoyment of the Property are located either in the public right-of-way abutting the Property (which will be connected so as to serve the Property without passing over other property) or in recorded easements serving the Property and such easements are set forth in and insured by the Title Insurance Policy. All roads necessary for the use of the Property for its current purpose have been completed and dedicated to public use and accepted by all Governmental Authorities. There is no on-site sewage disposal system and, upon construction thereon, the Property will be served by a sewer system maintained by a Governmental Authority or property owners association.

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

4.1.16 Separate Lots. The Property is comprised of multiple parcels more particularly described on Schedule 1.1(a) which each constitute(s) a separate tax lot or lots and does not constitute a portion of any other tax lot not a part of the Property.

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

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

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

4.1.20 Insurance. Borrower has obtained and has delivered to Lender evidence of all Policies, with all premiums paid thereunder, reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. No claims have been made or are currently pending, outstanding or otherwise remain unsatisfied under any such Policies, and neither Borrower nor any other Person, has done, by act or omission, anything which would impair the coverage of any such Policies.

4.1.21 Flood Zone. None of the Improvements on the Property are located in an area as identified by the Federal Emergency Management Agency as an area having special flood hazards or, if so located, the flood insurance required pursuant to Section 6.1(a)(i) hereof is in full force and effect with respect to the Property.

4.1.22 Leases. Any and all Leases at the Property (a) provide for rental rates comparable to existing local market rates, contain reasonable market rate terms and do not contain any terms which would materially adversely affect Lender's rights under the Loan Documents, (b) are for a lease term not exceeding one year, including all extensions, (c) are with individual, residential, non-commercial tenants, and (d) have been entered into by Borrower in its ordinary course of business. No Person has any possessory interest in the Property or right to occupy the same other than tenants pursuant to the express terms of the Leases.

4.1.23 Survey. Each Survey for the Property delivered to Lender is accurate.

4.1.24 Principal Place of Business; State of Organization. Borrower's principal place of business as of the date hereof is the address set forth in the introductory paragraph of this Agreement. Borrower is organized under the laws of the State of Delaware and is qualified to do business in the all states in which Borrower is required to be qualified.

4.1.25 Filing and Recording Taxes. All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the transfer of the Property to Borrower have been paid. All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Security Instrument, have been paid or are being paid simultaneously with the disbursement of the proceeds of the Loan to Borrower.

4.1.26 [Intentionally omitted].

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

4.1.28 No Change in Facts or Circumstances; Disclosure. All information submitted by Borrower and any Guarantor to Lender including, but not limited to, all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan or in satisfaction of the terms thereof and all statements of fact made by Borrower and each Guarantor in this Agreement or in any other Loan Document, are accurate, complete and correct in all material respects. There has been no Material Adverse Change in any condition, fact, circumstance or event that would make any such information inaccurate, incomplete or otherwise misleading in any material respect or that otherwise materially and adversely affects or might materially and adversely affect the use, operation or value of the Property or the business operations and/or the financial condition of Borrower or any Guarantor. Borrower and each Guarantor have disclosed to Lender all material facts and have not failed to disclose any material fact that could cause any information provided to Lender or representation or warranty made herein to be materially misleading.

4.1.29 Investment Company Act. Borrower is not (a) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; (b) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 2005, as amended; or (c) subject to any other Federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

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

4.1.31 Filing of Returns. Borrower and each Guarantor have filed all Federal income tax returns and all other material tax returns, domestic and foreign, or extensions, as the case may be, required to be filed by it and have paid all material taxes and assessments payable by it that have become due, other than those not yet delinquent and except for those being contested in good faith. Borrower and each Guarantor have each established on its books such charges, accruals and reserves in respect of taxes, assessments, fees and other governmental charges for all fiscal periods as are required by sound accounting principles consistently applied. Neither Borrower, nor any Guarantor knows of any proposed assessment for additional Federal, foreign or state taxes for any period, or of any basis therefor, that, individually or in the aggregate, taking into account such charges, accruals and reserves in respect thereof as such Person has made, could reasonably be expected to cause a Material Adverse Change with respect to Borrower, Guarantor or the Property.

4.1.32 Operations Agreements. Each Operations Agreement is in full force and effect and neither Borrower nor, to the best of Borrower's knowledge, any other party to any such Operations Agreement, 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.

Section 4.2 Survival of Representations. Borrower agrees that all of the representations and warranties of Borrower set forth in Section 4.1 and elsewhere in this Agreement and in the other Loan Documents shall survive for so long as any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

ARTICLE V

BORROWER COVENANTS

Section 5.1 Affirmative Covenants. From the date hereof and until payment and performance in full of all Obligations, Borrower hereby covenants and agrees with Lender that:

5.1.1 Existence; Compliance with Legal Requirements. Borrower shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, licenses, permits and franchises and comply with all Legal Requirements applicable to Borrower and the Property. There shall never be committed by Borrower, and Borrower shall not permit any other Person in occupancy of or involved with the operation or use of the Property to commit, any act or omission affording any Governmental Authority the right of forfeiture against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. Borrower shall not commit, permit or suffer to exist any act or omission affording such right of forfeiture. Borrower shall at all times maintain, preserve and protect all franchises and trade names, preserve all the remainder of its property used or useful in the conduct of its business, and shall keep the Property in good working order and repair, and from time to time make, or cause to be made, all reasonably necessary repairs, renewals, replacements, betterments and improvements thereto, all as more fully provided in the Security Instrument. Borrower shall keep the Property insured at all times by financially sound and reputable insurers, to such extent and against such risks, and maintain liability and such other insurance, as is more fully provided in this Agreement. After prior notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding promptly initiated and conducted in good faith and with due diligence, the validity of any Legal Requirement, the applicability of any Legal Requirement to Borrower or the Property or any alleged violation of any Legal Requirement, provided, that: (a) no Default or Event of Default has occurred and is continuing; (b) such proceeding shall be permitted under, and be conducted in accordance with, the provisions of any instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances; (c) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (d) Borrower shall, upon final determination thereof, promptly comply with any such Legal Requirement determined to be valid or applicable or cure any violation of any Legal Requirement; (e) such proceeding shall suspend the enforcement of the contested Legal Requirement against Borrower and the Property; and (f) Borrower shall furnish such security as may be required in the proceeding, or as may be requested by Lender, to insure compliance with such Legal Requirement, together with all interest and penalties payable in connection therewith. Lender may apply any such security, as necessary to cause compliance with such Legal Requirement at any time when, in the judgment of Lender, the validity, applicability or violation of such Legal Requirement is finally established or the Property (or any part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost.

5.1.2 Taxes and Other Charges. Borrower shall pay, all Taxes and Other Charges now or hereafter levied or assessed or imposed against the Property, or any part thereof, as the same become due and payable. Borrower will deliver or cause to be delivered to Lender receipts for payment or other evidence satisfactory to Lender that the Taxes and Other Charges have been so paid or are not then delinquent no later than ten (10) days prior to the date on which the Taxes and/or Other Charges would otherwise be delinquent if not paid. Borrower shall not suffer and shall promptly pay or cause to be paid and discharged any Lien or charge whatsoever which may be or become a Lien or charge against the Property, and shall promptly pay or cause to be paid all utility services provided to the Property. After prior notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Taxes or Other Charges, provided that (a) no Default or Event of Default has occurred and remains uncured; (b) such proceeding shall be permitted under, and be conducted in accordance with, the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances; (c) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (d) Borrower shall promptly upon final determination thereof pay or cause to be paid the amount of any such Taxes or Other Charges, together with all costs, interest and penalties which may be payable in connection therewith; (e) such proceeding shall suspend the collection of such contested Taxes or Other Charges from the Property (except that if such Taxes or Other Charges must be paid sooner in order to avoid being delinquent, then Borrower shall pay or cause the same to be paid prior to delinquency, and upon making such payment or causing such payment to be made prior to delinquency Borrower may continue such contest); and (f) Borrower shall furnish such security as may be required in the proceeding, or as may be requested by Lender, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon. Lender may pay over any such cash deposit or part thereof held by Lender to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established or the Property (or part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost or there shall be any danger of the Lien of the Security Instrument being primed by any related Lien.

5.1.3 Litigation. Borrower shall give prompt notice to Lender of any litigation or proceedings by any Governmental Authority pending or threatened against Borrower and/or any Guarantor which might have a Materially Adverse Effect on Borrower's or any Guarantor's condition (financial or otherwise) or business or the Property.

5.1.4 Access to Property. Borrower shall permit agents, representatives and employees of Lender to inspect the Property or any part thereof at reasonable hours upon reasonable advance notice (which may be given verbally).

5.1.5 Notice of Default. Borrower shall promptly advise Lender of any Material Adverse Change in Borrower's or any Guarantor's condition, financial or otherwise, or of the occurrence of any Default or Event of Default of which Borrower has knowledge.

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

5.1.7 Perform Loan Documents. Borrower shall observe, perform and satisfy all the terms, provisions, covenants and conditions of, and shall pay when due all costs, fees and expenses to the extent required under the Loan Documents. Payment of the costs and expenses associated with any of the foregoing shall be in accordance with the terms and provisions of this Agreement, including, without limitation, the provisions of Section 10.13 hereof.

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

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

(a) furnish to Lender all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements, and each and every other document, certificate, agreement and instrument required to be furnished by Borrower pursuant to the terms of the Loan Documents or which are reasonably requested by Lender in connection therewith;

(b) authorize the filing or recording of or execute and deliver to Lender such documents, instruments, certificates, assignments, financing statements 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 under the Loan Documents, as Lender may reasonably require; and

(c) 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. In furtherance hereof, Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of protecting, perfecting, preserving and realizing upon the interests granted pursuant to this Agreement and to effect the intent hereof, all as fully and effectually as Borrower might or could do; and Borrower hereby ratifies all that Lender shall lawfully do or cause to be done by virtue hereof. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other applicable Loan Document, and in the case of the Note, receipt of an indemnity from Lender, Borrower will issue, in lieu thereof, a replacement Note or other applicable Loan Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Loan Document in the same principal amount thereof and otherwise of like tenor. Borrower hereby authorizes Lender to file an "all assets" financing statement with respect to the Collateral.

5.1.10 Mortgage Taxes. Borrower shall simultaneously with the disbursement of the proceeds of the Loan pay all state, county and municipal recording and all other taxes imposed upon the execution and recordation of the Security Instrument.

5.1.11 Financial Reporting.

(a) Borrower will keep and maintain or will cause to be kept and maintained on a Fiscal Year basis in accordance with GAAP (or such other accounting basis selected by Borrower and reasonably acceptable to Lender), proper and accurate books, records and accounts reflecting all of the financial affairs of Borrower and all items of income and expense in connection with the operation of the Property. Lender shall have the right from time to time at all times during normal business hours upon reasonable notice (which may be verbal) to examine such books, records and accounts at the office of Borrower or any other Person maintaining such books, records and accounts and to make such copies or extracts thereof as Lender shall desire. After the occurrence of an Event of Default, Borrower shall pay any costs and expenses incurred by Lender to examine Borrower's accounting records with respect to the Property, as Lender shall reasonably determine to be necessary or appropriate in the protection of Lender's interest. Upon Lender's request, Borrower shall furnish to Lender such other information reasonably necessary and sufficient to fairly represent the financial condition of Borrower and the Property.

(b) Borrower will furnish to Lender annually, within one hundred twenty (120) days following the end of each Fiscal Year of Borrower, and within thirty (30) days of the end of each calendar quarter, a complete copy of Borrower's and each Guarantor's annual (or quarterly, as applicable) financial statements certified as true and correct by the party providing such statements (and, for the annual of statements of Borrower prepared by an independent certified public accountant acceptable to Lender) in accordance with GAAP (or such other accounting basis acceptable to Lender, consistently applied) covering the Property for such Fiscal Year (or calendar quarter) and containing statements of profit and loss for Borrower, Guarantor and the Property and a balance sheet for Borrower and each Guarantor. Such statements of Borrower shall set forth the financial condition and the results of operations for the Property for such Fiscal Year (or calendar quarter), and an Officer's Certificate certifying that each annual financial statement of Borrower fairly presents the financial condition and the results of operations of Borrower and the Property subject to such reporting, and that such financial statements have been prepared in accordance with GAAP and as of the date thereof whether 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. Guarantor's annual financial statements shall be accompanied by a certificate executed and delivered by Guarantor (if such Guarantor is a natural person) or an officer or other duly authorized representative of Guarantor (if such Guarantor is an entity) certifying that each annual financial statement presents fairly the financial condition and the results of operations of Guarantor being reported upon and that such financial statements have been prepared in accordance with GAAP (or such other accounting basis acceptable to Lender, and, for Guarantors, Lender hereby approves sound and prudent cash based financial statements consistently applied) and as of the date thereof whether there exists an event or circumstance which constitutes a Default or Event of Default by Guarantor under the Loan Documents, and if such Default or an 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 shall also provide such monthly reports and statements as are reasonably required by Lender within twenty (20) days after the end of each calendar month.

(d) Borrower shall furnish to Lender, within twenty (20) days after request (or as soon thereafter as may be reasonably possible), such further detailed information with respect to the operation of the Property and the financial affairs of Borrower as may be reasonably requested by Lender.

(e) Any reports, statements or other information required to be delivered under this Agreement shall be delivered in electronic form (or such other form as required by Lender) and Borrower agrees that Lender may disclose information regarding the Property and Borrower that is provided to Lender pursuant to this Section 5.1.11 in connection with any Lender Assignment to such parties requesting such information in connection with such Lender Assignment.

(f) Without limitation on other requirements of this Agreement, Lender may require, at Borrower's cost and expense, quarterly valuations of the Loan and Borrower shall cooperate in connection therewith; provided, however, so long as no Event of Default exists, Borrower shall not be required to reimburse Lender more than \$2,500 for the cost of any such quarterly valuation.

5.1.12 Business and Operations. Borrower will continue to engage in the businesses presently conducted by it as and to the extent the same are necessary for the ownership, maintenance, management and operation of the 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, maintenance, management and operation of the Property or ownership and management of an interest in Borrower (as applicable).

5.1.13 Title to the Property. Borrower will warrant and defend (a) the title to the Property and every part thereof, subject only to Permitted Encumbrances, and (b) the validity and priority of the Lien of each of the Security Instruments, subject only to Permitted Encumbrances, in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any losses, costs, damages or expenses (including attorneys' fees and expenses, and court costs) incurred by Lender if an interest in the Property, other than as permitted hereunder, is claimed by another Person.

5.1.14 Costs of Enforcement. In the event (a) that the Security Instrument is foreclosed in whole or in part or that the Security Instrument is put into the hands of an attorney for collection, suit, action or foreclosure, (b) of the foreclosure of any mortgage prior to or subsequent to the Security Instrument in which proceeding Lender is made a party, or (c) of a Bankruptcy Action related to Borrower or an assignment by Borrower for the benefit of its creditors, Borrower, on behalf of itself and its successors and assigns, agrees that it/they shall be chargeable with and shall pay all costs of collection and defense, including attorneys' fees and expenses, and court costs, incurred by Lender or Borrower in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, together with all required service or use taxes.

5.1.15 Estoppel Statement.

(a) After request by Lender, Borrower shall within ten (10) days furnish Lender with a statement, duly acknowledged and certified, setting forth (i) the original principal amount of the Loan, (ii) the Outstanding Principal Balance, (iii) the Interest Rate of the Loan, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the performance of the Obligations, if any, and (vi) that the Note, this Agreement, the Security Instrument and the other Loan Documents are valid, legal and binding obligations of Borrower and have not been modified or if modified, giving particulars of such modification.

(b) Borrower shall use commercially reasonable efforts to deliver to Lender upon request, tenant estoppel certificates from each commercial Tenant, if any, in form and substance reasonably satisfactory to Lender provided that Borrower shall not be required to deliver such certificates more frequently than once in any calendar year.

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

5.1.17 Performance by Borrower. Borrower shall in a timely manner observe, perform and fulfill each and every covenant, term and provision of each Loan Document executed and delivered by, or applicable to, Borrower and shall not enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Loan Document without the prior written consent of Lender.

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

5.1.19 Leasing Matters. Any Lease executed after the date hereof (and any amendment or termination thereof) shall require the prior written consent of Lender, which consent shall be in Lender's sole and absolute discretion. Borrower shall furnish Lender with true, correct and complete executed copies of all Leases, amendments thereof and any related agreements. Without limitation, and as applicable, Lender shall be deemed to have approved all renewals of Leases and all proposed Leases so long as the same (a) provide for rental rates comparable to existing local market rates, contain reasonable market rate terms and do not contain any terms which would materially adversely affect Lender's rights under the Loan Documents, (b) are for a lease term not exceeding one year, including all extensions, (c) are with individual, residential, non-commercial tenants, and (d) have been entered into by Borrower in its ordinary course of business. All Leases executed after the date hereof shall provide that they are subordinate to the Security Instrument and the Liens created thereby and that the Tenant thereunder agrees to attorn to Lender or any other purchaser of the Property at a sale by foreclosure (or deed in lieu thereof) or power of sale. Borrower (a) shall observe and perform the obligations imposed upon the lessor under the Leases in a commercially reasonable manner; (b) shall enforce the terms, covenants and conditions contained in the Leases upon the part of the Tenant thereunder to be observed or performed in a commercially reasonable manner and in a manner which does not impair the value of the Property involved, provided that in no event shall Borrower terminate or accept the surrender of any Lease by a Tenant unless by reason of a Tenant default and then only in a commercially reasonable manner to preserve and protect the Property; *provided, however*, that no such termination or surrender of any Lease will be permitted without the prior written consent of Lender or unless such termination or surrender is specifically provided for in the Lease; (c) shall not collect any of the Rents more than one (1) month in advance (other than security deposits required pursuant to such Lease); (d) shall not execute any other assignment of the lessor's interest in the Leases or the Rents (except to Lender pursuant to the Loan Documents); (e) shall not alter, modify or change the terms of the Leases; and (f) shall execute and deliver at the request of Lender all such further assurances, confirmations and assignments in connection with the Leases as Lender shall from time to time reasonably require. Lender shall have the right to require each new Tenant to execute and deliver to Lender a subordination, non-disturbance of possession and attornment agreement in form, content and manner of execution reasonably acceptable to Lender.

5.1.20 Operation of Property.

(a) Borrower shall: (i) promptly perform and/or observe in all material respects all of the covenants and agreements required to be performed and observed by it under any of the Operations Agreements and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Lender of any material default under any Operations Agreement of which it is aware; and (iii) enforce the performance and observance of all of the covenants and agreements required to be performed and/or observed by any party (other than Borrower) under the Operations Agreements, in a commercially reasonable manner.

(b) All Material Agreements shall be subject to the prior review and approval, not to be unreasonably withheld, of Lender. As used herein, “**Material Agreements**” shall mean each contract and agreement relating to the ownership, management, development, use, operation, leasing, maintenance, repair or improvement of the Property, as to which either (a) there is an obligation of Borrower to pay more than \$50,000 in the aggregate, or (b) the term thereof extends beyond one year (unless cancelable on thirty (30) days or less notice without requiring the payment of termination fees or payments of any kind).

5.1.21 Changes in the Legal Requirements Regarding Taxation. If any Legal Requirement or other law, order, requirement or regulation of any Governmental Authority is enacted or adopted or amended after the date the Loan is funded which imposes a tax, either directly or indirectly, on the Obligations or Lender’s interest in the Property, Borrower must pay or cause to be paid such tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of such tax or interest and penalties by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then in any such event, Lender may, by written notice to Borrower of not less than ninety (90) days, declare the Obligations immediately due and payable.

5.1.22 No Credits on Account of the Obligations. Borrower will not claim or demand or be entitled to any credit or credits on account of the Obligations for any payment of Taxes assessed against the Property and no deduction shall otherwise be made or claimed from the assessed value of the Property for real estate tax purposes because of the Loan Documents or the Obligations. If Legal Requirements or other laws, orders, requirements or regulations require such claim, credit or deduction, Lender may, by written notice to Borrower of not less than ninety (90) days, declare the Obligations immediately due and payable.

5.1.23 Personal Property. Borrower shall cause all of its personal property, fixtures, attachments and equipment delivered upon, attached to or used in connection with the operation of the Property to always be located at the Property and shall be kept free and clear of all Liens, encumbrances and security interests, except Permitted Encumbrances.

5.1.24 Rehabilitation Project.

(a) Project Documents. Borrower shall diligently and continuously undertake to Complete each Project in conformance with the applicable Project Documents. Borrower will perform its obligations under the Project Documents and will enforce the terms of the Project Documents.

(b) Permits. Borrower shall pay for and obtain or cause to be paid for and obtained all permits, licenses and approvals required by applicable Legal Requirements with regard to each Project.

(c) Lender Consultants. At Borrower’s expense, Lender shall have the right to employ an inspecting architect, engineer or consultant with respect to a Project. Borrower shall pay immediately upon demand the fees and expenses of any architect, engineer or consultant employed by Lender for the purpose of reviewing plans or otherwise engaged by Lender with respect to any Project.

(d) Performance by Lender. Upon the occurrence of an Event of Default, Lender shall have the right, without limitation of Lender’s other remedies under the Loan Documents, upon written notice to Borrower, either before or after accelerating the Debt or commencing foreclosure, either directly or through Lender’s agents and contractors to (i) enter onto the Property, (ii) complete the Project, (iii) modify the Project as Lender deems necessary, (iv) hire or replace any contractor or vendor retained by Borrower in connection with the Project as Lender deems necessary, (v) expend such sums as Lender determines necessary to Complete such Project and (vi) purchase any insurance coverage deemed appropriate by Lender in its sole discretion relating to the Project or Lender’s exercise of its rights under this Section 5.1.24(d). Borrower hereby waives any right to contest any such costs or expenses incurred by Lender in the exercise of Lender’s rights under this Section 5.1.24(d), and such costs and expenses (a) shall be added to the Debt, (b) shall be secured by the Security Instrument, (c) shall accrue interest at the Default Rate, and (d) shall be payable to Lender upon demand. Borrower hereby agrees to indemnify and hold harmless Lender for any such costs or expenses. Borrower hereby grants Lender an irrevocable power of attorney, coupled with an interest, to exercise Lender’s rights under this Section 5.1.24(d). Lender does not have and shall not have any obligation to complete any Project.

Section 5.2 Negative Covenants. From the date hereof until payment and performance in full of the Obligations, Borrower covenants and agrees with Lender that it will not do, directly or indirectly, any of the following:

5.2.1 Operation of Property. Borrower shall not, without Lender's prior consent (which consent shall be in Lender's sole and absolute discretion): enter into, amend, surrender, terminate, waive any rights under or cancel any Management Agreement.

5.2.3 Liens. Borrower shall not create, incur, assume, permit or suffer to exist any Lien on any portion of the Property or permit any such action to be taken, except for Permitted Encumbrances.

5.2.4 Dissolution. Borrower shall not (a) engage in any dissolution, liquidation, consolidation or merger with or into any other business entity, (b) engage in any business activity not related to the ownership and operation of the Property, (c) transfer, lease or sell, in one transaction or any combination of transactions, the assets or all or substantially all of the properties or assets of Borrower except to the extent permitted by the Loan Documents, or (d) modify, amend, waive or terminate its organizational documents or its qualification and good standing in any jurisdiction.

5.2.5 Change in Business. Borrower shall not enter into any line of business other than the ownership and operation of the Property, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business.

5.2.6 Debt Cancellation. Borrower shall not cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to Borrower by any Person, except for adequate consideration and in the ordinary course of Borrower's business.

5.2.7 Zoning. Borrower shall not initiate or consent to any zoning reclassification of any portion of the Property or seek any variance under any existing zoning ordinance, or use or permit the use of any portion of the 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, in each case, without the prior written consent of Lender.

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

5.2.9 Principal Place of Business and Organization. Borrower shall not change its principal place of business set forth in the introductory paragraph of this Agreement without first giving Lender at least thirty (30) days prior notice. Borrower shall not change the place of its organization as set forth in Section 4.1.24 without the consent of Lender, which consent shall not be unreasonably withheld. Upon Lender's request, Borrower shall execute and deliver additional financing statements, security agreements and other instruments which may be necessary to effectively evidence or perfect Lender's security interest in the Property as a result of such change of principal place of business or place of organization.

5.2.10 ERISA.

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

(b) Borrower further covenants and agrees to 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 (1) Borrower is not an “employee benefit plan” as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a “governmental plan” within the meaning of Section 3(32) of ERISA; (2) Borrower is not subject to any state statute regulating investments of, or fiduciary obligations with respect to, governmental plans; and (3) one or more of the following circumstances is true: (i) Equity interests in Borrower are publicly offered securities, within the meaning of 29 C.F.R. §2510.3-101(b)(2); (ii) Less than twenty-five percent (25%) of each outstanding class of equity interests in Borrower is held by “benefit plan investors” within the meaning of 29 C.F.R. §2510.3-101(f)(2); (iii) Borrower qualifies as an “operating company” or a “real estate operating company” within the meaning of 29 C.F.R. §2510.3-101(c) or (e); or (iv) The Loan meets the requirements of PTE 95-60, 90-1, 84-14 or similar exemption.

5.2.11 Transfers; Assumptions.

(a) Without the prior written consent of Lender and except to the extent otherwise set forth in this Section 5.2.10, no Transfer may occur without the prior written consent of Lender in its sole and absolute discretion.

(b) Notwithstanding the provisions of this Section 5.2.10, Lender’s consent shall not be required in connection with a Permitted Transfer; *provided, however*, that all of the following conditions are satisfied with respect to any such Transfers: (1) Borrower shall provide Lender thirty (30) days’ prior written notice thereof (other than a Permitted Transfer for which notice shall occur within thirty (30) days’ after such Transfer), (2) such Transfer shall not result in a change in the day-to-day management and operations of the Property, (3) [intentionally omitted], and (4) such Transfer shall not result in a breach of Section 5.2.9 or 5.2.13. Notwithstanding anything set forth herein, and without limiting any restrictions on any Transfer set forth herein, if any proposed transfer of any direct or indirect interests in Borrower would otherwise be a Permitted Transfer or not require Lender’s consent but shall result in any Person owning more than twenty percent (20%) of the direct or indirect legal, beneficial or economic interest in Borrower (other than Persons currently owning more than twenty percent (20%) of the direct or indirect legal, beneficial or economic interest in Borrower), approval of such transferee is required so that Lender can confirm the transfer and transferee complies with all legal and regulatory requirements and Lender policies relating to such transfer and transferee, including, without limitation, the Patriot Act and federal regulations issued with respect thereto and to ensure compliance with the representations in Section 4.1.30 hereof.

(c) Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon a Transfer without Lender’s consent. This provision shall apply to every Transfer regardless of whether voluntary or not, or whether or not Lender has consented to any previous Transfer.

5.2.12 Operations Agreements. Borrower shall not, without the prior written consent of Lender, modify any of the Operations Agreements.

5.2.13 [Intentionally omitted].

5.2.14 Embargoed Person; OFAC. As of the date hereof and at all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower and any Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person; (b) no Embargoed Person has any interest of any nature whatsoever in Borrower or any Guarantor, as applicable, with the result that the investment in Borrower or any Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of Borrower or any Guarantor, as applicable, have been derived from any unlawful activity with the result that the investment in Borrower or any Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law. Neither Borrower nor any Guarantor is (or will be) a Person with whom Lender is restricted from doing business under OFAC regulations (including those persons named on OFAC’s Specially Designated and Blocked Persons list) or under any statute, executive order (including the September 24, 2001 #13224 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and shall not engage in any dealings or transactions or otherwise be associated with such Persons. In addition, to help the US Government fight the funding of terrorism and money laundering activities, The USA Patriot Act (and the regulations thereunder) requires Lender to obtain, verify and record information that identifies its customers. Borrower shall provide Lender with any additional information that Lender deems necessary from time to time in order to ensure compliance with The USA Patriot Act and any other applicable Legal Requirements concerning money laundering and similar activities.

5.2.15 Distributions. Borrower shall not make or permit any Distribution.

5.2.16 Affiliate Agreements. Borrower shall not enter into any agreement with an Affiliate without Lender's prior written consent, in its sole and absolute discretion.

ARTICLE VI

INSURANCE; CASUALTY; CONDEMNATION

Section 6.1 Insurance.

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

(i) comprehensive "All Risk" or "Special Form" insurance on the Improvements and the Personal Property (A) in an amount equal to one hundred percent (100%) of the "**Full Replacement Cost**," which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations) with no depreciation; (B) containing an agreed amount endorsement with respect to the Improvements and Personal Property waiving all co-insurance provisions, or confirmation that co-insurance does not apply; and (C) providing for no deductible in excess of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) for all such insurance coverage. In addition, Borrower shall obtain: (x) if any portion of the Improvements is currently, or at any time in the future, located in a Federally designated "special flood hazard area", flood hazard insurance in an amount equal to the Outstanding Principal Balance or such other amount as Lender shall require; (y) earthquake insurance in amounts and in form and substance satisfactory to Lender in the event the Property is located in an area with a high degree of seismic activity; and (z) windstorm insurance in amounts and in form and substance satisfactory to Lender in the event such windstorm coverage is excluded under the Special Form Coverage, provided that the insurance pursuant to clauses (x), (y) and (z) hereof shall be on terms consistent with the comprehensive "All Risk" or "Special Form" insurance policy required under this subsection (i);

(ii) commercial general liability insurance, including a broad form comprehensive general liability endorsement and coverage against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, such insurance (A) to be on the so-called "occurrence" form with a combined limit of not less than Two Million and No/100 Dollars (\$2,000,000.00) in the aggregate and One Million and No/100 Dollars (\$1,000,000.00) per occurrence (and, if on a blanket policy, containing an "Aggregate Per Location" endorsement); (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 insured contracts; and (5) contractual liability covering the indemnities contained in Article VIII of the Security Instrument to the extent the same is available;

(iii) if there are tenants of the Property, rental loss insurance (A) with loss payable to Lender; (B) covering all risks required to be covered by the insurance provided for in subsection (i) above; and (C) for loss of Rents in an amount equal to one hundred percent (100%) of the projected rents from ` for a period of twelve (12) months from the date of such Casualty (assuming such Casualty had not occurred) and notwithstanding that the policy may expire prior to or at the end of such period. The amount of such loss of Rents or business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on Borrower's reasonable estimate of income to be derived from the Property for the succeeding twelve (12) month period. Notwithstanding anything to the contrary set forth herein, all proceeds payable to Lender pursuant to this subsection shall be held by Lender and shall be applied at Lender's sole discretion to (I) the Debt, or (II) operating expenses for the Property approved by Lender in its sole discretion; *provided, however*, that nothing herein contained shall be deemed to relieve Borrower of its obligations to pay the Debt, 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 forms do not otherwise apply, (A) owner's and contractor's 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 Property, and (4) with an agreed amount endorsement waiving co-insurance provision, or confirmation that co-insurance does not apply;

(v) if Borrower ever has any direct employees, worker's compensation insurance with respect to any employees of Borrower, as required by any Governmental Authority or Legal Requirement;

(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) if Borrower ever has any direct employees or owns any motor vehicles, motor vehicle liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence of not less than One Million and No/100 Dollars (\$1,000,000.00);

(viii) umbrella or excess liability insurance in an amount not less than Five Million and No/100 Dollars (\$5,000,000.00) per occurrence on terms consistent with the commercial general liability insurance policy required under subsection (ii) above;

(ix) if the Property is or becomes a legal "non-conforming" use or structure, ordinance or law coverage to compensate for the value of the undamaged portion of the Property, the cost of demolition and increased cost of construction in amounts as requested by Lender;

(x) if applicable, the commercial property, business income, general liability and umbrella or excess liability insurance required under Sections 6.1(a)(i), (ii), (iii) and (viii) above shall cover perils of terrorism and acts of terrorism and Borrower shall maintain commercial property and business income insurance for loss resulting from perils and acts of terrorism on terms (including amounts) consistent with those required under Sections 6.1(a)(i), (ii), (iii) and (viii) above at all times during the term of the Loan so long as Lender determines that either (I) prudent owners of real estate comparable to the Property are maintaining same or (II) prudent institutional lenders (including, without limitation, investment banks) to such owners are requiring that such owners maintain such insurance; and

(xi) upon sixty (60) days' notice, such other insurance and in such amounts as Lender from time to time may request against such other insurable hazards which at the time are commonly insured against for properties similar to the Property located in or around the region in which the Property is located.

(b) All insurance provided for in Section 6.1(a) shall be obtained under valid and enforceable policies (collectively, the "**Policies**" or in the singular, the "**Policy**"), and shall be subject to the approval of Lender as to insurance companies, amounts, deductibles, loss payees and insureds. The Policies shall be issued by financially sound and responsible insurance companies authorized to do business in the State and having a claims paying ability rating of "A-" or better by S&P or "A-X" or better by AM Best or "A3" or better by Moody's Investor Service, Inc.. Prior to the expiration dates of the Policies theretofore furnished to Lender, certificates of insurance evidencing the renewal or successor Policies accompanied by evidence satisfactory to Lender of payment of the premiums due thereunder (the "**Insurance Premiums**"), shall be delivered by Borrower to Lender. Borrower shall supply an original or certified copy of the original policy within ten (10) days of request by Lender, provided that the policy is available.

(c) Any blanket insurance Policy shall specifically allocate to the 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 Property in compliance with the provisions of Section 6.1(a).

(d) All Policies provided for or contemplated by Section 6.1(a), except for the Policy referenced in Section 6.1(a)(v), shall name Borrower as the insured and Lender (and its successors and assigns) as Mortgagee, Loss Payee and Additional Insured, as its interests may appear, and in the case of property damage, boiler and machinery, flood and earthquake insurance, shall contain a standard non-contributing mortgagee clause in favor of Lender providing that the loss thereunder shall be payable to Lender.

(e) All Policies provided for in this Section 6.1 shall contain clauses or endorsements to the effect that: (i) no act or negligence of Borrower, or anyone acting for Borrower, or of any tenant or other occupant, or failure to comply with the provisions of any Policy, which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Lender is concerned; (ii) the Policies on which Lender is listed as a Mortgagee shall not be canceled without at least thirty (30) days' notice to Lender; (iii) Lender shall not be liable for any Insurance Premiums thereon or subject to any assessments thereunder; and (iv) shall contain a waiver of subrogation in favor of Lender.

(f) If at any time Lender is not in receipt of written evidence that all Policies are in full force and effect, Lender shall have the right, without notice to Borrower, to take such action as Lender deems necessary to protect its interest in the Property, including, without limitation, the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate. 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 Security Instrument and shall bear interest at the Default Rate. Provided no Event of Default exists, Lender shall promptly provide Borrower with notice of any such premiums incurred.

(g) Without limitation, Borrower shall continue to maintain all insurance that is in effect as of the date hereof.

Section 6.2 Casualty. If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (a "**Casualty**"), Borrower shall (a) give prompt notice of such damage to Lender, and (b) promptly commence and diligently prosecute the completion of Restoration so that the Property resembles, as nearly as possible, the condition the Property was in immediately prior to such Casualty, with such alterations as may be reasonably approved by Lender and otherwise in accordance with Section 6.4. Borrower shall pay all costs of such Restoration whether or not such costs are covered by insurance. Lender may, but shall not be obligated to make proof of loss if not made promptly by Borrower. In addition, Lender may participate in (and have approval rights over) any settlement discussions with any insurance companies with respect to any Casualty in which the Net Proceeds or the costs of completing Restoration are equal to or greater than five percent (5%) of the applicable Allocated Loan Amount for the affected Individual Property and Borrower shall deliver to Lender all instruments required by Lender to permit such participation.

Section 6.3 Condemnation. Borrower shall promptly give Lender notice of the actual or threatened commencement of any proceeding in respect of Condemnation, and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings, and Borrower shall from time to time deliver to Lender all instruments requested by 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 taking by any public or quasi-public authority through Condemnation or otherwise (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to perform the Obligations at the time and in the manner provided in this Agreement and the other Loan Documents and the Outstanding Principal Balance shall not be reduced until any Award shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Obligations. Lender shall not be limited to the interest paid on the Award by the applicable 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 Property or any portion thereof is taken by a Governmental Authority, Borrower shall promptly commence and diligently prosecute Restoration and otherwise comply with the provisions of Section 6.4. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the Award, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the Award, or a portion thereof sufficient to pay the Debt.

Section 6.4 Restoration. If there are any Improvements on the Property, the following provisions shall apply:

(a) If the Net Proceeds and the costs of completing Restoration shall each be less than five percent (5%) of the applicable Allocated Loan Amount for the affected Individual Property, then the Net Proceeds will be disbursed by Lender to Borrower upon receipt, provided that all of the conditions set forth in Section 6.4(b)(i) are met and Borrower delivers to Lender a written undertaking to expeditiously commence and to satisfactorily complete with due diligence Restoration in accordance with the terms of this Agreement.

(b) If the Net Proceeds are equal to or greater than five percent (5%) of the applicable Allocated Loan Amount for the affected Individual Property, but less than twenty percent (20%) of the applicable Allocated Loan Amount for the affected Individual Property, or the costs of completing Restoration are equal to or greater than five percent (5%) of the applicable Allocated Loan Amount for the affected Individual Property, but less than twenty percent (20%) of the applicable Allocated Loan Amount for the affected Individual Property, then, in either case, the Net Proceeds will be held by Lender and Lender shall make the Net Proceeds available for Restoration in accordance with the provisions of this Section 6.4. The term "**Net Proceeds**" for purposes of this Section 6.4 shall mean: (i) the net amount of all insurance proceeds received by Lender pursuant to Section 6.1 (a)(i), (iv), (vi), (ix) and (x) as a result of such damage or destruction, after deduction of Lender's reasonable costs and expenses (including, but not limited to, reasonable counsel costs and fees), if any, in collecting same ("**Insurance Proceeds**"), or (ii) the net amount of the Award, after deduction of Lender's reasonable costs and expenses (including, but not limited to, reasonable counsel costs and fees), if any, in collecting same ("**Condemnation Proceeds**"), whichever the case may be.

(i) The Net Proceeds shall be made available to Borrower for Restoration upon the determination of Lender in its sole discretion that the following conditions are met:

(A) no Event of Default shall have occurred and be continuing;

(B) in the event the Net Proceeds are Condemnation Proceeds, 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 Property, and no portion of the Improvements is located on such land;

(C) if applicable, Leases demising in the aggregate a percentage amount equal to or greater than ninety percent (90%) of the total rentable space in the affected Individual Property which has been demised under executed and delivered Leases in effect as of the date of the occurrence of such Casualty or Condemnation, whichever the case may be, shall remain in full force and effect during and after the completion of Restoration, notwithstanding the occurrence of any such Casualty or Condemnation, whichever the case may be, and will make all necessary repairs and restorations thereto at their sole cost and expense;

(D) Borrower shall commence Restoration as soon as reasonably practicable (but in no event later than sixty (60) days after such Casualty or Condemnation, whichever the case may be, occurs) and shall diligently pursue the same to satisfactory completion;

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

(F) Lender shall be satisfied that Restoration will be completed on or before the earliest to occur of (1) four (4) months prior to the Maturity Date, (2) the earliest date required for such completion under the terms of any Leases, (3) such time as may be required under all applicable Legal Requirements in order to repair and restore the affected Individual Property to the condition it was in immediately prior to such Casualty or to as nearly as possible the condition it was in immediately prior to such Condemnation, as applicable, or (4) the expiration of the insurance coverage referred to in Section 6.1(a)(iii);

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

applicable Legal Requirements; (H) Restoration shall be done and completed by Borrower in an expeditious and diligent fashion and in compliance with all

related Improvements; (I) such Casualty or Condemnation, as applicable, does not result in the loss of access to the affected Individual Property or the

architect or engineer stating the entire cost of completing Restoration, which budget shall be acceptable to Lender; and (J) Borrower shall deliver, or cause to be delivered, to Lender a signed detailed budget approved in writing by Borrower's

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

(ii) The Net Proceeds shall be paid directly to Lender for deposit in an interest-bearing account (the "*Net Proceeds Account*") and, until disbursed in accordance with the provisions of this Section 6.4(b), shall constitute additional security for the Debt and the Other Obligations. The Net Proceeds shall be disbursed by Lender to, or as directed by, Borrower from time to time during the course of Restoration, upon receipt of evidence satisfactory to Lender that (A) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with Restoration have been paid for in full, and (B) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Property which have not either been fully bonded to the satisfaction of Lender and discharged of record or in the alternative fully insured to the satisfaction of Lender by the Title Company.

(iii) All plans and specifications required in connection with Restoration shall be subject to prior review and acceptance in all respects by Lender in its discretion and by an independent consulting engineer selected by Lender (the "*Casualty Consultant*"). Lender shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with Restoration. The identity of the contractor engaged in Restoration, as well as the contracts under which it has been engaged, shall be subject to prior review and acceptance by Lender in its discretion and the Casualty Consultant. All costs and expenses incurred by Lender in connection with making the Net Proceeds available for Restoration including, without limitation, reasonable counsel fees and disbursements and the Casualty Consultant's fees, shall be paid by Borrower.

(iv) In no event shall 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 Restoration, as certified by the Casualty Consultant, minus the Retention Amount. The term "*Retention Amount*" shall mean, as to each contractor, subcontractor or materialman engaged in Restoration, an amount equal to ten percent (10%) of the costs actually incurred for work in place as part of Restoration, as certified by the Casualty Consultant, until Restoration has been completed. The Retention Amount shall in no event, and notwithstanding anything to the contrary set forth above in this Section 6.4(b), be less than the amount actually held back by Borrower from contractors, subcontractors and materialmen engaged in Restoration. The Retention Amount shall not be released until the Casualty Consultant certifies to Lender that Restoration has been completed in accordance with the provisions of this Section 6.4(b) and that all approvals necessary for the re-occupancy and use of the Property have been obtained from all appropriate Governmental Authorities, and Lender receives evidence satisfactory to Lender that the costs of Restoration have been paid in full or will be paid in full out of the Retention Amount; *provided, however*, that Lender will release the portion of the Retention Amount being held with respect to any contractor, subcontractor or materialman engaged in 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 Security Instrument and evidence of payment of any premium payable for such endorsement. If required by Lender, the release of any such portion of the Retention Amount shall be approved by the surety company, if any, which has issued a payment or performance bond with respect to the contractor, subcontractor or materialman.

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

(vi) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the 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 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 Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this Section 6.4(b) shall constitute additional security for the Debt and the Other Obligations.

(vii) The excess, if any, of the Net Proceeds and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Lender after the Casualty Consultant certifies to Lender that Restoration has been completed in accordance with the provisions of this Section 6.4(b), and the receipt by Lender of evidence satisfactory to Lender that all costs incurred in connection with Restoration have been paid in full, shall be remitted by Lender to Borrower, provided no Event of Default shall have occurred and shall be continuing.

(c) If Net Proceeds are (i) equal to or greater than twenty percent (20%) of the applicable Allocated Loan Amount for the affected Individual Property, (ii) not required to be made available for Restoration (due to Borrower's inability to satisfy the conditions set forth in Section 6.4(b)(i) or otherwise), or (iii) not to be returned to Borrower as excess Net Proceeds pursuant to Section 6.4(b)(vii), then in any such event all Net Proceeds may be retained and applied by Lender in accordance with Section 2.4.2 hereof toward reduction of the Outstanding Principal Balance whether or not then due and payable in such order, priority and proportions as Lender in its sole discretion shall deem proper, or, in the sole discretion of Lender, the same may be paid, either in whole or in part, to Borrower for such purposes as Lender shall approve, in its sole discretion. No prepayment charge shall be payable by Borrower by reason of a Casualty or Condemnation.

(d) In the event of foreclosure of the Security Instrument, or other transfer of title to the Property in extinguishment in whole or in part of the Debt all right, title and interest of Borrower in and to the Policies that are not blanket Policies then in force concerning the Property and all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure or Lender or other transferee in the event of such other transfer of title.

ARTICLE VII

RESERVE FUNDS

Section 7.1 [Intentionally Omitted]

Section 7.2 [Intentionally Omitted]

Section 7.3 Reserve Funds, Generally.

(a) Borrower (i) hereby grants to Lender a first priority security interest in all of the Reserve Funds and any and all monies now or hereafter deposited in each Reserve Account as additional security for payment and performance of the Obligations and (ii) will take all actions necessary to maintain in favor of Lender a perfected first priority security interest in the Reserve Funds, including, without limitation, filing or authorizing Lender to file UCC-1 financing statements and continuations thereof. Until expended or applied in accordance herewith, the Reserve Funds shall constitute additional security for the Obligations.

(b) Upon the occurrence of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in any or all of the Reserve Funds to the reduction of the Outstanding Principal Balance or the payment of any other amounts then due and owing under this Agreement or any of the other Loan Documents in any order in its sole discretion.

(c) Borrower shall not further pledge, assign or grant any security interest in any Reserve Fund or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 financing statements, except those naming Lender as the secured party, to be filed with respect thereto.

(d) The Reserve Funds shall not constitute trust funds and may be commingled with other monies held by Lender. No earnings or interest on the Reserve Funds shall be payable to Borrower. Lender shall not have any obligation to keep or maintain such Reserve Funds or any funds deposited therein in interest bearing accounts.

(e) Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys' fees and expenses) (collectively, "**Claims**") arising from or in any way connected with the Reserve Funds or the performance of the obligations for which the Reserve Funds were established; provided, however, Borrower shall not be obligated to indemnify Lender for any such Claims to the extent arising from Lender's gross negligence or willful misconduct. Borrower shall assign to Lender all rights and claims Borrower may have against all Persons supplying labor, materials or other services which are to be paid from or secured by the Reserve Funds; *provided, however*, that Lender may not pursue any such right or claim unless an Event of Default has occurred and remains uncured.

(f) Upon payment in full of the Debt in accordance with the terms of this Agreement and the other Loan Documents, Lender shall return any remaining Reserve Funds to Borrower.

Section 7.4 Project Reserve Funds.

7.4.1 Deposits of Project Reserve Funds. Borrower shall deposit with Lender (which amount may be net funded by Lender but deemed disbursed) an amount equal to \$175,000.00 on the Closing Date for the purpose of funding Project Costs, which amounts shall be deposited into a Reserve Account (the "**Project Reserve Account**"). Amounts deposited from time to time into the Project Reserve Account pursuant to this Section 7.4.1 are referred to herein as the "**Project Reserve Funds**". The allocated amount of Project Reserve Funds with respect to each Individual Property, are set forth on Schedule 1.1(a) hereof.

7.4.2 Disbursement of Project Reserve Funds.

(a) Disbursements Upon Completion of Project at Individual Property. Each disbursement of Project Reserve Funds shall be released subject to satisfaction of the following conditions, any of which may be waived by Lender in Lender's sole discretion:

(i) Any request for a disbursement of Project Reserve Funds shall be submitted to Lender on Lender's form of request, not less than ten (10) Business Days prior to the anticipated date for the disbursement of Project Reserve Funds, and shall be accompanied by all evidence required to be approved by Lender as a condition to such disbursement, including an Officer's Certificate stating that said conditions are then satisfied;

(ii) Disbursement of Project Reserve Funds shall only be used for the portion of the Project at the Individual Property to which the request for disbursement of Project Reserve Funds relates shall not exceed the amount of the Project Reserve Funds allocated to the applicable Individual Property;

(iii) Borrower shall be in compliance with the terms and conditions of Section 5.1.24;

(iv) The relevant portion of the Project at an Individual Property to which the requested disbursement of Project Reserve Funds relates shall be Complete;

(v) At Lender's election, Lender shall have received certificates of Lender's consultant, any Architect and the General Contractor that the such portion of the Project is Complete;

(vi) Evidence reasonably acceptable to Lender, together with all other appropriate certificates and other documentation that Lender may require from, and as are customarily issued by, applicable Governmental Authorities, evidencing (i) compliance with all applicable Legal Requirements, including final certificates of occupancy and all consents or approvals required from third parties or any Governmental Authority have been obtained, and (ii) that no petitions, actions or proceedings are pending or threatened which could reasonably be expected to materially alter or declare invalid any approvals, consents, permits or certificates for or relating to the Project, or any part thereof;

(vii) Final unconditional waivers of lien (and evidence of payment) from all other contractors, subcontractors and materialmen as required by Lender or the Title Company; and

(viii) Lender shall have received notices of title continuation showing that since the date of the last disbursement of Project Reserve Funds there has been no adverse change in the state of title to the applicable Individual Property not approved by Lender, and, to the extent that any new improvements have been constructed at the applicable Individual Property outside their footprint on the date of the most recent survey, no adverse survey exceptions with respect to the Property not theretofore approved by Lender, and Lender may, in its discretion, require an endorsement to the Title Insurance Policy, in form and content satisfactory to Lender, insuring, in effect, that such disbursement has the same priority as the initial disbursement of the Loan and that there has been no Material Adverse Change in the condition of title to the Property since the issuance of the Title Insurance Policy;

(ix) No actions, suits or proceedings shall then be pending nor have any been threatened against or which affect Borrower, any Guarantor or the Property which could have a Material Adverse Change on Borrower, Guarantor or the Property;

(x) No Default or Event of Default shall have occurred and be continuing and all representations and warranties set forth in this Agreement and in any other Loan Document shall be materially true and correct as of the date of Borrower's request for the disbursement, the date the disbursement is made, and immediately following the making of the disbursement;

(xi) No substantial unrepaired damage to any portion of the Property by fire or other casualty which is not in Lender's judgment adequately covered by collectible proceeds of insurance; and

(xii) Borrower shall have paid all of the costs and expenses incurred by Lender, including reasonable attorneys' fees and expenses, all title premiums and other title and survey charges in connection with the proposed disbursement and a nonrefundable rehabilitation management in the amount of Two Hundred Ninety-Five and No/100 Dollars (\$295.00) payable to Lender with respect to each disbursement of Project Reserve Funds.

(b) Disbursement by Wire Transfer. Disbursement of Project Reserve Funds shall be made at Lender's election by wire transfer, at Borrower's cost and expense, or by check. Lender may, in its election, make payments of the Project Reserve Funds directly to the contractor, subcontractor, or material supplier. Lender may also require, at Lender's election, in its sole discretion, at Borrower's sole cost and expense, that disbursements of Project Reserve Funds be made through (a) the Title Company pursuant to a construction loan disbursement escrow agreement or (b) a vending control company. Any such arrangement with the Title Company or a vending control company shall be in Lender's sole discretion

(c) Waiver of Conditions. Lender may from time to time, in its sole discretion, waive any condition or conditions to any disbursement of Project Reserve Funds without such waiver or series of waivers constituting a course of dealing or any amendment to this Agreement or a prohibition against subsequent imposition of such condition or conditions or a waiver of a default.

ARTICLE VIII

DEFAULTS

Section 8.1 Event of Default

8.1.1 Generally

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

(i) if any portion of the Debt is not paid when due (including, without limitation, the failure of Borrower to repay the entire outstanding principal balance of the Note in full on the Maturity Date);

(ii) if any of the Taxes or Other Charges are not paid when the same are due and payable without payment of a penalty;

(iii) if the Policies are not kept in full force and effect, or if copies of the certificates evidencing the Policies (or certified copies of the Policies if requested by Lender) are not delivered to Lender within thirty (30) days after written request therefor;

(iv) the occurrence of any Transfer (except a Permitted Transfer) or other encumbrance with respect to any portion of the Property or the Collateral in violation of the provisions of this Agreement or Article 6 of the Security Instrument, or the occurrence of any Transfer in violation of the provisions of Section 5.2.10 hereof;

(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 or deemed remade;

(vi) if Borrower or any Guarantor shall (i) make an assignment for the benefit of creditors or (ii) generally not be paying its debts as they become due;

(vii) if a receiver, liquidator or trustee shall be appointed for Borrower, or if Borrower shall be adjudicated bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to Federal bankruptcy law, or any similar Federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower, or if any proceeding for the dissolution or liquidation of Borrower shall be instituted; *provided, however*, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, upon the same not being discharged, stayed or dismissed within ninety (90) days;

(viii) if a receiver, liquidator or trustee shall be appointed for any Guarantor or if any 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 Guarantor, or if any proceeding for the dissolution or liquidation of any Guarantor shall be instituted; *provided, however*, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by the applicable Guarantor, upon the same not being discharged, stayed or dismissed within ninety (90) days; provided, further, however, it shall be at Lender's option to determine whether any of the foregoing shall be an Event of Default;

(ix) 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;

(x) if Borrower breaches any representation, warranty or covenant contained in Section 4.1.26 or any of its respective negative covenants contained in Section 5.2;

(xi) with respect to any term, covenant or provision set forth herein which specifically contains a notice requirement or grace period, if Borrower shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

(xii) Borrower breaches any covenant contained in Section 5.1.11 and such breach continues for ten (10) days after notice from Lender;

(xiii) 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 (xi) 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 thirty (30) day period and provided further that Borrower shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed ninety (90) days; or

(xiv) if there shall be a Default under any of the other Loan Documents beyond any applicable cure periods contained in such documents, whether as to Borrower, Guarantor or the Property.

(b) Upon the occurrence of an Event of Default (other than an Event of Default described in clauses (vi), (vii) or (viii) above) and at any time thereafter, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, Lender may take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, without limitation, declaring the Obligations to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents against Borrower and the Property, including, without limitation, all rights or remedies available at law or in equity; 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.

8.1.2 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 (including, without limitation, Lender may accelerate the Loan and declare the Outstanding Principal Balance and all other amounts under the Loan Documents due and payable and institute foreclosure proceedings), 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. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by 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. To the fullest extent permitted by law or equity, without limiting the generality of the foregoing, Borrower agrees that if an Event of Default is continuing (i) Lender shall not be 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 Property and the Security Instrument has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Debt or the Obligations have been paid in full.

(b) With respect to Borrower and the Property, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to the Property for the satisfaction of any of the Debt in any preference or priority, and Lender may seek satisfaction out of the 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 Security Instrument in any manner and for any amounts secured by the Security Instrument then due and payable as determined by Lender in its sole discretion, including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose the Security Instrument to recover such delinquent payments or (ii) in the event Lender elects to accelerate less than the entire Outstanding Principal Balance, Lender may foreclose the Security Instrument to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by the Security Instrument as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to the Security Instrument to secure payment of sums secured by the Security Instrument and not previously recovered.

(c) Lender shall have the right from time to time to partially foreclose the Security Instrument in any manner and for any amounts secured by the Security Instrument then due and payable as determined by Lender in its sole discretion, including the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and/or interest, Lender may foreclose the Security Instrument to recover such delinquent payments, or (ii) in the event Lender elects to accelerate less than the entire Outstanding Principal Balance, Lender may foreclose the Security Instrument to recover so much of the Debt as Lender may accelerate and such other sums secured by the Security Instrument as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to the Security Instrument to secure payment of sums secured by the Security Instrument and not previously recovered.

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

(e) If an Event of Default exists, Lender may (directly or by its agents, employees, contractors, engineers, architects, nominees, attorneys or other representatives), but without any obligation to do so and without notice to Borrower and without releasing Borrower from any obligation hereunder, cure the Event of Default in such manner and to such extent as Lender may deem necessary to protect the security hereof. Subject to Tenants' rights under the Leases, Lender (and its agents, employees, contractors, engineers, architects, nominees, attorneys or other representatives) are authorized to enter upon the Property to cure such Event of Default, and Lender is authorized to appear in, defend, or bring any action or proceeding reasonably necessary to maintain, secure or otherwise protect the Property or the priority of the Lien granted by the Security Instrument.

(f) Lender may appear in and defend any action or proceeding brought with respect to the Property and may bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its sole discretion, decides should be brought to protect its interest in the Property. Lender shall, at its option, be subrogated to the Lien of any mortgage or other security instrument discharged in whole or in part by the Obligations, and any such subrogation rights shall constitute additional security for the payment of the Obligations.

(g) As used in this Section 8.1.2, a "foreclosure" shall include, without limitation, a power of sale.

8.1.3 Remedies Cumulative; Waivers. The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or to impair any remedy, right or power consequent thereon.

8.1.4 **CONFESSION OF JUDGMENT.** THE FOLLOWING PARAGRAPH SETS FORTH A WARRANT OF AUTHORITY FOR ANY ATTORNEY TO CONFESS JUDGMENT AGAINST THE BORROWER. IN GRANTING THIS WARRANT OF ATTORNEY TO CONFESS JUDGMENT AGAINST THE BORROWER, BORROWER, FOLLOWING CONSULTATION WITH (OR DECISION NOT TO CONSULT) COUNSEL FOR BORROWER AND WITH KNOWLEDGE OF THE LEGAL EFFECT HEREOF, HEREBY KNOWINGLY, INTENTIONALLY, VOLUNTARILY AND UNCONDITIONALLY WAIVES ANY AND ALL RIGHTS BORROWER HAS OR MAY HAVE TO PRIOR NOTICE AND AN OPPORTUNITY OF REHEARING UNDER THE RESPECTIVE CONSTITUTIONS AND LAWS OF THE UNITED STATES OF AMERICA, THE COMMONWEALTH OF PENNSYLVANIA, OR ELSEWHERE. IT IS SPECIFICALLY ACKNOWLEDGED BY BORROWER THAT LENDER HAS RELIED ON THIS WARRANT OF ATTORNEY AS AN INDUCEMENT TO GRANT FINANCIAL ACCOMMODATIONS TO BORROWER. UPON AND FOLLOWING THE OCCURRENCE OF AN UNCURED EVENT OF DEFAULT, BORROWER HEREBY AUTHORIZES AND EMPOWERS ANY ATTORNEY OF ANY COURT OF RECORD OR THE PROTHONOTARY OR CLERK OF ANY COUNTY IN THE COMMONWEALTH OF PENNSYLVANIA, OR IN ANY JURISDICTION WHERE PERMITTED BY LAW OR THE CLERK OF ANY UNITED STATES DISTRICT COURT, TO APPEAR FOR BORROWER IN ANY AND ALL ACTIONS WHICH MAY BE BROUGHT HEREUNDER AND ENTER AND CONFESS JUDGMENT AGAINST BORROWER OR ANY OF THEM IN FAVOR OF LENDER FOR SUCH SUMS AS ARE DUE OR MAY BECOME DUE HEREUNDER OR UNDER ANY OTHER LOAN DOCUMENT, TOGETHER WITH COSTS OF SUIT AND ACTUAL COLLECTION COSTS INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES EQUAL TO FIVE PERCENT (5%) OF THE LIABILITIES THEN DUE AND OWING BUT IN NO EVENT LESS THAN \$5,000, WITH OR WITHOUT DECLARATION, WITHOUT PRIOR NOTICE, WITHOUT STAY OF EXECUTION AND WITH RELEASE OF ALL PROCEDURAL ERRORS AND THE RIGHT TO ISSUE EXECUTIONS FORTHWITH. IF A COPY OF THIS NOTE VERIFIED BY AFFIDAVIT OF ANY OFFICER OF LENDER SHALL HAVE BEEN FILED IN SUCH ACTION, IT SHALL NOT BE NECESSARY TO FILE THE ORIGINAL THEREOF AS A WARRANT OF ATTORNEY, ANY PRACTICE OR USAGE TO THE CONTRARY NOTWITHSTANDING. THE AUTHORITY HEREIN GRANTED TO CONFESS JUDGMENT SHALL NOT BE EXHAUSTED BY ANY SINGLE EXERCISE THEREOF, BUT SHALL CONTINUE AND MAY BE EXERCISED FROM TIME TO TIME AS OFTEN AS LENDER SHALL FIND IT NECESSARY AND DESIRABLE AND AT ALL TIMES UNTIL FULL PAYMENT OF ALL AMOUNTS DUE HEREUNDER AND UNDER THE OTHER LOAN DOCUMENTS. LENDER MAY CONFESS ONE OR MORE JUDGMENTS IN THE SAME OR DIFFERENT JURISDICTIONS FOR ALL OR ANY PART OF BORROWER'S OBLIGATIONS ARISING HEREUNDER OR UNDER ANY OTHER LOAN DOCUMENT TO WHICH BORROWER IS A PARTY, WITHOUT REGARD TO WHETHER JUDGMENT HAS THERETOFORE BEEN CONFESSED ON MORE THAN ONE OCCASION FOR THE SAME OBLIGATIONS. IN THE EVENT THAT ANY JUDGMENT CONFESSED AGAINST BORROWER IS STRICKEN OR OPENED UPON APPLICATION BY OR ON BEHALF OF BORROWER FOR ANY REASONS, LENDER IS HEREBY AUTHORIZED AND EMPOWERED TO AGAIN APPEAR FOR AND CONFESS JUDGMENT AGAINST BORROWER FOR ANY PART OR ALL OF THE LIABILITIES DUE AND OWING UNDER THIS NOTE AND THE OTHER LOAN DOCUMENTS, AS HEREIN PROVIDED.

ARTICLE IX

SPECIAL PROVISIONS

Section 9.1 Transfer of Loan. Lender may, at any time, sell, transfer or assign this Agreement, the Note, the Security Instrument and the other Loan Documents, and any or all servicing rights with respect thereto, or grant participations therein or issue mortgage pass-through certificates or other securities (the "*Securities*") evidencing a beneficial interest in a rated or unrated public offering or private placement (such sales, participation, offering and/or placement, collectively, a "*Lender Assignment*"). Lender may forward to each purchaser, transferee, assignee, servicer, participant or investor in such participations or Securities (collectively, the "*Investor*"), each prospective Investor, and any organization maintaining databases on the underwriting and performance of commercial mortgage loans, all documents and information which Lender now has or may hereafter acquire relating to the Loan or to Borrower, any Guarantor or the Property, whether furnished by Borrower, any Guarantor or otherwise, as Lender determines necessary or desirable, including, without limitation, financial statements relating to Borrower, Guarantor, the Property and any Tenant at the Property. Borrower irrevocably waives any and all rights it may have under law or in equity to prohibit such disclosure, including but not limited to any right of privacy.

Section 9.2 Severed Loan Documents. 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 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 (and cause other parties who executed any of the Loan Documents to execute and deliver) to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender may reasonably request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender and Borrower. 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 the parties thereto only as of the Closing Date.

Section 9.3 Servicer. At the option of Lender, the Loan may be serviced by a master servicer, primary servicer, special servicer and/or trustee (any such master servicer, primary servicer, special servicer, and trustee, together with its agents, nominees or designees, are collectively referred to as “**Servicer**”) selected by Lender and Lender may delegate all or any portion of its responsibilities under this Agreement and the other Loan Documents to Servicer pursuant to a pooling and servicing agreement, servicing agreement, special servicing agreement or other agreement providing for the servicing of one or more mortgage loans (collectively, the “**Servicing Agreement**”) between Lender and Servicer. Without limitation, Borrower shall promptly reimburse Lender on demand for (a) interest payable on advances made by Servicer with respect to delinquent debt service payments (to the extent interest at the Default Rate actually paid by Borrower in respect of such payments are insufficient to pay the same) or expenses paid by Servicer or trustee in respect of the protection and preservation of the Property (including, without limitation, on account of Basic Carrying Costs), (b) all costs and expenses, liquidation fees, workout fees, special servicing fees, operating advisor fees or any other similar fees payable by Lender to Servicer which may be due and payable under the Servicing Agreement (whether on a periodic or a continuing basis) as a result of an Event of Default under the Loan, the Loan becoming specially serviced, the commencement or continuance of any enforcement action of any kind with respect to the Loan or any of the Loan Documents, a refinancing or a restructuring of the credit arrangements provided under this Agreement in the nature of a “work-out” of the Loan Documents, or any Bankruptcy Action involving Borrower, Principal, Guarantor or any of their respective principals or Affiliates, (c) all costs and expenses of any Property inspections and/or appraisals (or any updates to any existing inspection or appraisal) that Servicer or the trustee may be required to obtain (but not more than one appraisal in any twelve months unless an Event of Default exists), and (d) all costs and expenses relating to or arising from any special requests made by Borrower or Guarantor during the term of the Loan including, without limitation, in connection with a prepayment, defeasance, assumption or modification of the Loan.

Section 9.4 Cooperation. Borrower and Guarantor agree to reasonably cooperate with Lender (and agree to cause their respective officers and representatives to cooperate) in connection with any Lender Assignment or potential Lender Assignment.

ARTICLE X

MISCELLANEOUS

Section 10.1 Survival. This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Obligations are outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the legal representatives, successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Lender.

Section 10.2 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 and absolute discretion of Lender and shall be final and conclusive.

Section 10.3 Governing Law. THIS AGREEMENT WAS NEGOTIATED IN THE COMMONWEALTH OF PENNSYLVANIA, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE COMMONWEALTH OF PENNSYLVANIA, AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE COMMONWEALTH OF PENNSYLVANIA, 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 COMMONWEALTH OF PENNSYLVANIA APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT TO THE SECURITY INSTRUMENT AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE COMMONWEALTH OF PENNSYLVANIA SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND/OR THE OTHER LOAN DOCUMENTS, AND THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA.

(a) EXCEPTIONS, NOTWITHSTANDING THE FOREGOING CHOICE OF LAW:

(i) THE PROCEDURES GOVERNING THE ENFORCEMENT BY LENDER OF ITS FORECLOSURE AND OTHER REMEDIES AGAINST BORROWER AND GUARANTOR UNDER THE SECURITY INSTRUMENT AND UNDER THE OTHER LOAN DOCUMENTS WITH RESPECT TO THE REAL PROPERTY ASSETS OF BORROWER, INCLUDING BY WAY OF ILLUSTRATION, BUT NOT IN LIMITATION, ACTIONS FOR FORECLOSURE, FOR INJUNCTIVE RELIEF OR FOR THE APPOINTMENT OF A RECEIVER SHALL BE GOVERNED BY THE LAWS OF THE STATE WHERE SUCH PROPERTY OR OTHER ASSETS ARE LOCATED;

(ii) LENDER SHALL COMPLY WITH APPLICABLE LAW IN THE STATE WHERE THE PROPERTY OR OTHER ASSETS ARE LOCATED TO THE EXTENT REQUIRED BY THE LAW OF SUCH JURISDICTION IN CONNECTION WITH THE FORECLOSURE OF THE SECURITY INTERESTS AND LIENS CREATED UNDER THE SECURITY INSTRUMENT;

(iii) PROVISIONS OF FEDERAL LAW AND THE LAW OF THE STATE WHERE THE PROPERTY IS LOCATED SHALL APPLY IN DEFINING THE TERMS HAZARDOUS SUBSTANCES, ENVIRONMENTAL STATUTES, AND LEGAL REQUIREMENTS AS SUCH TERMS ARE USED IN THIS LOAN AGREEMENT, AND THE OTHER LOAN DOCUMENTS, WITH RESPECT TO THE PROPERTY, BORROWER AND GUARANTOR; AND

(iv) MATTERS OF REAL ESTATE, LANDLORD-TENANT AND PROPERTY LAW SHALL BE GOVERNED BY THE LAWS OF THE STATE WHERE THE PROPERTY IS SITUATED.

(b) AGENT FOR SERVICE OF PROCESS. ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY AT LENDER'S SOLE OPTION BE INSTITUTED IN ANY FEDERAL DISTRICT COURT OR STATE COURT IN THE COMMONWEALTH OF PENNSYLVANIA, COUNTY OF NORTHAMPTON, PURSUANT TO PENNSYLVANIA LAW, AND BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY OBJECTIONS WHICH BORROWER MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

FTE Networks, Inc.
237 West 35th Street, Suite 806
New York, NY 10001
Attn: CEO
Phone: 646-755-3605
Email: mbeys@blmlp.com

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON BORROWER'S 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 THE COMMONWEALTH OF PENNSYLVANIA, AND BORROWER 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 CONCLUSIVELY BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE COMMONWEALTH OF PENNSYLVANIA. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN THE COMMONWEALTH OF PENNSYLVANIA (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN THE COMMONWEALTH OF PENNSYLVANIA OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR. NOTHING CONTAINED HEREIN SHALL AFFECT THE RIGHT OF AGENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST BORROWER IN ANY OTHER JURISDICTION.

Section 10.4 Modification, Waiver in Writing. No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Note, or of any other Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances.

Section 10.5 Delay Not a Waiver. Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

Section 10.6 Notices. All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested, (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, or (c) facsimile (with answer back acknowledged) or as a PDF or similar attachment to an e-mail, provided that such facsimile or email attachment shall be followed within one (1) business day by delivery of such notice pursuant to clause (a) or (b) above, in each case addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a notice to the other parties hereto in the manner provided for in this Section 10.6):

If to Lender: DLP Lending Fund LLC
95 Highland Avenue, Suite 300
Bethlehem, PA 28017
Attention: Barry W. DeGroot, Esq.
E-Mail: barry@dlpre.com

with a copy to: Pircher, Nichols & Meeks LLP
1901 Avenue of the Stars, Suite 1200
Los Angeles, California 90067
Attention: Real Estate Notices (WBT: 6004.2)
Facsimile No.: (310) 201-8922
E-Mail: realestatenotices@pircher.com

If to Borrower: FTE Legal
237 West 35th Street, Suite 806
New York, NY 10001
Attn: Corporate Counsel
Phone: (239) 315-3161
Email: legal@ftenet.com

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; in the case of expedited prepaid delivery, upon the first attempted delivery on a Business Day; or in the case of facsimile or PDF or similar attachment to an e-mail, upon sender's receipt of a machine-generated confirmation of successful transmission after advice by telephone to recipient that a facsimile or e-mail notice is forthcoming. Any failure to deliver a notice by reason of a change of address not given in accordance with this Section 10.6, or any refusal to accept a notice, shall be deemed to have been given when delivery was attempted. Any notice required or permitted to be given by any party hereunder or under any other Loan Document may be given by its respective counsel.

Section 10.7 Waiver of Trial by Jury. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER.

Section 10.8 Headings. The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 10.9 Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Section 10.10 Preferences. 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 Debt. 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 10.11 Waiver of Notice. Borrower hereby expressly waives, and 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.

Section 10.12 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, Borrower agrees that neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment. The parties hereto agree that any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment. Further, it is agreed Lender shall not be in default under this Agreement, or under any other Loan Document, unless a written notice specifically setting forth the claim of Borrower shall have been given to Lender within thirty (30) days after Borrower first had knowledge of the occurrence of the event which Borrower alleges gave rise to such claim and Lender does not remedy or cure the default, if any there be, promptly thereafter. Failure to give such notice shall constitute a waiver of such claim.

Section 10.13 Expenses; Indemnity.

(a) Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender upon receipt of notice from Lender for all costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Lender in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including without limitation any opinions requested by Lender as to any legal matters arising under this Agreement or the other Loan Documents with respect to the Property); (ii) Borrower's ongoing performance of and compliance with Borrower's respective agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date, including, without limitation, confirming compliance with environmental and insurance requirements; (iii) Lender's ongoing performance and compliance with all agreements and conditions contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date; (iv) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters requested by Lender; (v) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement; (vi) the filing and recording fees and expenses, title insurance and 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; (vii) enforcing or preserving any rights, either in response to third party claims or in prosecuting or defending any action or proceeding or other litigation, in each case against, under or affecting Borrower, this Agreement, the other Loan Documents, the Property, or any other security given for the Loan; and (viii) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the 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 or any other amounts required under Section 9.3; *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 cost and expenses due and payable to Lender may be paid by Lender from any Reserve Account.

(b) Borrower shall indemnify, defend and hold harmless the Indemnified Parties from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for Lender in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not Lender shall be designated a party thereto), that may be imposed on, incurred by, or asserted against any Indemnified Party in any manner relating to or arising out of (i) any breach by Borrower of its Obligations under, or any 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 (the liabilities, losses, costs, expenses and other matters described in this subparagraph (b), collectively, the “**Indemnified Liabilities**”); *provided, however*, that Borrower shall not have any obligation to an Indemnified Party hereunder to the extent that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of such Indemnified Party. To the extent that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall pay the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by the Indemnified Parties.

Section 10.14 Exhibits and Schedules Incorporated. Any Exhibits and Schedules annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

Section 10.15 Offsets, Counterclaims and Defenses. Any assignee of Lender’s interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses solely to the extent such offsets, counterclaims or defenses are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

Section 10.16 No Joint Venture or Partnership; No Third Party Beneficiaries.

(a) Borrower 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 Property other than that of mortgagee, beneficiary or lender.

(b) This Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the Obligations contained herein or therein. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender’s sole discretion, Lender deems it advisable or desirable to do so.

Section 10.17 Publicity. All news releases, publicity or advertising by Borrower or its Affiliates through any media intended to reach the general public which refers to the Loan Documents or the financing evidenced by the Loan Documents, to Lender or any of its Affiliates shall be subject to the prior approval of Lender.

Section 10.18 Waiver of Marshalling of Assets; Homestead Waiver. 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 Property, or to a sale in inverse order of alienation in the event of foreclosure of the Security Instrument, 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 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 Property in preference to every other claimant whatsoever. To the extent permitted by applicable law, Borrower hereby waives any Homestead protections that may be available to Borrower under the law of the state in which the Property is located.

Section 10.19 Waiver of Counterclaim. Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents.

Section 10.20 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 its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any 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 10.21 Brokers and Financial Advisors. Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement other than Direct Lending Partners LLC, which arranged the Loan. Borrower hereby agrees to 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 10.21 shall survive the expiration and termination of this Agreement and the payment of the Debt.

Section 10.22 Prior Agreements. This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, including, without limitation, the Term Sheet dated April 13, 2020 between Borrower (or an agent or representative of Borrower) and Lender, are superseded by the terms of this Agreement and the other Loan Documents.

Section 10.23 Cumulative Rights. All of the rights of Lender under this Agreement hereunder and under each of the other Loan Documents and any other agreement now or hereafter executed in connection herewith or therewith, shall be cumulative and may be exercised singly, together, or in such combination as Lender may determine in its sole judgment.

Section 10.24 Counterparts; Electronic Delivery. This Agreement and all of the other Loan Documents may be executed in several counterparts, each of which when executed and delivered is an original, but all of which together shall constitute one instrument. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart which is executed by the party against whom enforcement of this Agreement is sought. The delivery of an executed counterpart of this Agreement or any other Loan Document (other than Note) by facsimile or as a PDF or similar attachment to an email shall constitute effective delivery of such counterpart for all purposes with the same force and effect as the delivery of an original, executed counterpart.

Section 10.25 Time is of the Essence. Time is of the essence of each provision of this Agreement and the other Loan Documents.

Section 10.26 Consent of Holder. Wherever this Agreement refers to Lender's consent or discretion or other rights, such references to Lender shall be deemed to refer to any holder of the Loan. The holder of the Loan may from time to time appoint a trustee or servicer, and Borrower shall be entitled to rely upon written instructions executed by a purported officer of the holder of the Loan as to the extent of authority delegated to any such trustee or from time to time and determinations made by such trustee or servicer to the extent identified as within the delegated authority of such trustee or servicer, unless and until such instructions are superseded by further written instructions from the holder of the Loan.

Section 10.27 Successor Laws. Any reference in this Agreement to any statute or regulation shall be deemed to include any successor statute or regulation.

Section 10.28 Reliance on Third Parties. Lender may perform any of its responsibilities hereunder through one or more agents, attorneys or independent contractors. In addition, Lender may conclusively rely upon the advice or determinations of any such agents, attorneys or independent contractors in performing any discretionary function under the terms of this Agreement.

Section 10.29 Joint Borrower. The representations, covenants, warranties and obligations of Borrower shall be joint and several. Each entity that constitutes Borrower acknowledges and agrees that it shall be jointly and severally liable for the Loan and all other Obligations arising under this Agreement and/or any of the other Loan Documents. In furtherance thereof, each Borrower acknowledges and agrees as follows:

(a) For the purpose of implementing the joint borrower provisions of the Loan Documents, each Borrower hereby irrevocably appoints each other Borrower as its agent and attorney-in-fact for all purposes of the Loan Documents, including the giving and receiving of notices and other communications.

(b) To induce Lender to make the Loan, and in consideration thereof, each Borrower hereby agrees to indemnify Lender against, and hold Lender harmless from, any and all liabilities, expenses, losses, damages and/or claims of damage or injury asserted against Lender by any Borrower or by any other Person arising from or incurred by reason of (i) reliance by Lender on any requests or instructions from any Borrower, or (ii) any other action taken by Lender in good faith with respect to this Agreement or the other Loan Documents.

(c) Each Borrower acknowledges that the liens and security interests created or granted herein and by the other Loan Documents will secure the Obligations of all Borrowers under the Loan Documents and, in full recognition of that fact, each Borrower consents and agrees that Lender may, at any time and from time to time, without notice or demand, and without affecting the enforceability or security hereof or of any other Loan Document:

(i) agree with any Borrower to supplement, modify, amend, extend, renew, accelerate, or otherwise change the time for payment or the terms of the Obligations or any part thereof, including any increase or decrease of the rate(s) of interest thereon;

(ii) agree with any Borrower to supplement, modify, amend or waive, or enter into or give any agreement, approval or consent with respect to, the Obligations or any part thereof or any of the Loan Documents or any additional security or guaranties, or any condition, covenant, default, remedy, right, representation or term thereof or thereunder;

(iii) accept new or additional instruments, documents or agreements in exchange for or relative to any of the Loan Documents or the Obligations or any part thereof;

(iv) accept partial payments on the Obligations;

(v) receive and hold additional security or guaranties for the Obligations or any part thereof;

(vi) release, reconvey, terminate, waive, abandon, subordinate, exchange, substitute, transfer and enforce any security for or guaranties of the Obligations, and apply any security and direct the order or manner of sale thereof as Lender, in its sole and absolute discretion may determine;

(vii) release any Person or any guarantor from any personal liability with respect to the Obligations or any part thereof; or

(viii) settle, release on terms satisfactory to Lender or by operation of applicable laws or otherwise liquidate or enforce any Obligations and any security therefor or guaranty thereof in any manner, consent to the transfer of any such security and bid and purchase at any sale; and consent to the merger, change or any other restructuring or termination of the corporate existence of any Borrower or any other Person, and correspondingly restructure the obligations of such Borrower or other Person, and any such merger, change, restructuring or termination shall not affect the liability of any Borrower or the continuing existence of any lien or security interest hereunder, under any other Loan Document to which any Borrower is a party or the enforceability hereof or thereof with respect to all or any part of the Obligations.

(d) Upon the occurrence of and during the continuance of any Event of Default, Lender may enforce this Agreement and the other Loan Documents independently as to each Borrower and independently of any other remedy or security Lender at any time may have or hold in connection with the Obligations, and in collecting on the Loan it shall not be necessary for Lender to marshal assets in favor of any Borrower or any other Person or to proceed upon or against and/or exhaust any other security or remedy before proceeding to enforce this Agreement and the other Loan Documents. Each Borrower expressly waives any right to require Lender, in connection with Lender's efforts to obtain repayment of the Loan and Other Obligations, to marshal assets in favor of any Borrower or any other Person or to proceed against any other Person or any collateral provided by any other Person, and agrees that Lender may proceed against any Persons and/or collateral in such order as it shall determine in its sole and absolute discretion in connection with Lender's efforts to obtain repayment of the Loan and other Obligations. Lender may file a separate action or actions against each Borrower to enforce the Obligations, whether action is brought or prosecuted with respect to any other security or against any other Person, or whether any other Person is joined in any such action or actions. Each Borrower agrees that Lender, each Borrower and/or any other Person may deal with each other in connection with the Obligations or otherwise, or alter any contracts or agreements now or hereafter existing between any of them, in any manner whatsoever, all without in any way altering or affecting the security of this Agreement or the other Loan Documents. The rights of Lender hereunder and under the other Loan Documents shall be reinstated and revived, and the enforceability of this Agreement and the other Loan Documents shall continue, with respect to any amount at any time paid on account of the Obligations which thereafter shall be required to be restored or returned by Lender as a result of the bankruptcy, insolvency or reorganization of any Borrower or any other Person, or otherwise, all as though such amount had not been paid. The enforceability of this Agreement and the other Loan Documents at all times shall remain effective even though any or all Obligations, or any other security or guaranty therefor, may be or hereafter may become invalid or otherwise unenforceable as against any Borrower or any other Person and whether or not any Borrower or any other Person shall have any personal liability with respect thereto. Each Borrower expressly waives any and all defenses to the enforcement of its Obligations under the Loan Documents now or hereafter arising or asserted by reason of (i) any disability or other defense of any Borrower or any other Person with respect to the Obligations, (ii) the unenforceability or invalidity of any security or guaranty for the Obligations or the lack of perfection or continuing perfection or failure of priority of any security for the Obligations, (iii) the cessation for any cause whatsoever of the liability of any Borrower or any other Person (other than by reason of the full and final payment and performance of all Obligations), (iv) any failure of Lender to marshal assets in favor of any of the Borrowers or any other Person, (v) any failure of Lender to give notice of sale or other disposition of any Collateral for the Obligations to any Borrower or to any other Person or any defect in any notice that may be given in connection with any such sale or disposition, (vi) any failure of Lender to comply in any non-material respect with applicable laws in connection with the sale or other disposition of any collateral or other security for any Obligation, (vii) any act or omission of Lender or others that directly or indirectly results in or aids the discharge or release of any Borrower or of any other Person or of any of the Obligations or any other security or guaranty therefor by operation of law or otherwise, (viii) any law which provides that the obligation of a surety or guarantor must neither be larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety's or guarantor's obligation in proportion to the principal obligation, (ix) any failure of Lender to file or enforce a claim in any bankruptcy or similar proceeding with respect to any Person, (x) the election by Lender, in any bankruptcy or similar proceeding of any Person, of the application or non-application of Section 1111(b)(2) of the Bankruptcy Code, (xi) any extension of credit or the grant of any lien under Section 364 of the Bankruptcy Code except to the extent otherwise provided in this Agreement, (xii) any use of cash collateral under Section 363 of the Bankruptcy Code, (xiii) any agreement or stipulation with respect to the provision of adequate protection in any bankruptcy or similar proceeding of any Person, (xiv) the avoidance of any lien or security interest in favor of Lender securing the Obligations for any reason, or (xv) any bankruptcy or similar proceeding commenced by or against any Person, including any discharge of, or bar or stay against collecting, all or any of the Obligations (or any interest thereon) in or as a result of any such proceeding. Without in any way limiting the foregoing, with respect to the Loan Documents and the Obligations, Borrower: (A) waives all rights and defenses arising out of an election of remedies by Lender even though that election of remedies, such as non-judicial foreclosure with respect to security for Borrowers' obligations, has destroyed each of their rights of subrogation and reimbursement against the other; and (B) waives any right to a fair value hearing or similar proceeding following a non-judicial foreclosure of the Obligations.

(e) Borrowers represent and warrant to Lender that they have established adequate means of obtaining from each other, on a continuing basis, financial and other information pertaining to their respective businesses, operations and condition (financial and otherwise) and their respective properties, and each now is and hereafter will be completely familiar with the businesses, operations and condition (financial and otherwise) of the other and their respective properties. Each Borrower hereby expressly waives and relinquishes any duty on the part of Lender to disclose to such Borrower any matter, fact or thing related to the businesses, operations or condition (financial or otherwise) of the other Borrowers or the other Borrowers' properties, whether now known or hereafter known by Lender during the life of this Agreement. With respect to any of the Obligations, Lender need not inquire into the powers of any Borrower or the officers, employees or other Persons acting or purporting to act on such Borrower's behalf.

(f) Without limiting the foregoing, or anything else contained in this Agreement, each Borrower waives all rights and defenses that it may have because the Obligations are secured by real property. This means, among other things:

(i) Lender may collect on the Obligations from any Borrower without first foreclosing on any real or personal property collateral pledged by the other Borrowers; and

(ii) If Lender foreclose on any real property collateral pledged by any Borrower for the Obligations: (A) the amount of the indebtedness owed by the other Borrowers may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; and (B) Lender may collect from any Borrower even if Lender, by foreclosing on the real property collateral, has destroyed any right any Borrower may have to collect from the other Borrowers.

(iii) This is an unconditional and irrevocable waiver of any rights and defenses each Borrower may have because the Obligations are secured by real property. Each Borrower expressly waives any right to receive notice of any judicial or nonjudicial foreclosure or sale of any real property collateral provided by the other Borrowers to secure the Obligations and failure to receive any such notice shall not impair or affect such Borrower's obligations hereunder or the enforceability of this Agreement or the other Loan Documents or any liens created or granted hereby or thereby.

(iv) Notwithstanding anything to the contrary elsewhere contained herein or in any other Loan Document to which any Borrower is a party, with respect to the Loan and all other Obligations, each Borrower hereby waives with respect to the other Borrowers and their successors and assigns (including any surety) and any other Person any and all rights at law or in equity, to subrogation, to reimbursement, to exoneration, to contribution, to set-off, to any other rights and defenses available to it or to any other rights that could accrue to a surety against a principal, to a guarantor against a maker or obligor, to an accommodation party against the party accommodated, or to a holder or transferee against a maker and which each of them may have or hereafter acquire against the other or any other Person in connection with or as a result of such Borrower's execution, delivery and/or performance of this Agreement or any other Loan Document to which it is a party until the Obligations are paid and performed in full. Each Borrower agrees that it shall not have or assert any such rights against any other Borrower or any other Borrower's successors and assigns or any other Person (including any surety), either directly or as an attempted set-off to any action commenced against such Borrower by any other Borrower (as borrower or in any other capacity) or any other Person until all the Obligations are paid and performed in full. Each Borrower hereby acknowledges and agrees that this waiver is intended to benefit Lender and shall not limit or otherwise affect any Borrower's liability under this Agreement or any other Loan Document to which it is a party, or the enforceability hereof or thereof.

EACH BORROWER WARRANTS AND AGREES THAT EACH OF THE WAIVERS AND CONSENTS SET FORTH HEREIN IS MADE WITH FULL KNOWLEDGE OF ITS SIGNIFICANCE AND CONSEQUENCES, WITH THE UNDERSTANDING THAT EVENTS GIVING RISE TO ANY DEFENSE WAIVED MAY DIMINISH, DESTROY OR OTHERWISE ADVERSELY AFFECT RIGHTS WHICH EACH OTHERWISE MAY HAVE AGAINST THE OTHER, AGAINST LENDER OR OTHERS, OR AGAINST ANY COLLATERAL. IF ANY OF THE WAIVERS OR CONSENTS HEREIN IS DETERMINED TO BE CONTRARY TO ANY APPLICABLE LAW OR PUBLIC POLICY, SUCH WAIVERS AND CONSENTS SHALL BE EFFECTIVE TO THE MAXIMUM EXTENT PERMITTED BY LAW.

[The Remainder of the Page is Intentionally Blank]

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

BORROWER:

DSV SPV1, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of DSV SPV1, LLC

DSV SPV2, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of DSV SPV2, LLC

DSV SPV3, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of DSV SPV3, LLC

Kaja Holdings, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of Kaja Holdings, LLC

ALGA, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of ALGA, LLC

RVFM 4 Series, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of RVFM 4 Series, LLC

(Signatures continue on following page)

RVFM 11 Series, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of RVFM 11 Series, LLC

RVFM 13 Series, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of RVFM 13 Series, LLC

Boom SC, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of Boom SC, LLC

MI Seven, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of MI Seven, LLC

PENNA, LLC
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of PENNA, LLC

(Signatures continue on following page)

LENDER:

DLP Lending Fund LLC,
a Delaware limited liability company

By: /s/ Donald Wenner
Donald Wenner
President

SCHEDULE 1

Borrower Entities

[to be inserted]

Schedule 1 - 1

SCHEDULE 1.1(a)

Allocated Loan Amounts

Attached.

Schedule 1.1(a) - 1

SCHEDULE 1.1(b)

List of Projects

[to be inserted]

Schedule 1.1(b) - 1

SCHEDULE 4.1.1

Organizational Chart

[to be inserted]

Schedule 4.1.1 - 1

PROMISSORY NOTE

\$1,605,000.00

August 26, 2020

FOR VALUE RECEIVED, the undersigned, jointly and severally (individually and collectively, "**Borrower**"), as maker, having its principal place of business at 16 Berryhill Road, Suite 200 Columbia, SC 29210, hereby unconditionally promises to pay to the order of DLP LENDING FUND LLC, a Delaware limited liability company, as lender, having an address at 95 Highland Avenue, St. Augustine, FL 32095 (together with its successors and assigns, collectively, "**Lender**"), or at such other place as the holder hereof may from time to time designate in writing, the principal sum of ONE MILLION SIX HUNDRED FIVE THOUSAND and 00/100 Dollars (\$1,605,000.00), or so much thereof as is advanced pursuant to that certain Loan Agreement, dated the date hereof, between Borrower and Lender (as the same may be amended, modified, restated, replaced, supplemented or otherwise modified from time to time, the "**Loan Agreement**"), in lawful money of the United States of America, with interest thereon to be computed from the date of this Promissory Note (as the same may be amended, supplemented, restated, replaced or otherwise modified from time to time, this "**Note**") at the Interest Rate (as defined in the Loan Agreement), and to be paid in accordance with the terms of this Note and the Loan Agreement. All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement.

ARTICLE 1 – PAYMENT TERMS

Borrower agrees to pay the principal sum of this Note and interest on the unpaid principal sum of this Note and all other amounts due under the Loan Agreement and other Loan Documents from time to time outstanding without relief from valuation and appraisal laws at the rates and at the times specified in the Loan Agreement and the outstanding balance of the principal sum of this Note and all accrued and unpaid interest thereon and all other amounts due under the Loan Agreement and other Loan Documents shall be due and payable, in all events, on the Maturity Date. The obligations of each Borrower or party under this Note shall be joint and several.

ARTICLE 2 – DEFAULT AND ACCELERATION

The Debt shall without notice become immediately due and payable at the option of Lender, if any payment required in this Note is not paid (a) on or prior to the date when due, (b) on the Maturity Date or (c) on the happening of any other Event of Default.

ARTICLE 3 – LOAN DOCUMENTS

This Note is secured by the Security Instrument and the other Loan Documents. All of the terms, covenants and conditions contained in the Loan Agreement, the Security Instrument and the other Loan Documents are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. In the event of a conflict or inconsistency between the terms of this Note and the Loan Agreement, the terms and provisions of the Loan Agreement shall govern.

ARTICLE 4 – SAVINGS CLAUSE

Notwithstanding anything to the contrary contained herein, (a) all agreements and communications between Borrower and Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed interest, the interest contracted for, charged or received by Lender shall never exceed the Maximum Legal Rate or amount, (b) in calculating whether any interest exceeds the Maximum Legal Rate, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Borrower to Lender, and (c) if through any contingency or event Lender receives or is deemed to receive interest in excess of the Maximum Legal Rate, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Borrower to Lender.

ARTICLE 5 – NO ORAL CHANGE

This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

ARTICLE 6 – WAIVERS

Borrower and all others who may become liable for the payment of all or any part of the Debt do hereby jointly and severally waive presentment and demand for payment, notice of dishonor, notice of intention to accelerate, notice of acceleration, protest and notice of protest and non-payment and all other notices of any kind. No release of any security for the Debt or extension of time for payment, of this Note or any installment hereof, and no alteration, amendment or waiver of any provision of this Note, the Loan Agreement or the other Loan Documents made by agreement between Lender or any other Person shall release, modify, amend, waive, extend, change, discharge, terminate or affect the liability of Borrower, and any other Person who may become liable for the payment of all or any part of the Debt, under this Note, the Loan Agreement or the other Loan Documents. No notice to or demand on Borrower shall be deemed to be a waiver of the obligation of Borrower or of the right of Lender to take further action without further notice or demand as provided for in this Note, the Loan Agreement or the other Loan Documents. If Borrower is a partnership or limited liability company, the agreements herein contained shall remain in force and be applicable, notwithstanding any changes in the individuals or entities comprising the partnership or limited liability company, and the term "Borrower," as used herein, shall include any alternate or successor partnership or limited liability company, but any predecessor partnership or limited liability company and their partners or members shall not thereby be released from any liability. If Borrower is a corporation, the agreements contained herein shall remain in full force and be applicable notwithstanding any changes in the shareholders comprising, or the officers and directors relating to, the corporation, and the term "Borrower" as used herein, shall include any alternative or successor corporation, but any predecessor corporation shall not be relieved of liability hereunder. Nothing in the foregoing two sentences shall be construed as a consent to, or a waiver of, any prohibition or restriction on transfers of interests in such partnership, limited liability company or corporation, as applicable, which may be set forth in the Loan Agreement, the Security Instrument or any other Loan Document.

ARTICLE 7 – TRANSFER

Upon the transfer of this Note in whole or in part, Borrower hereby waiving notice of or consent to any such transfer, Lender may deliver all the collateral mortgaged, granted, pledged or assigned pursuant to the Loan Documents, or any part thereof, to the transferee who shall thereupon become vested with all the rights (and liabilities arising thereafter) herein or under Legal Requirements of and given to Lender with respect thereto, and Lender shall thereafter forever be relieved and fully discharged from any liability or responsibility in the matter; but Lender shall retain all rights hereby given to it with respect to any liabilities and the collateral not so transferred.

ARTICLE 8 – GOVERNING LAW AND WAIVER OF TRIAL BY JURY

This Note shall be governed in accordance with the terms and provisions of Section 10.3 and Section 10.7 of the Loan Agreement.

ARTICLE 9 – NOTICES

All notices or other written communications hereunder shall be delivered in accordance with Section 10.6 of the Loan Agreement.

ARTICLE 10 TRANSACTION ASSIGNMENT AND REGISTRAR

I. ASSIGNMENTS, PARTICIPATIONS

A. Assignments by Lender, etc. Subject to compliance with this Article 10, any Lender may on or after the date hereof sell and assign, or pledge, hypothecate or encumber, all or any portion of its Loans and all other Obligations with respect thereto, to or with Persons as may be selected by such Lender in its sole and absolute discretion (each an “*Assignee*”) and on terms and conditions satisfactory to in its sole and absolute discretion (which shall include the execution and delivery by the Assignee of assignment documentation in form and substance satisfactory to such assigning Lender). Borrower shall cooperate in all reasonable respects with such Lender in connection with the sale and assignment, or pledge, hypothecation or encumbrance, of all or any portion of such Lender’s interest in the Loan, and shall, in connection therewith, promptly execute and deliver such documents as may be reasonably requested by such Lender; provided, that such cooperation shall not include reimbursement of any Lender or any Assignee for any costs incurred in connection with such assignment or related documents.

A. Effect of Assignment. Pursuant to any assignment or participation of all or any portion of a Lender’s Loan as contemplated in this Article 10 to any Assignee, such Lender (a) may, subject to compliance with this Article 10, transfer its obligations hereunder and under the other Loan Documents (or may transfer the portion thereof corresponding to the transferred portion of the Obligations) and, except as otherwise specified herein, any Assignee shall succeed to the rights and obligations of Lender hereunder in respect of the transferred portion, and (b) shall relinquish its rights and be released from its obligations hereunder and under this Agreement and the other Loan Documents as to the transferred portion of its interest in the Loan.

B. Assignments by Borrower. No Borrower shall have any right to assign its rights or obligations hereunder or under the other Loan Documents or any interest herein or therein without the prior written consent of Lender and each of its successors and assigns, which consent may be withheld by in their sole and absolute discretion. Any attempted or purported assignment in contravention of this Article 10 shall be null and void ab initio.

C. Participations. Subject to compliance with this Article 10, any Lender may at any time, without the consent of, or notice to, Borrower, sell to one or more Persons as may be selected by such Lender in its sole and absolute discretion a participation (each a “*Participant*”) in all or a portion of such Lender’s rights and/or obligations under this Agreement (including all or a portion of the interest in the Loan owing to it); provided that (a) such Lender’s obligations under this Agreement shall remain unchanged, (b) such Lender shall remain solely responsible to the other Parties hereto for the performance of such obligations, (c) Borrower shall continue to deal solely and directly with Lender in connection with such Lender’s rights and obligations under this Agreement and the other Loan Documents, and (d) no Participant shall have any right to approve any amendment or waiver of any provision of any Loan Document, or any consent to any departure by Borrower or any other party therefrom, except to the extent that such amendment, waiver or consent would reduce the principal of, or interest on, the Loan or any fees or other amounts payable hereunder, in each case to the extent subject to such participation, or postpone any date fixed for any payment of any amount hereunder, to the extent subject to such participation.

II. REGISTRATION

A. Registered Obligation. Borrower hereby acknowledges and makes this Note (if any) a registered obligation for United States withholding tax purposes. DLP Lending Fund LLC, as Borrower's non-fiduciary agent for this purpose, shall be the registrar for this Note (if any) (the "**Registrar**") with full power of substitution. In the event the Registrar becomes unable or unwilling to act as registrar under this Agreement, Borrower shall reasonably designate a successor Registrar.

B. Register. The Registrar shall maintain, or cause to be maintained, a register (the "**Register**") for the recordation of the names and addresses of each Lender and any Assignee of all or any portion of such Lender's interest in the Loan and the principal amount outstanding of the Loan (and stated interest accrued but unpaid thereon) (the "**Registered Loan**") held by Lender and each Assignee from time to time. Borrower, each Lender and each Assignee shall treat each Person whose name is recorded in the Register as a "Lender" hereunder for all purposes of this Agreement. The Register shall be available for inspection by Borrower at any reasonable time and from time to time upon reasonable prior notice.

C. Registration of Assignment. A Registered Loan (and the registered Note evidencing the same, if any) may be assigned or sold in whole or in part only by registration of such assignment or sale on the Register (and each registered Note, if any, shall expressly so provide), which registration the Registrar shall effect immediately upon receipt of assignment documentation. Any assignment or sale of all or part of such Registered Loan (and the registered Note evidencing the same, if any) may be effected only by registration of such assignment or sale on the Register, together with the surrender of the registered Note evidencing the same, if any, duly endorsed by (or accompanied by a written instrument of assignment or sale duly executed by) the holder of such registered Note, if any, whereupon, at the request of the designated assignee(s) or transferee(s), one or more new registered Notes in the same aggregate principal amount shall be issued to the designated assignee(s) or transferee(s). Prior to the registration of assignment or sale of any Registered Loan (and the registered Note evidencing the same, if any), Borrower shall treat the Person in whose name such Registered Loan (and the registered Note evidencing the same, if any) is registered as the owner thereof for the purpose of receiving all payments thereon and for all other purposes, notwithstanding notice to the contrary.

D. Participant Register. If any Lender sells a participation or participations in the Loan to a Participant, such Lender shall report such sale of a participation to the Registrar and the Registrar shall, acting solely for this purpose as a non-fiduciary agent of Borrower, maintain a register on which it enters the name and the address of each Participant and the principal amounts of each Participant's participation interest in the Loan (or other rights or obligations) held by it (the "**Participant Register**"). The entries in the Participant Register shall be conclusive, absent manifest error, and each Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation interest as the owner thereof for all purposes notwithstanding any notice to the contrary. In maintaining the Participant Register, the Registrar shall be acting as the agent of Borrower solely for purposes of applicable United States federal income tax law and undertakes no duty, responsibility or obligation to Borrower and, without limitation, in no event shall the Registrar be a fiduciary of Borrower for any purpose, except that the Registrar shall maintain the Participant Register and, upon reasonable prior notice from Borrower, shall make the Participant Register available for inspection by Borrower at any reasonable time and from time to time.

[The Remainder of the Page is Intentionally Blank]

IN WITNESS WHEREOF, Borrower has duly executed this Promissory Note as of the day and year first above written.

BORROWER:

DSV SPV1, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of DSV SPV1, LLC

DSV SPV2, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of DSV SPV2, LLC

DSV SPV3, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of DSV SPV3, LLC

Kaja Holdings, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of Kaja Holdings, LLC

ALGA, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of ALGA, LLC

Signature Page – Promissory Note

RVFM 4 Series, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of RVFM 4 Series, LLC

RVFM 11 Series, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of RVFM 11 Series, LLC

RVFM 13 Series, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of RVFM 13 Series, LLC

Boom SC, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of Boom SC, LLC

MI Seven, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of MI Seven, LLC

PENNA, LLC
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of PENNA, LLC

Signature Page – Continued – Promissory Note

LOAN AGREEMENT

Dated as of August 26, 2020

among

THE ENTITIES SET FORTH ON SCHEDULE 1 ATTACHED HERETO,

individually and collectively, as Borrower

and

DLP LENDING FUND LLC,

as Lender

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LOAN AGREEMENT

This LOAN AGREEMENT, dated as of August 26, 2020 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this “*Agreement*”), between DLP LENDING FUND LLC, a Delaware limited liability company (“*Lender*”), having an address at 95 Highland Avenue, St. Augustine, FL 32095, and THE ENTITIES SET FORTH ON SCHEDULE 1 ATTACHED HERETO, jointly and severally (individually and collectively, “*Borrower*”), having its principal place of business at 16 Berryhill Road, Suite 200 Columbia, SC 29210

WITNESSETH:

WHEREAS, Borrower desires to obtain a loan in the original principal amount of ONE MILLION TWO HUNDRED SEVENTY EIGHT THOUSAND ONE HUNDRED SEVENTY EIGHT and 24/100 Dollars (\$1,278,178.24) from Lender pursuant to this Agreement (the “*Loan*”); and

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

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

ARTICLE I

DEFINITIONS: PRINCIPLES OF CONSTRUCTION

Section 1.1 Definitions. For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

“*Accrued Interest*” shall mean all accrued and unpaid interest on the outstanding principal balance of the Loan from time to time.

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

“*Agreement*” shall mean this Loan Agreement, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“*Allocated Loan Amount*” shall mean, with respect to each Individual Property, the amount set forth on Schedule 1.1(a) hereof.

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

“*Approved Plans*” means complete plans, drawings, specifications and scope of work, that comply with applicable Legal Requirements and have been approved in writing by Lender, for the Project.

“*Assignment of Management Agreement*” shall mean individually and collectively as applicable, an Assignment of Management Agreement and Subordination of Management Fees, dated as of the date hereof or thereafter, as applicable, among Lender, Borrower and Manager, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

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

“Bankruptcy Action” shall mean with respect to any Person (a) such Person filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (b) the filing of an involuntary petition against such Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition against such Person; (c) such Person filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition from any Person; (d) such Person consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, assignee, sequestrator (or similar official), liquidator, or examiner for such Person or any portion of the Property; (e) the filing of a petition against a Person seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code or any other applicable law, (f) under the provisions of any other law for the relief or aid of debtors, an action taken by any court of competent jurisdiction that allows such court to assume custody or Control of a Person or of the whole or any substantial part of its property or assets or (g) such Person making an assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due.

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

“Basic Carrying Costs” shall mean, for any period, the sum of the following costs: (a) Taxes, (b) Other Charges and (c) Insurance Premiums.

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

“Business Day” shall mean any day other than a Saturday, Sunday or any other day on which any of the following institutions is not open for business: (i) banks and savings and loan institutions in New York or Pennsylvania, (ii) the financial institution that maintains any collection account for or on behalf of any Reserve Funds, (iii) the New York Stock Exchange or (iv) the Federal Reserve Bank of New York.

“Casualty” shall have the meaning set forth in Section 6.2 hereof.

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

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

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

“Collateral” shall have the meaning ascribed to such term in the Security Instrument.

“Completion” or **“Complete”** shall mean one hundred percent (100%) completion of construction, renovation, rehabilitation of a Project, as applicable, subject to usual and customary punch list items, in a good and workmanlike manner and in compliance with all Legal Requirements, and in a manner consistent and compliant in all material respects with the applicable Project Documents as approved by Lender, and free and clear of all liens, claims, encumbrances and rights of others, other than Permitted Encumbrances, as evidenced by the issuance of certificates of completion by Lender’s consultant or inspecting architect or engineer, if any, in each case in form and substance acceptable to Lender and, if available or required under applicable Legal Requirements, a final or partial certificate of occupancy and, as applicable, acceptance of completion by the applicable tenant.

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

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

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

“**Debt**” shall mean the Outstanding Principal Balance together with all interest accrued and unpaid thereon and all other sums due to Lender in respect of the Loan under the Note, this Agreement, the Security Instrument or any other Loan Document.

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

“**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 twenty-four percent (24%) per annum.

“**Distribution**” means (i) any dividend, distribution or other payment of any kind on any shares of capital stock or other securities or partnership, membership, economic or other interests, or (ii) any fee, payment, bonus or other remuneration of any kind, or (iii) any repayment of or debt service on loans or other indebtedness other than the Loan.

“**Dollars**” and the sign “\$” shall mean lawful money of the United States of America.

“**Embargoed Person**” shall mean any person, entity or government subject to trade restrictions under U.S. law, including, but not limited to, The USA Patriot Act (including the anti-terrorism provisions thereof), the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701, et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder including those related to Specially Designated Nationals and Specially Designated Global Terrorists, with the result that the investment in Borrower or any Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan made by Lender is in violation of law.

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

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

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

“**ERISA Affiliate**” shall mean each person (as defined in section 3(9) of ERISA) that together with Borrower would be deemed to be a “single employer” within the meaning of Section 414(b), (c), (m) or (o) of the Code.

“**Event of Default**” shall have the meaning set forth in Section 8.1.1(a) hereof.

“**Exchange Act**” shall mean the Securities Exchange Act of 1934, as the same may be amended, modified or replaced, from time to time.

“**Exchange Act Filing**” shall have the meaning set forth in Section 5.1.11(f) hereof.

“**Extended Maturity Date**” shall have the meaning set forth in Section 2.6.1 hereof.

“**Extension Notice**” shall have the meaning set forth in Section 2.6.1 hereof.

“**First Extension Option**” shall have the meaning set forth in Section 2.6.1 hereof.

“**First Payment Date**” shall have the meaning set forth in Section 2.3.2 hereof.

“**Fiscal Year**” shall mean each twelve (12) month period commencing on January 1 and ending on December 31 during each year of the term of the Loan.

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

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

“**Guarantor**” shall mean, jointly and severally, and, as the context requires, individually and collectively, Alexander Szkaradek, Antoni Szkaradek, Michael P. Beys each an individual; US Home Rentals, LLC, a Delaware limited liability company and FTE Networks, Inc., a Delaware corporation.

“**Guaranty**” shall mean that certain Guaranty dated as of the date hereof, from Guarantor in favor of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

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

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

“**In Balance**” means, with respect to each Project, no Deficiency then exists with respect to such Project.

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

“**Indemnified Parties**” shall mean Lender and any of its Affiliates and any of their officers, directors, members, partners, employees, representatives and consultants.

“**Indemnifying Person**” shall mean Borrower and each Guarantor, on a joint and several basis.

“**Individual Property**” shall mean all parcels of land, the Improvements thereon and all personal property owned by the Borrower and encumbered by a Security Instrument, together with all rights pertaining to such property and Improvements, as more particularly described in the granting clauses of each such Security Instrument and referred to therein as the “Property”.

“**Interest Period**” shall mean (i) initially, the period commencing on and including the date of the funding of the Loan and ending on and including the last day of the calendar month of the Closing Date, and (ii) thereafter, for any specified Payment Date including the Maturity Date, the period commencing on and including the first (1st) day of the calendar month prior to such Payment Date and ending on the last day of the calendar month in which such Payment Date occurs.

“**Interest Rate**” shall mean a fixed rate of Eleven and Ninety-Nine Hundredths percent (11.99%) per annum.

“**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 Property by or on behalf of Borrower, and (a) every modification, amendment or other agreement relating to such lease, sublease, subsublease, or other agreement entered into in connection with such lease, sublease, subsublease, or other agreement, and (b) every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto.

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

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

“**Lien**” shall mean any mortgage, deed of trust, deed to secure debt, indemnity deed of trust, lien (statutory or otherwise), pledge, hypothecation, easement, restrictive covenant, preference, assignment, security interest, or any other encumbrance, charge or transfer of, or any agreement to enter into or create any of the foregoing, on or affecting Borrower, the Property, or any portion thereof or any interest therein, or any direct or indirect 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 have the meaning set forth in the recitals hereof.

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

“**Management Agreement**” shall mean any property management agreement or similar agreement entered into by and between Borrower and Manager, pursuant to which Manager is to provide management and other services with respect to the Property, and any successor property management approved by Lender, in writing, in Lender’s sole discretion.

“**Manager**” shall mean, the individual or entity who provides management and other services with respect to the Property pursuant to a Management Agreement.

“**Material Adverse Change**” or “**Materially Adverse Effect**” shall mean that the business, operations, property, assets, liabilities or financial condition of any applicable Person and each of their subsidiaries, taken as a whole, or the ability of any such Person to perform its obligations under the Loan Documents, has changed in a manner which could materially impair the value of Lender’s security for the Loan or prevent timely repayment of the Loan or otherwise prevent the applicable person or entity from timely performing any of its material obligations under the Loan Documents or any Lease, as the case may be, as determined by Lender.

“**Material Agreements**” shall have the meaning set forth in Section 15.20 hereof.

“**Maturity Date**” shall mean the Stated Maturity Date, provided that (a) in the event of the exercise by Borrower of the First Extension Option pursuant to Section 2.6, the Maturity Date shall be the First Extended Maturity Date, and (b) in the event of the exercise by Borrower of the Second Extension Option pursuant to Section 2.6, the Maturity Date shall be the Second Extended Maturity Date, or such earlier date on which the final payment of principal of the Note becomes due and payable as herein or therein provided, whether at the Stated Maturity Date, by declaration of acceleration, or otherwise.

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

“**Multiemployer Plan**” shall mean a multiemployer plan, as defined in Section 4001(a)(3) of ERISA to which Borrower or any ERISA Affiliate is making or accruing an obligation to make contributions or has within any of the preceding three plan years made or accrued an obligation to make contributions.

“**Multiple Employer Plan**” shall mean an employee benefit plan, other than a Multiemployer Plan, to which Borrower or any ERISA Affiliate, and one or more employers other than Borrower or an ERISA Affiliate, is making or accruing an obligation to make contributions or, in the event that any such plan has been terminated, to which Borrower or an ERISA Affiliate made or accrued an obligation to make contributions during any of the five plan years preceding the date of termination of such plan.

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

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

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

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

“**Obligations**” shall mean, collectively, Borrower’s obligations for the payment of the Debt and the performance of the Other Obligations.

“**OFAC**” shall mean the Office of Foreign Asset Control of the Department of the Treasury of the United States of America.

“**Officer’s Certificate**” shall mean a certificate delivered to Lender by Borrower which is signed by an authorized officer of (i) Borrower, or (ii) any direct or indirect general partner or member of Borrower with authority to act on behalf of and bind Borrower.

“**Operations Agreements**” shall mean any covenants, restrictions, easements, declarations or agreements of record relating to the construction, operation or use of the Property, together with all amendments, modifications or supplements thereto.

“**Other Charges**” shall mean all ground rents, maintenance charges, impositions other than Taxes, any “common expenses” or expenses allocated to and required to be paid by Borrower under any Operations Agreements and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property, now or hereafter levied or assessed or imposed against the Property or any part thereof.

“**Other Obligations**” shall mean (a) the performance of all obligations of Borrower contained herein; (b) the performance of each obligation of Borrower or any Guarantor contained in any other Loan Document; (c) the payment of all costs, expenses, legal fees and liabilities incurred by Lender in connection with the enforcement of any of Lender’s rights or remedies under the Loan Documents, or any other instrument, agreement or document which evidences or secures any other Obligations or collateral therefor, whether now in effect or hereafter executed; and (d) the payment, performance, discharge and satisfaction of all other liabilities and obligations of Borrower and/or Guarantor to Lender, whether now existing or hereafter arising, direct or indirect, absolute or contingent, and including, without limitation, each liability and obligation of Borrower and each Guarantor under any one or more of the Loan Documents and any amendment, extension, modification, replacement or recasting of any one or more of the instruments, agreements and documents referred to herein or therein or executed in connection with the transactions contemplated hereby or thereby.

“**Outstanding Principal Balance**” shall mean, as of any date, the outstanding principal balance of the Loan. For the avoidance of doubt, the outstanding principal balance of the Loan shall include Project Reserve Funds and all other funds held by lender or escrow agent.

“**Payment Date**” shall mean, commencing with the First Payment Date, the first (1st) day of each calendar month during the term of the Loan until and including the Maturity Date or, for purposes of making payments hereunder, but not for purposes of calculating Interest Periods, if such day is not a Business Day, the immediately preceding Business Day.

“**Permitted Encumbrances**” shall mean, collectively (a) the Liens and security interests created by the Loan Documents, (b) all Liens, encumbrances and other matters disclosed in “Schedule B-I” of the Title Insurance Policy, (c) Liens, if any, for Taxes imposed by any Governmental Authority which are not yet due or delinquent, and (d) such other title and survey exceptions as Lender has approved or may approve in writing in Lender’s sole discretion, which Permitted Encumbrances in the aggregate do not materially adversely affect the value or use of the Property or Borrower’s ability to repay the Loan.

“**Permitted Transfer**” means any of the following: (a) any Transfer, directly as a result of the death of a natural person, of stock, membership interests, partnership interests or other ownership interests previously held by the decedent in question to the Person or Persons lawfully entitled thereto; (b) any Transfer, directly as a result of the legal incapacity of a natural person, of stock, membership interests, partnership interests or other ownership interests previously held by such natural person to the Person or Persons lawfully entitled thereto; and (c) any Transfer expressly permitted by and completed strictly in accordance with Section 5.2.10.

“**Person**” shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any Governmental Authority, and any fiduciary acting in such capacity on behalf of any of the foregoing.

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

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

“**Prohibited Transaction**” shall mean any action or 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.

“**Project**” shall mean and refer to, individually and collectively as applicable, the rehabilitation improvements to each Individual Property more particularly described on Schedule 1.1(b) hereto, that will be funded, in whole or in part, with disbursements of Project Reserve Funds.

“**Project Budget**” shall mean a budget for construction of each Project approved by Lender in its sole discretion and any modifications thereof approved by Lender in writing in its sole and absolute discretion.

“**Project Contracts**” shall mean each contract or agreement to which Borrower or any agent of Borrower is a party, providing for the provision of construction services (including architect’s or engineering services), labor or material in connection with a Project.

“**Project Costs**” shall mean all costs and expenses of every kind and nature whatsoever to be incurred by Borrower in connection with the Completion of a Project, including such reserves and contingencies as Lender shall reasonably require.

“**Project Documents**” shall mean each of the following as approved by Lender with respect to each Project: the Approved Plans and the applicable Project Contracts.

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

“**Project Reserve Funds**” shall have the meaning set forth in Section 7.4.1 hereof.

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

“**Release Amount**” shall mean, for an Individual Property, the lesser of:

(a) the Debt; or

(b) an amount equal to the Allocated Loan Amount for such Individual Property set forth on Schedule 1.1(a) (as adjusted pursuant to Sections 2.4.1(c) and 2.4.2(a) if applicable) multiplied by one hundred and ten percent (110%).

“**Release Property**” shall have the meaning set forth in Section 2.7 hereof.

“**Rents**” shall mean all rents (including additional rents of any kind and percentage rents), rent equivalents, moneys payable as damages (including payments by reason of the rejection of a Lease in a Bankruptcy Action) or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other payments and consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower or any of their agents or employees from any and all sources arising from or attributable to the Property, and the Improvements, including charges for oil, gas, water, steam, heat, ventilation, air-conditioning, electricity, license fees, maintenance fees, charges for Taxes, operating expenses or other amounts payable to Borrower (or for the account of Borrower), revenues from telephone services, vending and all receivables, customer obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of the Property or rendering of services by Borrower, or any of its agents or employees and proceeds, if any, from business interruption or other loss of income insurance.

“**Reserve Accounts**” shall mean, collectively, the Project Reserve Account, the Net Proceeds Account, and any other escrow or reserve account established pursuant to the Loan Documents

“**Reserve Funds**” shall mean, collectively, the Project Reserve Funds and any other escrow or reserve funds established pursuant to the Loan Documents.

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

“**Retention Amount**” shall have the meaning set forth in Section 6.4(b)(iv) hereof.

“**Second Extension Option**” shall have the meaning set forth in Section 2.6.1 hereof.

“**Securities**” shall have the meaning set forth in Section 9.1 hereof.

“**Security Instrument**” shall mean those certain first priority Deeds of Trust, Security Agreements, Assignment of Leases and Fixture Filings of even date herewith, made by Borrower for the benefit of Lender as security for the Obligations and encumbering the Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Servicer**” shall have the meaning set forth in Section 9.3 hereof.

“**Servicing Agreement**” shall have the meaning set forth in Section 9.3 hereof.

“**Severed Loan Documents**” shall have the meaning set forth in Section 9.2 hereof.

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

“**Stated Maturity Date**” shall mean August 31, 2021.

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

“**Taxes**” shall mean all taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against (a) the Property or part thereof, together with all interest and penalties thereon and (b) against the rents, issues, income or profits thereof or upon the lien or estate hereby created, whether any or all of said taxes, assessments or charges be levied directly or indirectly or as excise taxes or ad valorem real estate or personal property taxes or as income taxes.

“**Tenant**” shall mean the lessee of all or any portion of the Property under a Lease.

“**Title Company**” shall mean the title insurance company which issued the Title Insurance Policy.

“**Title Insurance Policy**” shall mean an ALTA mortgagee title insurance policy in a form acceptable to Lender (or, if the State does not permit the issuance of such ALTA policy, such form as shall be permitted in the State and acceptable to Lender) with respect to the Property and insuring the Lien of any of the Security Instrument encumbering the Property.

“**Transfer**” shall mean means the sale, transfer, hypothecation, pledge, encumbrance, mortgage, conveyance, lease, alienation, assignment, disposition, divestment, or leasing with option to purchase, or assignment of the Property, or any portion thereof or interest therein or in Borrower (whether direct or indirect, legal or equitable including the issuance, sale, assignment, alienation, conveyance, divestment, transfer, disposition, hypothecation, pledge, mortgage or encumbrance of any ownership interest in Borrower or in any entity having an ownership interest in Borrower, whether direct or indirect); or entering into any agreement or contract to do any of the foregoing which is not conditioned on compliance with the terms of the Loan Documents with respect to Transfers, or undertaking, suffering or causing any of the foregoing to occur voluntarily, involuntarily or by operation of law.

“**UCC**” shall mean the Uniform Commercial Code as in effect in the State in which the Property is located, as the same may be amended from time to time *provided, however*, that if by reason of mandatory provisions of law, the perfection or the effect of perfection or non-perfection or priority of the security interest in any item or portion of the collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State in which the Property is located (“**Other UCC State**”), “**UCC**” means the Uniform Commercial Code as in effect in such Other UCC State, as the same may be amended from time to time, for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection or priority.

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

Section 1.2 Principles of Construction. All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All uses of the word “including” shall mean “including, without limitation” unless the context shall indicate otherwise. Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined.

ARTICLE II

GENERAL TERMS

Section 2.1 Loan Commitment; Disbursement to Borrower.

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

2.1.2 Single Disbursement to Borrower. Borrower may request and receive only one disbursement hereunder in respect of the Loan and any amount borrowed and repaid in respect of the Loan may not be re-borrowed. Borrower acknowledges and agrees that the Loan has been fully funded as of the Closing Date.

2.1.3 The Note, Security Instrument and Loan Documents. The Loan shall be evidenced by the Note and secured by the Security Instrument, and the other Loan Documents.

2.1.4 Use of Proceeds. Borrower shall use the proceeds of the Loan to (a) refinance the Property, (b) make deposits of Reserve Funds into the Reserve Accounts on the Closing Date in the amounts provided herein (Borrower hereby authorizing Lender to reserve a portion of the proceeds of the Loan in the amount of the Reserve Funds from disbursement of the proceeds of the Loan on the date hereof), (c) pay costs and expenses incurred in connection with the closing of the Loan, as approved by Lender, and (d) pay for Project Costs.

2.1.5 Upfront Payment. At Closing, Borrower shall pay to Lender an upfront fee (the “*Upfront Payment*”) in an amount equal to Seventy-Five Thousand and No/100 Dollars (\$75,000.00), less any portion of the Upfront Fee paid to Lender prior to the Closing. The Upfront Payment is fully earned and non-refundable.

Section 2.2 Interest Rate.

2.2.1 Interest Rate. Subject to Section 2.2.4 hereof, interest on the Outstanding Principal Balance shall accrue from the date of the funding of the Loan to but excluding the Maturity Date at the Interest Rate.

2.2.2 Interest Calculation. With respect to any applicable period, interest on the Outstanding Principal Balance 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 the Interest Rate and a three hundred sixty (360) day year by (c) the average Outstanding Principal Balance in effect for the applicable period as calculated by Lender.

2.2.3 Default Rate. In the event that, and for so long as, any Event of Default shall have occurred and be continuing, the Outstanding Principal Balance and, to the extent permitted by law, all accrued and unpaid interest in respect thereof and any other amounts due pursuant to the Loan Documents, shall accrue interest at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained herein.

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

Section 2.3 Debt Service Payments.

2.3.1 Payments Generally. For purposes of making payments hereunder, but not for purposes of calculating Interest Periods, if the day on which such payment is due is not a Business Day, then amounts due on such date shall be due on the immediately succeeding Business Day. All amounts due pursuant to this Agreement and the other Loan Documents shall be payable without setoff, counterclaim, defense or any other deduction whatsoever.

2.3.2 Monthly Debt Service Payment. On the Closing Date, Borrower shall make a payment of interest only for the period commencing on and including the date of the funding of the Loan through and including September 30, 2020. Beginning on October 1, 2020 (the “*First Payment Date*”) and each subsequent Payment Date up to and including the Maturity Date, Borrower shall make a payment to Lender of principal (if any) and interest in an amount equal to the Monthly Debt Service Payment Amount, which payments shall be applied to accrued and unpaid interest.

2.3.3 Payment on Maturity Date. Borrower shall pay to Lender not later than 3:00 P.M., Philadelphia city time, on the Maturity Date the Outstanding Principal Balance, all accrued and unpaid interest and all other amounts due hereunder and under the Note, the Security Instrument and the other Loan Documents.

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

2.3.5 Method and Place of Payment. Except as otherwise specifically provided herein, all payments and prepayments under this Agreement and the Note shall be made to Lender not later than 2:00 P.M., Philadelphia city time, on the date when due and shall be made in Dollars in immediately available funds at Lender's office or as otherwise directed by Lender, 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. Any prepayments required to be made hereunder shall be deemed to have been timely made for purposes of this Section 2.3.5.

2.3.6 ACH Payment. All payments due and owing under this Agreement or any other Loan Documents shall be made by wire transfer to an account designated by Lender to Borrower from time to time, or at Lender's election, shall be made through automated clearing house ("**ACH**") transfers from the Borrower directly to Lender. In this regard, if Lender elects to receive payments through ACH, shall execute and deliver to Lender an authorization agreement for direct payments whereby, among other things, Lender shall be irrevocably authorized to initiate ACH transfers from the a payment account designated by Borrower to Lender in the amounts required or permitted under this Agreement and all other Loan Documents. Lender's authorization for direct ACH transfers as hereby provided shall be irrevocable and such ACH transfers shall continue until all Obligations are paid in full. For so long as any Obligations remain outstanding, Borrower shall: (i) not revoke Lender's authority to initiate ACH transfers as hereby contemplated; (ii) not change, modify, close or otherwise affect the designated payment account; (iii) deposit all revenues of any nature or kind whatsoever relating to Borrower or its business only into the designated payment account; and (iv) be responsible for all costs, expenses or other fees and charges incurred by Lender as a result of any failed or returned ACH transfers, whether resulting from insufficient sums being available in the designated payment account, or otherwise. Borrower shall undertake any and all required actions, execute any required documents, instruments or agreements, or to otherwise do any other thing required or requested by Lender in order to effectuate the requirements of this Section 2.3.6.

Section 2.4 Prepayments.

2.4.1 Voluntary Prepayments.

(a) Except as otherwise provided in this Section 2.4, Borrower shall not have the right to prepay the Loan in whole or in part. Provided no Event of Default has occurred and is continuing, Borrower may prepay the Loan in whole upon the satisfaction of the following conditions:

(b) Borrower shall provide a written notice to Lender of such prepayment no less than thirty (30) days, and no more than sixty (60) days, prior to the date of such prepayment, specifying the Business Day on which a prepayment of the Debt (the "**Prepayment Date**") is to be made; and

(c) Borrower shall pay to Lender on the Prepayment Date, together with any portion of the Outstanding Principal Balance being repaid:

(i) all accrued and unpaid interest on the amount of the Outstanding Principal Balance being prepaid, which, for the avoidance of doubt, shall include interest on such amount calculated at the applicable Interest Rate through the end of the Interest Period in which such prepayment occurs; and

(ii) without duplication of any of the foregoing, all other sums, then due under the Note, this Agreement, the Security Instrument, and the other Loan Documents.

(d) If for any reason Borrower fails to prepay the Loan on the Prepayment Date (including if such notice is revoked), Borrower shall pay to Lender any actual out-of-pocket losses, costs, damages or expenses (including reasonable attorneys' fees and expenses) incurred by Lender in connection therewith.

(e) Upon receipt by Lender of a voluntary prepayment permitted pursuant to the terms of this Agreement, except for a prepayment made (i) in connection with a release of any Individual Property from the Lien of any of the Security Instruments or (ii) any Casualty/Condemnation Prepayment up to the Allocated Loan Amount of the applicable Individual Property, the Allocated Loan Amount for each Individual Property that is then subject to the Lien of any of the Security Instruments shall be reduced on a pro rata basis by such amount.

2.4.2 Mandatory Prepayments.

(a) 90-Day Principal Payments. On December 1, 2020, Borrower shall make a payment to Lender (the “**Initial 90-Day Principal Payment**”) in an amount equal to five percent (5%) of the Outstanding Principal Balance. Beginning on March 1, 2021 and on each third (3rd) Payment Date thereafter (i.e., on June 1, September 1, December 1 and March 1 of each calendar year), Borrower shall make a payment to Lender (each such payment, and together with the Initial 90-Day Principal Payment, collectively the “**90-Day Principal Payments**”) in an amount (but not less than zero) equal to (a) ten percent (10%) of the Outstanding Principal Balance, less (b) all Release Amounts paid to Lender pursuant to and in accordance with Section 2.7 hereof and applied to pay down the Outstanding Principal Balance but only to the extent such Release Amounts have not been applied to reduce any prior 90-Day Principal Payments. Provided no Event of Default exists, Lender shall apply the 90-Day Principal Payments to the Outstanding Principal Balance.

(b) Net Proceeds Payments. On the Payment Date immediately succeeding the date on which Lender actually receives any Net Proceeds, and if Lender is not required to make such Net Proceeds available to Borrower for a Restoration in accordance with the terms of this Agreement, Borrower shall prepay or authorize Lender to apply the Net Proceeds as a prepayment of the Outstanding Principal Balance in an amount equal to one hundred percent (100%) of such Net Proceeds provided that Borrower shall simultaneously therewith pay to Lender all accrued and unpaid interest on the principal amount being repaid (which, for the avoidance of doubt, shall include interest accruing on such amounts through the last day of the Interest Period in which such repayment occurs). Notwithstanding anything herein to the contrary, so long as no Event of Default has then occurred and is continuing, no or any other prepayment premium, penalty or fee shall be due in connection with any prepayment made pursuant to this Section 2.4.2.

2.4.3 Prepayments After Default. If, during the continuance of an Event of Default, payment of all or any part of the Debt is tendered by Borrower and accepted by Lender or is otherwise recovered by Lender (including through application of any Reserve Funds), such tender or recovery shall be deemed to be a voluntary prepayment by Borrower in violation of the prohibition against prepayment set forth in Section 2.4.1 hereof, and Borrower shall pay, as part of the Debt, all of the interest calculated at the Interest Rate on the amount of principal being prepaid through and including the end of the Interest Period in which such prepayment occurs.

Section 2.5 Release of Property. Except as set forth in Section 2.7 below, no repayment, prepayment 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 of the Security Instruments. Lender shall, upon the written request and at the expense of Borrower, upon payment in full of the Debt in accordance with the terms of this Agreement and the other Loan Documents, release the Lien of the Security Instruments.

Section 2.6 Extension Option(s).

2.6.1 Extension Option(s). Subject to the provisions of this Section 2.6.1, Borrower shall have the option (the “**First Extension Option**”), by irrevocable written notice (the “**First Extension Notice**”) delivered to Lender no later than thirty (30) days prior to the Stated Maturity Date, to extend the Maturity Date to August 31, 2022 (the “**First Extended Maturity Date**”). Borrower’s right to so extend the Maturity Date shall be subject to the satisfaction of the following conditions precedent prior to the effectiveness of any such extension:

(a) (i) no Event of Default shall have occurred and be continuing on the date Borrower delivers the First Extension Notice or the Second Extension Notice, as applicable, and (ii) no Default or Event of Default shall have occurred and be continuing on the Stated Maturity Date and the First Extended Maturity Date, as applicable;

(b) All amounts due and payable by Borrower and any other Person pursuant to this Agreement or the other Loan Documents as of the Stated Maturity Date or the First Maturity Date, as applicable, and all costs and expenses of Lender, including fees and expenses of Lender’s counsel, in connection with the Loan and/or the extension shall have been paid in full;

(c) Borrower shall deliver an Officer's Certificate to Lender (i) certifying that all representations and warranties set forth in this Agreement remain true, correct and complete in all material respects as of the commencement of the applicable Extension Option, and (ii) waiving any claims, counterclaims, rights of rescission, set-offs or defenses, known or unknown, against Lender as of the commencement of the applicable Extension Option.

If Borrower is unable to satisfy all of the foregoing conditions within the applicable time frames for each, Lender shall have no obligation to extend the Stated Maturity Date hereunder.

2.6.2 Extension Documentation. If requested by Lender, Borrower shall execute and deliver an agreement in form and substance reasonably acceptable to Lender commemorating the extension of the Maturity Date upon the exercise of an Extension Option and satisfaction of all applicable conditions to such extension as provided in Section 2.6.1; provided that no such agreement shall materially increase or alter the obligations of Borrower pursuant to the Loan Documents (it being acknowledged that a ratification by Borrower or any Guarantor of its respective obligations under the Loan Documents to which it is a party or a certification by Borrower and/or any Guarantor that its respective representations and warranties set forth in the Loan Documents to which it is a party remain true and correct in all material respects as of the first day of any extension term shall not constitute an increase in Borrower's obligations for such purpose).

2.7 Release of Individual Property. At any time Borrower may obtain the release of an Individual Property from the Lien of the applicable Security Instrument thereon and related Loan Documents (each such Individual Property, a "**Release Property**") and the release of Borrower's obligations under the Loan Documents with respect to such Release Property (other than those expressly stated to survive), upon the satisfaction of each of the following conditions:

(a) Not more than ninety (90) calendar days and not less than ten (10) calendar days prior to the date of the release, Borrower delivers a notice to Lender setting forth (i) the date of the proposed release and (ii) a description of the Release Property that will be subject to the release;

(b) no Event of Default shall be continuing on the date that the Release Property is released from the Lien of the Security Instrument thereon other than as expressly permitted below;

(c) Borrower shall have paid to Lender the applicable Release Amount;

(d) Borrower shall submit to Lender, not less than ten (10) days prior to the date of such release, a release of Lien (and related Loan Documents) for such Release Property for execution by Lender. Such release shall be in a form appropriate in each jurisdiction in which such Release Property is located and that would be reasonably satisfactory to a prudent lender. In addition, Borrower shall provide all documentation Lender reasonably requires to be delivered by Borrower in connection with such release, together with an Officer's Certificate certifying that such documentation (A) will effect such release in accordance with the terms of this Agreement, and (B) will not impair or otherwise adversely affect the Liens, security interests and other rights of Lender under the Loan Documents not being released (or as to the parties to the Loan Documents and Individual Properties subject to the Loan Documents not being released);

(e) Borrower shall have paid or reimbursed Lender for all reasonable out of pocket costs and expenses incurred by Lender (including, without limitation, reasonable attorneys' fees and disbursements) in connection with any release effectuated pursuant to this Section 2.7, and Borrower shall have paid all third-party fees, costs and expenses incurred in connection with any such release, including but not limited to, the payment of all recording charges, filing fees, taxes or other similar expenses incurred in the reasonable judgment of Lender in order to effectuate the release;

(f) [Intentionally omitted]

(g) At Lender's request, Borrower shall deliver to Lender (i) an endorsement to the Title Insurance Policy for the remaining Property (to the extent reasonably available in the State in which the remaining Property is located) insuring the Security Instrument, which endorsement (A) extends the effective date of such Title Insurance Policy for the remaining Property to the effective date of the release, (B) confirms no change in the priority of the Security Instrument on the balance of the Property (exclusive of the Release Parcel); and (C) lists any Permitted Encumbrances; and (ii) at Lender's request, a survey in form and substance reasonably acceptable to Lender of the remaining portion of the Property; and

(h) Notwithstanding the foregoing provisions of this Section 2.7, if the Loan is included in a REMIC Trust, as a condition to such release, Borrower shall have established to Lender's reasonable satisfaction that the loan-to-value ratio of the Loan (expressed as a percentage) based upon valuations obtained by Borrower at its sole cost and expense using (i) an existing appraisal (if such release occurs within twenty-four (24) months of the Closing Date), (ii) a new appraisal or (iii) a broker's price opinion or other written determination of value using a commercially reasonable valuation method (provided, in each case, that such appraisal, opinion or other determination constitutes a commercially reasonable method permitted to a REMIC Trust, and provided, further, that such valuation shall be based solely on the value of real property and shall exclude personal property and going-concern value) does not exceed 125% immediately after the release of the Release Property, no such release will be permitted unless the Borrower pays down the principal balance of the Loan by an amount not less than the greater of (A) the Release Amount or (B) the least of one of the following amounts: (i) if the Individual Property is sold, the net proceeds of an arm's-length sale of the Release Property to an unrelated Person, (ii) the fair market value of the Release Property at the time of the release, or (iii) an amount such that the loan-to-value ratio of the Loan as so determined by Lender after the release is not greater than the loan-to-value ratio of the Loan immediately prior to the release, unless the Lender receives an opinion of counsel that, if (B) is not followed, the Securitization will not fail to maintain its status as a REMIC Trust as a result of the release.

ARTICLE III

[Intentionally Omitted**]**

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

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

4.1.1 Organization. Borrower has been duly organized and is validly existing and in good standing with requisite power and authority to own its properties and to transact the business in which it is now engaged and as contemplated by this Agreement, including, without limitation, the power and authority to do business in the State. Borrower is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations. Borrower possesses all rights, licenses, permits and authorizations, governmental or otherwise, necessary to entitle it to own its properties and to transact the businesses in which it is now engaged. The sole business of Borrower is the ownership, management and operation of the Property. The ownership interests of Borrower are as set forth on the organizational chart attached hereto as Schedule 4.1.1. Borrower (a) has complied in all respects with its articles of organization or limited liability company agreement; (b) has maintained complete books and records and bank accounts separate from those of its Affiliates; and (c) has obeyed all formalities required to maintain its status as, and at all times has held itself out to the public as, a legal entity separate and distinct from any other entity (including, but not limited to, any Affiliate thereof). The signatory hereto has all necessary power, authority and legal right to execute this Agreement, the Note and the other Loan Documents on Borrower's behalf to which Borrower is a party. Guarantor has the necessary power, authority and legal right to execute, deliver and perform its obligations under the Guaranty.

4.1.2 Proceedings. Borrower has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents. This Agreement and the other Loan Documents to which it is a party have been duly executed and delivered by or on behalf of Borrower and constitute the legal, valid and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

4.1.3 No Conflicts. The execution, delivery and performance of this Agreement and the other Loan Documents by Borrower and/or Guarantor, as applicable, will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any Lien, charge or encumbrance (other than pursuant to the Loan Documents) upon any of the property or assets of Borrower pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, partnership agreement, management agreement or other agreement or instrument to which Borrower is a party or by which any of Borrower's property or assets is subject, nor will such action result in any violation of the provisions of any Legal Requirements of any Governmental Authority having jurisdiction over Borrower or any of Borrower's properties or assets, and any consent, approval, authorization, order, registration or qualification of or with any court or any such Governmental Authority required for the execution, delivery and performance by Borrower and/or any Guarantor, as applicable, of this Agreement or any other Loan Documents has been obtained and is in full force and effect.

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

4.1.5 Agreements. Borrower is not a party to any agreement or instrument or subject to any restriction which might materially and adversely affect Borrower or the Property, or Borrower's business, properties or assets, operations or condition, financial or otherwise. Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party or by which Borrower or the Property are bound. Borrower has no material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower is a party or by which Borrower or the Property is otherwise bound, other than as permitted by this Agreement.

4.1.6 Title. Borrower has good, marketable and insurable fee simple title to the real property comprising part of the Property and good title to the balance of the Property, free and clear of all Liens whatsoever except the Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. The Security Instrument, when properly recorded in the appropriate records, together with any UCC-1 financing statements required to be filed in connection therewith, will create (a) a valid, perfected first priority lien on the Property, subject only to Permitted Encumbrances and the Liens created by the Loan Documents, and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty, solely to the extent such security interests can be perfected by the filing of a UCC-1 financing statement, all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. There are no claims for payment for work, labor or materials affecting the Property which are or may become a Lien prior to, or of equal priority with, the Liens created by the Loan Documents.

4.1.7 Solvency. Borrower has (a) not entered into the transaction contemplated by this Agreement or executed the Note, this Agreement or any other Loan Documents with the actual intent to hinder, delay or defraud any creditor and (b) received reasonably equivalent value in exchange for its obligations under such Loan Documents. After 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 liabilities (including contingent liabilities, if any), 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 incur debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debts 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 the obligations of Borrower). No Bankruptcy Action exists against Borrower and Borrower has never been a debtor party in a Bankruptcy Action. No Bankruptcy Action exists against any Guarantor, and neither Borrower nor has any Guarantor has ever been a debtor party in a Bankruptcy Action. Neither Borrower nor any Guarantor is contemplating either a Bankruptcy Action or the liquidation of all or a major portion of Borrower's or Guarantor's respective assets or properties, and Borrower has no knowledge of any Person contemplating the filing of any petition against Borrower or any Guarantor.

4.1.8 Full and Accurate Disclosure. No statement of fact made by or on behalf of Borrower in this Agreement or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no material information that has not been disclosed to Lender which adversely affects, nor as far as Borrower can reasonably foresee, might materially adversely affect, the Property or the business, operations or condition (financial or otherwise) of Borrower or any Guarantor.

4.1.9 No Plan Assets. Borrower is not an “employee benefit plan,” as defined in Section 3(3) of ERISA, subject to Title I of ERISA or Section 4975 of the Code, and none of the assets of Borrower constitutes or will constitute “plan assets” of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101. Compliance by Borrower and each Guarantor with the provisions hereof will not involve any Prohibited Transaction. Neither Guarantor nor Borrower has any pension, profit sharing, stock option, insurance or other arrangement or plan for employees covered by Title IV of ERISA, and no “Reportable Event” as defined in ERISA has occurred and is now continuing with respect to any such plan. The performance by Borrower of its obligations under the Loan Documents and Borrower’s conducting of its operations do not violate any provisions of ERISA. In addition, (a) Borrower is not a “governmental plan” within the meaning of Section 3(32) of ERISA, (b) transactions by or with Borrower are not subject to any state statute or regulation regulating investments of, or fiduciary obligations with respect to, governmental plans within the meaning of Section 2(32) of ERISA which is similar to the provisions of Section 406 of ERISA or Section 4975 of the Code currently in effect, which prohibit or otherwise restrict the transactions contemplated by this Agreement, and (c) none of Borrower, Guarantor or ERISA Affiliate is at the date hereof, or has been at any time within the two years preceding the date hereof, an employer required to contribute to any Multiemployer Plan or Multiple Employer Plan, or a “contributing sponsor” (as such term is defined in Section 4001 of ERISA) in any Multiemployer Plan or Multiple Employer Plan; and none of Borrower, Guarantor or any ERISA Affiliate has any contingent liability with respect to any post-retirement “welfare benefit plan” (as such term is defined in ERISA) except as disclosed to Lender in writing.

4.1.10 Compliance. Borrower and the Property (including the use thereof) comply in all material respects with all applicable Legal Requirements, including, without limitation, building and zoning ordinances and codes. Borrower is not in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority, including, without limitation, any order of a bankruptcy court or plan approved thereby. There has not been committed by Borrower (or any other Person), any act or omission affording any Governmental Authority the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower’s obligations under any of the Loan Documents. Neither the Improvements, if any, as constructed, nor the use of the Property or any contemplated accessory uses, will violate (a) any Legal Requirements (including subdivision, zoning, building, environmental protection and wetland protection Legal Requirements), or (b) any building permits, restrictions or records, or agreements affecting the Property or any part thereof. Neither the zoning authorizations, approvals or variances nor any other right to construct or to use the Property is to any extent dependent upon or related to any real estate other than the Property.

4.1.11 Financial Information. All financial data with respect to the Property and Guarantor, including, without limitation, the statements of cash flow and income and operating expense, that have been delivered to Lender in connection with the Loan (a) are true, complete and correct in all material respects, (b) fairly and accurately represent the financial condition of the Property and each Guarantor as of the date of such reports, and (c) to the extent prepared or audited by an independent certified public accounting firm, have been prepared in accordance with GAAP (or such other accounting basis acceptable to Lender) throughout the periods covered, except as disclosed therein. Except for Permitted Encumbrances, Borrower does not have any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and reasonably likely to have a Materially Adverse Effect on the Property or the Project. Since the date of such financial statements, there has been no Material Adverse Change (or any other material change) in the financial condition, operation or business of Borrower or any Guarantor from that set forth in said financial statements.

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

4.1.13 Federal Reserve Regulations. No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulation U or any other Regulations of such Board of Governors, or for any purposes prohibited by any Legal Requirements or by the terms and conditions of this Agreement or the other Loan Documents.

4.1.14 Public Access. The Property has rights of access to public ways and, upon construction thereon, will be served by water, sewer, sanitary sewer and storm drain facilities adequate to service the Property for its intended uses. All public utilities necessary or convenient to the full use and enjoyment of the Property are located either in the public right-of-way abutting the Property (which will be connected so as to serve the Property without passing over other property) or in recorded easements serving the Property and such easements are set forth in and insured by the Title Insurance Policy. All roads necessary for the use of the Property for its current purpose have been completed and dedicated to public use and accepted by all Governmental Authorities. There is no on-site sewage disposal system and, upon construction thereon, the Property will be served by a sewer system maintained by a Governmental Authority or property owners association.

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

4.1.16 Separate Lots. The Property is comprised of multiple parcels more particularly described on Schedule 1.1(a) which each constitute(s) a separate tax lot or lots and does not constitute a portion of any other tax lot not a part of the Property.

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

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

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

4.1.20 Insurance. Borrower has obtained and has delivered to Lender evidence of all Policies, with all premiums paid thereunder, reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. No claims have been made or are currently pending, outstanding or otherwise remain unsatisfied under any such Policies, and neither Borrower nor any other Person, has done, by act or omission, anything which would impair the coverage of any such Policies.

4.1.21 Flood Zone. None of the Improvements on the Property are located in an area as identified by the Federal Emergency Management Agency as an area having special flood hazards or, if so located, the flood insurance required pursuant to Section 6.1(a)(i) hereof is in full force and effect with respect to the Property.

4.1.22 Leases. Any and all Leases at the Property (a) provide for rental rates comparable to existing local market rates, contain reasonable market rate terms and do not contain any terms which would materially adversely affect Lender's rights under the Loan Documents, (b) are for a lease term not exceeding one year, including all extensions, (c) are with individual, residential, non-commercial tenants, and (d) have been entered into by Borrower in its ordinary course of business. No Person has any possessory interest in the Property or right to occupy the same other than tenants pursuant to the express terms of the Leases.

4.1.23 Survey. Each Survey for the Property delivered to Lender is accurate.

4.1.24 Principal Place of Business; State of Organization. Borrower's principal place of business as of the date hereof is the address set forth in the introductory paragraph of this Agreement. Borrower is organized under the laws of the State of Delaware and is qualified to do business in the all states in which Borrower is required to be qualified.

4.1.25 Filing and Recording Taxes. All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the transfer of the Property to Borrower have been paid. All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Security Instrument, have been paid or are being paid simultaneously with the disbursement of the proceeds of the Loan to Borrower.

4.1.26 [Intentionally omitted].

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

4.1.28 No Change in Facts or Circumstances; Disclosure. All information submitted by Borrower and any Guarantor to Lender including, but not limited to, all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan or in satisfaction of the terms thereof and all statements of fact made by Borrower and each Guarantor in this Agreement or in any other Loan Document, are accurate, complete and correct in all material respects. There has been no Material Adverse Change in any condition, fact, circumstance or event that would make any such information inaccurate, incomplete or otherwise misleading in any material respect or that otherwise materially and adversely affects or might materially and adversely affect the use, operation or value of the Property or the business operations and/or the financial condition of Borrower or any Guarantor. Borrower and each Guarantor have disclosed to Lender all material facts and have not failed to disclose any material fact that could cause any information provided to Lender or representation or warranty made herein to be materially misleading.

4.1.29 Investment Company Act. Borrower is not (a) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; (b) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 2005, as amended; or (c) subject to any other Federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

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

4.1.31 Filing of Returns. Borrower and each Guarantor have filed all Federal income tax returns and all other material tax returns, domestic and foreign, or extensions, as the case may be, required to be filed by it and have paid all material taxes and assessments payable by it that have become due, other than those not yet delinquent and except for those being contested in good faith. Borrower and each Guarantor have each established on its books such charges, accruals and reserves in respect of taxes, assessments, fees and other governmental charges for all fiscal periods as are required by sound accounting principles consistently applied. Neither Borrower, nor any Guarantor knows of any proposed assessment for additional Federal, foreign or state taxes for any period, or of any basis therefor, that, individually or in the aggregate, taking into account such charges, accruals and reserves in respect thereof as such Person has made, could reasonably be expected to cause a Material Adverse Change with respect to Borrower, Guarantor or the Property.

4.1.32 Operations Agreements. Each Operations Agreement is in full force and effect and neither Borrower nor, to the best of Borrower's knowledge, any other party to any such Operations Agreement, 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.

Section 4.2 Survival of Representations. Borrower agrees that all of the representations and warranties of Borrower set forth in Section 4.1 and elsewhere in this Agreement and in the other Loan Documents shall survive for so long as any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

ARTICLE V

BORROWER COVENANTS

Section 5.1 Affirmative Covenants. From the date hereof and until payment and performance in full of all Obligations, Borrower hereby covenants and agrees with Lender that:

5.1.1 Existence; Compliance with Legal Requirements. Borrower shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, licenses, permits and franchises and comply with all Legal Requirements applicable to Borrower and the Property. There shall never be committed by Borrower, and Borrower shall not permit any other Person in occupancy of or involved with the operation or use of the Property to commit, any act or omission affording any Governmental Authority the right of forfeiture against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. Borrower shall not commit, permit or suffer to exist any act or omission affording such right of forfeiture. Borrower shall at all times maintain, preserve and protect all franchises and trade names, preserve all the remainder of its property used or useful in the conduct of its business, and shall keep the Property in good working order and repair, and from time to time make, or cause to be made, all reasonably necessary repairs, renewals, replacements, betterments and improvements thereto, all as more fully provided in the Security Instrument. Borrower shall keep the Property insured at all times by financially sound and reputable insurers, to such extent and against such risks, and maintain liability and such other insurance, as is more fully provided in this Agreement. After prior notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding promptly initiated and conducted in good faith and with due diligence, the validity of any Legal Requirement, the applicability of any Legal Requirement to Borrower or the Property or any alleged violation of any Legal Requirement, provided, that: (a) no Default or Event of Default has occurred and is continuing; (b) such proceeding shall be permitted under, and be conducted in accordance with, the provisions of any instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances; (c) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (d) Borrower shall, upon final determination thereof, promptly comply with any such Legal Requirement determined to be valid or applicable or cure any violation of any Legal Requirement; (e) such proceeding shall suspend the enforcement of the contested Legal Requirement against Borrower and the Property; and (f) Borrower shall furnish such security as may be required in the proceeding, or as may be requested by Lender, to insure compliance with such Legal Requirement, together with all interest and penalties payable in connection therewith. Lender may apply any such security, as necessary to cause compliance with such Legal Requirement at any time when, in the judgment of Lender, the validity, applicability or violation of such Legal Requirement is finally established or the Property (or any part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost.

5.1.2 Taxes and Other Charges. Borrower shall pay, all Taxes and Other Charges now or hereafter levied or assessed or imposed against the Property, or any part thereof, as the same become due and payable. Borrower will deliver or cause to be delivered to Lender receipts for payment or other evidence satisfactory to Lender that the Taxes and Other Charges have been so paid or are not then delinquent no later than ten (10) days prior to the date on which the Taxes and/or Other Charges would otherwise be delinquent if not paid. Borrower shall not suffer and shall promptly pay or cause to be paid and discharged any Lien or charge whatsoever which may be or become a Lien or charge against the Property, and shall promptly pay or cause to be paid all utility services provided to the Property. After prior notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Taxes or Other Charges, provided that (a) no Default or Event of Default has occurred and remains uncured; (b) such proceeding shall be permitted under, and be conducted in accordance with, the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances; (c) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (d) Borrower shall promptly upon final determination thereof pay or cause to be paid the amount of any such Taxes or Other Charges, together with all costs, interest and penalties which may be payable in connection therewith; (e) such proceeding shall suspend the collection of such contested Taxes or Other Charges from the Property (except that if such Taxes or Other Charges must be paid sooner in order to avoid being delinquent, then Borrower shall pay or cause the same to be paid prior to delinquency, and upon making such payment or causing such payment to be made prior to delinquency Borrower may continue such contest); and (f) Borrower shall furnish such security as may be required in the proceeding, or as may be requested by Lender, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon. Lender may pay over any such cash deposit or part thereof held by Lender to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established or the Property (or part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost or there shall be any danger of the Lien of the Security Instrument being primed by any related Lien.

5.1.3 Litigation. Borrower shall give prompt notice to Lender of any litigation or proceedings by any Governmental Authority pending or threatened against Borrower and/or any Guarantor which might have a Materially Adverse Effect on Borrower's or any Guarantor's condition (financial or otherwise) or business or the Property.

5.1.4 Access to Property. Borrower shall permit agents, representatives and employees of Lender to inspect the Property or any part thereof at reasonable hours upon reasonable advance notice (which may be given verbally).

5.1.5 Notice of Default. Borrower shall promptly advise Lender of any Material Adverse Change in Borrower's or any Guarantor's condition, financial or otherwise, or of the occurrence of any Default or Event of Default of which Borrower has knowledge.

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

5.1.7 Perform Loan Documents. Borrower shall observe, perform and satisfy all the terms, provisions, covenants and conditions of, and shall pay when due all costs, fees and expenses to the extent required under the Loan Documents. Payment of the costs and expenses associated with any of the foregoing shall be in accordance with the terms and provisions of this Agreement, including, without limitation, the provisions of Section 10.13 hereof.

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

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

(a) furnish to Lender all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements, and each and every other document, certificate, agreement and instrument required to be furnished by Borrower pursuant to the terms of the Loan Documents or which are reasonably requested by Lender in connection therewith;

(b) authorize the filing or recording of or execute and deliver to Lender such documents, instruments, certificates, assignments, financing statements 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 under the Loan Documents, as Lender may reasonably require; and

(c) 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. In furtherance hereof, Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of protecting, perfecting, preserving and realizing upon the interests granted pursuant to this Agreement and to effect the intent hereof, all as fully and effectually as Borrower might or could do; and Borrower hereby ratifies all that Lender shall lawfully do or cause to be done by virtue hereof. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other applicable Loan Document, and in the case of the Note, receipt of an indemnity from Lender, Borrower will issue, in lieu thereof, a replacement Note or other applicable Loan Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Loan Document in the same principal amount thereof and otherwise of like tenor. Borrower hereby authorizes Lender to file an "all assets" financing statement with respect to the Collateral.

5.1.10 Mortgage Taxes. Borrower shall simultaneously with the disbursement of the proceeds of the Loan pay all state, county and municipal recording and all other taxes imposed upon the execution and recordation of the Security Instrument.

5.1.11 Financial Reporting.

(a) Borrower will keep and maintain or will cause to be kept and maintained on a Fiscal Year basis in accordance with GAAP (or such other accounting basis selected by Borrower and reasonably acceptable to Lender), proper and accurate books, records and accounts reflecting all of the financial affairs of Borrower and all items of income and expense in connection with the operation of the Property. Lender shall have the right from time to time at all times during normal business hours upon reasonable notice (which may be verbal) to examine such books, records and accounts at the office of Borrower or any other Person maintaining such books, records and accounts and to make such copies or extracts thereof as Lender shall desire. After the occurrence of an Event of Default, Borrower shall pay any costs and expenses incurred by Lender to examine Borrower's accounting records with respect to the Property, as Lender shall reasonably determine to be necessary or appropriate in the protection of Lender's interest. Upon Lender's request, Borrower shall furnish to Lender such other information reasonably necessary and sufficient to fairly represent the financial condition of Borrower and the Property.

(b) Borrower will furnish to Lender annually, within one hundred twenty (120) days following the end of each Fiscal Year of Borrower, and within thirty (30) days of the end of each calendar quarter, a complete copy of Borrower's and each Guarantor's annual (or quarterly, as applicable) financial statements certified as true and correct by the party providing such statements (and, for the annual of statements of Borrower prepared by an independent certified public accountant acceptable to Lender) in accordance with GAAP (or such other accounting basis acceptable to Lender, consistently applied) covering the Property for such Fiscal Year (or calendar quarter) and containing statements of profit and loss for Borrower, Guarantor and the Property and a balance sheet for Borrower and each Guarantor. Such statements of Borrower shall set forth the financial condition and the results of operations for the Property for such Fiscal Year (or calendar quarter), and an Officer's Certificate certifying that each annual financial statement of Borrower fairly presents the financial condition and the results of operations of Borrower and the Property subject to such reporting, and that such financial statements have been prepared in accordance with GAAP and as of the date thereof whether 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. Guarantor's annual financial statements shall be accompanied by a certificate executed and delivered by Guarantor (if such Guarantor is a natural person) or an officer or other duly authorized representative of Guarantor (if such Guarantor is an entity) certifying that each annual financial statement presents fairly the financial condition and the results of operations of Guarantor being reported upon and that such financial statements have been prepared in accordance with GAAP (or such other accounting basis acceptable to Lender, and, for Guarantors, Lender hereby approves sound and prudent cash based financial statements consistently applied) and as of the date thereof whether there exists an event or circumstance which constitutes a Default or Event of Default by Guarantor under the Loan Documents, and if such Default or an 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 shall also provide such monthly reports and statements as are reasonably required by Lender within twenty (20) days after the end of each calendar month.

(d) Borrower shall furnish to Lender, within twenty (20) days after request (or as soon thereafter as may be reasonably possible), such further detailed information with respect to the operation of the Property and the financial affairs of Borrower as may be reasonably requested by Lender.

(e) Any reports, statements or other information required to be delivered under this Agreement shall be delivered in electronic form (or such other form as required by Lender) and Borrower agrees that Lender may disclose information regarding the Property and Borrower that is provided to Lender pursuant to this Section 5.1.11 in connection with any Lender Assignment to such parties requesting such information in connection with such Lender Assignment.

(f) Without limitation on other requirements of this Agreement, Lender may require, at Borrower's cost and expense, quarterly valuations of the Loan and Borrower shall cooperate in connection therewith; provided, however, so long as no Event of Default exists, Borrower shall not be required to reimburse Lender more than \$2,500 for the cost of any such quarterly valuation.

5.1.12 Business and Operations. Borrower will continue to engage in the businesses presently conducted by it as and to the extent the same are necessary for the ownership, maintenance, management and operation of the 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, maintenance, management and operation of the Property or ownership and management of an interest in Borrower (as applicable).

5.1.13 Title to the Property. Borrower will warrant and defend (a) the title to the Property and every part thereof, subject only to Permitted Encumbrances, and (b) the validity and priority of the Lien of each of the Security Instruments, subject only to Permitted Encumbrances, in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any losses, costs, damages or expenses (including attorneys' fees and expenses, and court costs) incurred by Lender if an interest in the Property, other than as permitted hereunder, is claimed by another Person.

5.1.14 Costs of Enforcement. In the event (a) that the Security Instrument is foreclosed in whole or in part or that the Security Instrument is put into the hands of an attorney for collection, suit, action or foreclosure, (b) of the foreclosure of any mortgage prior to or subsequent to the Security Instrument in which proceeding Lender is made a party, or (c) of a Bankruptcy Action related to Borrower or an assignment by Borrower for the benefit of its creditors, Borrower, on behalf of itself and its successors and assigns, agrees that it/they shall be chargeable with and shall pay all costs of collection and defense, including attorneys' fees and expenses, and court costs, incurred by Lender or Borrower in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, together with all required service or use taxes.

5.1.15 Estoppel Statement.

(a) After request by Lender, Borrower shall within ten (10) days furnish Lender with a statement, duly acknowledged and certified, setting forth (i) the original principal amount of the Loan, (ii) the Outstanding Principal Balance, (iii) the Interest Rate of the Loan, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the performance of the Obligations, if any, and (vi) that the Note, this Agreement, the Security Instrument and the other Loan Documents are valid, legal and binding obligations of Borrower and have not been modified or if modified, giving particulars of such modification.

(b) Borrower shall use commercially reasonable efforts to deliver to Lender upon request, tenant estoppel certificates from each commercial Tenant, if any, in form and substance reasonably satisfactory to Lender provided that Borrower shall not be required to deliver such certificates more frequently than once in any calendar year.

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

5.1.17 Performance by Borrower. Borrower shall in a timely manner observe, perform and fulfill each and every covenant, term and provision of each Loan Document executed and delivered by, or applicable to, Borrower and shall not enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Loan Document without the prior written consent of Lender.

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

5.1.19 Leasing Matters. Any Lease executed after the date hereof (and any amendment or termination thereof) shall require the prior written consent of Lender, which consent shall be in Lender's sole and absolute discretion. Borrower shall furnish Lender with true, correct and complete executed copies of all Leases, amendments thereof and any related agreements. Without limitation, and as applicable, Lender shall be deemed to have approved all renewals of Leases and all proposed Leases so long as the same (a) provide for rental rates comparable to existing local market rates, contain reasonable market rate terms and do not contain any terms which would materially adversely affect Lender's rights under the Loan Documents, (b) are for a lease term not exceeding one year, including all extensions, (c) are with individual, residential, non-commercial tenants, and (d) have been entered into by Borrower in its ordinary course of business. All Leases executed after the date hereof shall provide that they are subordinate to the Security Instrument and the Liens created thereby and that the Tenant thereunder agrees to attorn to Lender or any other purchaser of the Property at a sale by foreclosure (or deed in lieu thereof) or power of sale. Borrower (a) shall observe and perform the obligations imposed upon the lessor under the Leases in a commercially reasonable manner; (b) shall enforce the terms, covenants and conditions contained in the Leases upon the part of the Tenant thereunder to be observed or performed in a commercially reasonable manner and in a manner which does not impair the value of the Property involved, provided that in no event shall Borrower terminate or accept the surrender of any Lease by a Tenant unless by reason of a Tenant default and then only in a commercially reasonable manner to preserve and protect the Property; *provided, however*, that no such termination or surrender of any Lease will be permitted without the prior written consent of Lender or unless such termination or surrender is specifically provided for in the Lease; (c) shall not collect any of the Rents more than one (1) month in advance (other than security deposits required pursuant to such Lease); (d) shall not execute any other assignment of the lessor's interest in the Leases or the Rents (except to Lender pursuant to the Loan Documents); (e) shall not alter, modify or change the terms of the Leases; and (f) shall execute and deliver at the request of Lender all such further assurances, confirmations and assignments in connection with the Leases as Lender shall from time to time reasonably require. Lender shall have the right to require each new Tenant to execute and deliver to Lender a subordination, non-disturbance of possession and attornment agreement in form, content and manner of execution reasonably acceptable to Lender.

5.1.20 Operation of Property.

(a) Borrower shall: (i) promptly perform and/or observe in all material respects all of the covenants and agreements required to be performed and observed by it under any of the Operations Agreements and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Lender of any material default under any Operations Agreement of which it is aware; and (iii) enforce the performance and observance of all of the covenants and agreements required to be performed and/or observed by any party (other than Borrower) under the Operations Agreements, in a commercially reasonable manner.

(b) All Material Agreements shall be subject to the prior review and approval, not to be unreasonably withheld, of Lender. As used herein, “**Material Agreements**” shall mean each contract and agreement relating to the ownership, management, development, use, operation, leasing, maintenance, repair or improvement of the Property, as to which either (a) there is an obligation of Borrower to pay more than \$50,000 in the aggregate, or (b) the term thereof extends beyond one year (unless cancelable on thirty (30) days or less notice without requiring the payment of termination fees or payments of any kind).

5.1.21 Changes in the Legal Requirements Regarding Taxation. If any Legal Requirement or other law, order, requirement or regulation of any Governmental Authority is enacted or adopted or amended after the date the Loan is funded which imposes a tax, either directly or indirectly, on the Obligations or Lender’s interest in the Property, Borrower must pay or cause to be paid such tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of such tax or interest and penalties by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then in any such event, Lender may, by written notice to Borrower of not less than ninety (90) days, declare the Obligations immediately due and payable.

5.1.22 No Credits on Account of the Obligations. Borrower will not claim or demand or be entitled to any credit or credits on account of the Obligations for any payment of Taxes assessed against the Property and no deduction shall otherwise be made or claimed from the assessed value of the Property for real estate tax purposes because of the Loan Documents or the Obligations. If Legal Requirements or other laws, orders, requirements or regulations require such claim, credit or deduction, Lender may, by written notice to Borrower of not less than ninety (90) days, declare the Obligations immediately due and payable.

5.1.23 Personal Property. Borrower shall cause all of its personal property, fixtures, attachments and equipment delivered upon, attached to or used in connection with the operation of the Property to always be located at the Property and shall be kept free and clear of all Liens, encumbrances and security interests, except Permitted Encumbrances.

5.1.24 Rehabilitation Project.

(a) Project Documents. Borrower shall diligently and continuously undertake to Complete each Project in conformance with the applicable Project Documents. Borrower will perform its obligations under the Project Documents and will enforce the terms of the Project Documents.

(b) Permits. Borrower shall pay for and obtain or cause to be paid for and obtained all permits, licenses and approvals required by applicable Legal Requirements with regard to each Project.

(c) Lender Consultants. At Borrower’s expense, Lender shall have the right to employ an inspecting architect, engineer or consultant with respect to a Project. Borrower shall pay immediately upon demand the fees and expenses of any architect, engineer or consultant employed by Lender for the purpose of reviewing plans or otherwise engaged by Lender with respect to any Project.

(d) Performance by Lender. Upon the occurrence of an Event of Default, Lender shall have the right, without limitation of Lender’s other remedies under the Loan Documents, upon written notice to Borrower, either before or after accelerating the Debt or commencing foreclosure, either directly or through Lender’s agents and contractors to (i) enter onto the Property, (ii) complete the Project, (iii) modify the Project as Lender deems necessary, (iv) hire or replace any contractor or vendor retained by Borrower in connection with the Project as Lender deems necessary, (v) expend such sums as Lender determines necessary to Complete such Project and (vi) purchase any insurance coverage deemed appropriate by Lender in its sole discretion relating to the Project or Lender’s exercise of its rights under this Section 5.1.24(d). Borrower hereby waives any right to contest any such costs or expenses incurred by Lender in the exercise of Lender’s rights under this Section 5.1.24(d), and such costs and expenses (a) shall be added to the Debt, (b) shall be secured by the Security Instrument, (c) shall accrue interest at the Default Rate, and (d) shall be payable to Lender upon demand. Borrower hereby agrees to indemnify and hold harmless Lender for any such costs or expenses. Borrower hereby grants Lender an irrevocable power of attorney, coupled with an interest, to exercise Lender’s rights under this Section 5.1.24(d). Lender does not have and shall not have any obligation to complete any Project.

Section 5.2 Negative Covenants From the date hereof until payment and performance in full of the Obligations, Borrower covenants and agrees with Lender that it will not do, directly or indirectly, any of the following:

5.2.1 Operation of Property. Borrower shall not, without Lender's prior consent (which consent shall be in Lender's sole and absolute discretion): enter into, amend, surrender, terminate, waive any rights under or cancel any Management Agreement.

5.2.3 Liens. Borrower shall not create, incur, assume, permit or suffer to exist any Lien on any portion of the Property or permit any such action to be taken, except for Permitted Encumbrances.

5.2.4 Dissolution. Borrower shall not (a) engage in any dissolution, liquidation, consolidation or merger with or into any other business entity, (b) engage in any business activity not related to the ownership and operation of the Property, (c) transfer, lease or sell, in one transaction or any combination of transactions, the assets or all or substantially all of the properties or assets of Borrower except to the extent permitted by the Loan Documents, or (d) modify, amend, waive or terminate its organizational documents or its qualification and good standing in any jurisdiction.

5.2.5 Change in Business. Borrower shall not enter into any line of business other than the ownership and operation of the Property, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business.

5.2.6 Debt Cancellation. Borrower shall not cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to Borrower by any Person, except for adequate consideration and in the ordinary course of Borrower's business.

5.2.7 Zoning. Borrower shall not initiate or consent to any zoning reclassification of any portion of the Property or seek any variance under any existing zoning ordinance, or use or permit the use of any portion of the 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, in each case, without the prior written consent of Lender.

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

5.2.9 Principal Place of Business and Organization. Borrower shall not change its principal place of business set forth in the introductory paragraph of this Agreement without first giving Lender at least thirty (30) days prior notice. Borrower shall not change the place of its organization as set forth in Section 4.1.24 without the consent of Lender, which consent shall not be unreasonably withheld. Upon Lender's request, Borrower shall execute and deliver additional financing statements, security agreements and other instruments which may be necessary to effectively evidence or perfect Lender's security interest in the Property as a result of such change of principal place of business or place of organization.

5.2.10 ERISA.

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

(b) Borrower further covenants and agrees to 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 (1) Borrower is not an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(32) of ERISA; (2) Borrower is not subject to any state statute regulating investments of, or fiduciary obligations with respect to, governmental plans; and (3) one or more of the following circumstances is true: (i) Equity interests in Borrower are publicly offered securities, within the meaning of 29 C.F.R. §2510.3-101(b)(2); (ii) Less than twenty-five percent (25%) of each outstanding class of equity interests in Borrower is held by "benefit plan investors" within the meaning of 29 C.F.R. §2510.3-101(f)(2); (iii) Borrower qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R. §2510.3-101(c) or (e); or (iv) The Loan meets the requirements of PTE 95-60, 90-1, 84-14 or similar exemption.

5.2.11 Transfers; Assumptions.

(a) Without the prior written consent of Lender and except to the extent otherwise set forth in this Section 5.2.10, no Transfer may occur without the prior written consent of Lender in its sole and absolute discretion.

(b) Notwithstanding the provisions of this Section 5.2.10, Lender's consent shall not be required in connection with a Permitted Transfer; *provided, however*, that all of the following conditions are satisfied with respect to any such Transfers: (1) Borrower shall provide Lender thirty (30) days' prior written notice thereof (other than a Permitted Transfer for which notice shall occur within thirty (30) days' after such Transfer), (2) such Transfer shall not result in a change in the day-to-day management and operations of the Property, (3) [intentionally omitted], and (4) such Transfer shall not result in a breach of Section 5.2.9 or 5.2.13. Notwithstanding anything set forth herein, and without limiting any restrictions on any Transfer set forth herein, if any proposed transfer of any direct or indirect interests in Borrower would otherwise be a Permitted Transfer or not require Lender's consent but shall result in any Person owning more than twenty percent (20%) of the direct or indirect legal, beneficial or economic interest in Borrower (other than Persons currently owning more than twenty percent (20%) of the direct or indirect legal, beneficial or economic interest in Borrower), approval of such transferee is required so that Lender can confirm the transfer and transferee complies with all legal and regulatory requirements and Lender policies relating to such transfer and transferee, including, without limitation, the Patriot Act and federal regulations issued with respect thereto and to ensure compliance with the representations in Section 4.1.30 hereof.

(c) Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon a Transfer without Lender's consent. This provision shall apply to every Transfer regardless of whether voluntary or not, or whether or not Lender has consented to any previous Transfer.

5.2.12 Operations Agreements. Borrower shall not, without the prior written consent of Lender, modify any of the Operations Agreements.

5.2.13 [Intentionally omitted].

5.2.14 Embargoed Person; OFAC. As of the date hereof and at all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower and any Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person; (b) no Embargoed Person has any interest of any nature whatsoever in Borrower or any Guarantor, as applicable, with the result that the investment in Borrower or any Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of Borrower or any Guarantor, as applicable, have been derived from any unlawful activity with the result that the investment in Borrower or any Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law. Neither Borrower nor any Guarantor is (or will be) a Person with whom Lender is restricted from doing business under OFAC regulations (including those persons named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including the September 24, 2001 #13224 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and shall not engage in any dealings or transactions or otherwise be associated with such Persons. In addition, to help the US Government fight the funding of terrorism and money laundering activities, The USA Patriot Act (and the regulations thereunder) requires Lender to obtain, verify and record information that identifies its customers. Borrower shall provide Lender with any additional information that Lender deems necessary from time to time in order to ensure compliance with The USA Patriot Act and any other applicable Legal Requirements concerning money laundering and similar activities.

5.2.15 Distributions. Borrower shall not make or permit any Distribution.

5.2.16 Affiliate Agreements. Borrower shall not enter into any agreement with an Affiliate without Lender's prior written consent, in its sole and absolute discretion.

ARTICLE VI

INSURANCE; CASUALTY; CONDEMNATION

Section 6.1 Insurance.

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

(i) comprehensive "All Risk" or "Special Form" insurance on the Improvements and the Personal Property (A) in an amount equal to one hundred percent (100%) of the "**Full Replacement Cost**," which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations) with no depreciation; (B) containing an agreed amount endorsement with respect to the Improvements and Personal Property waiving all co-insurance provisions, or confirmation that co-insurance does not apply; and (C) providing for no deductible in excess of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) for all such insurance coverage. In addition, Borrower shall obtain: (x) if any portion of the Improvements is currently, or at any time in the future, located in a Federally designated "special flood hazard area", flood hazard insurance in an amount equal to the Outstanding Principal Balance or such other amount as Lender shall require; (y) earthquake insurance in amounts and in form and substance satisfactory to Lender in the event the Property is located in an area with a high degree of seismic activity; and (z) windstorm insurance in amounts and in form and substance satisfactory to Lender in the event such windstorm coverage is excluded under the Special Form Coverage, provided that the insurance pursuant to clauses (x), (y) and (z) hereof shall be on terms consistent with the comprehensive "All Risk" or "Special Form" insurance policy required under this subsection (i);

(ii) commercial general liability insurance, including a broad form comprehensive general liability endorsement and coverage against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, such insurance (A) to be on the so-called "occurrence" form with a combined limit of not less than Two Million and No/100 Dollars (\$2,000,000.00) in the aggregate and One Million and No/100 Dollars (\$1,000,000.00) per occurrence (and, if on a blanket policy, containing an "Aggregate Per Location" endorsement); (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 insured contracts; and (5) contractual liability covering the indemnities contained in Article VIII of the Security Instrument to the extent the same is available;

(iii) if there are tenants of the Property, rental loss insurance (A) with loss payable to Lender; (B) covering all risks required to be covered by the insurance provided for in subsection (i) above; and (C) for loss of Rents in an amount equal to one hundred percent (100%) of the projected rents from ` for a period of twelve (12) months from the date of such Casualty (assuming such Casualty had not occurred) and notwithstanding that the policy may expire prior to or at the end of such period. The amount of such loss of Rents or business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on Borrower's reasonable estimate of income to be derived from the Property for the succeeding twelve (12) month period. Notwithstanding anything to the contrary set forth herein, all proceeds payable to Lender pursuant to this subsection shall be held by Lender and shall be applied at Lender's sole discretion to (I) the Debt, or (II) operating expenses for the Property approved by Lender in its sole discretion; *provided, however*, that nothing herein contained shall be deemed to relieve Borrower of its obligations to pay the Debt, 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 forms do not otherwise apply, (A) owner's and contractor's 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 Property, and (4) with an agreed amount endorsement waiving co-insurance provision, or confirmation that co-insurance does not apply;

(v) if Borrower ever has any direct employees, worker's compensation insurance with respect to any employees of Borrower, as required by any Governmental Authority or Legal Requirement;

(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) if Borrower ever has any direct employees or owns any motor vehicles, motor vehicle liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence of not less than One Million and No/100 Dollars (\$1,000,000.00);

(viii) umbrella or excess liability insurance in an amount not less than Five Million and No/100 Dollars (\$5,000,000.00) per occurrence on terms consistent with the commercial general liability insurance policy required under subsection (ii) above;

(ix) if the Property is or becomes a legal "non-conforming" use or structure, ordinance or law coverage to compensate for the value of the undamaged portion of the Property, the cost of demolition and increased cost of construction in amounts as requested by Lender;

(x) if applicable, the commercial property, business income, general liability and umbrella or excess liability insurance required under Sections 6.1(a)(i), (ii), (iii) and (viii) above shall cover perils of terrorism and acts of terrorism and Borrower shall maintain commercial property and business income insurance for loss resulting from perils and acts of terrorism on terms (including amounts) consistent with those required under Sections 6.1(a)(i), (ii), (iii) and (viii) above at all times during the term of the Loan so long as Lender determines that either (I) prudent owners of real estate comparable to the Property are maintaining same or (II) prudent institutional lenders (including, without limitation, investment banks) to such owners are requiring that such owners maintain such insurance; and

(xi) upon sixty (60) days' notice, such other insurance and in such amounts as Lender from time to time may request against such other insurable hazards which at the time are commonly insured against for properties similar to the Property located in or around the region in which the Property is located.

(b) All insurance provided for in Section 6.1(a) shall be obtained under valid and enforceable policies (collectively, the "**Policies**" or in the singular, the "**Policy**"), and shall be subject to the approval of Lender as to insurance companies, amounts, deductibles, loss payees and insureds. The Policies shall be issued by financially sound and responsible insurance companies authorized to do business in the State and having a claims paying ability rating of "A-" or better by S&P or "A-X" or better by AM Best or "A3" or better by Moody's Investor Service, Inc.. Prior to the expiration dates of the Policies theretofore furnished to Lender, certificates of insurance evidencing the renewal or successor Policies accompanied by evidence satisfactory to Lender of payment of the premiums due thereunder (the "**Insurance Premiums**"), shall be delivered by Borrower to Lender. Borrower shall supply an original or certified copy of the original policy within ten (10) days of request by Lender, provided that the policy is available.

(c) Any blanket insurance Policy shall specifically allocate to the 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 Property in compliance with the provisions of Section 6.1(a).

(d) All Policies provided for or contemplated by Section 6.1(a), except for the Policy referenced in Section 6.1(a)(v), shall name Borrower as the insured and Lender (and its successors and assigns) as Mortgagee, Loss Payee and Additional Insured, as its interests may appear, and in the case of property damage, boiler and machinery, flood and earthquake insurance, shall contain a standard non-contributing mortgagee clause in favor of Lender providing that the loss thereunder shall be payable to Lender.

(e) All Policies provided for in this Section 6.1 shall contain clauses or endorsements to the effect that: (i) no act or negligence of Borrower, or anyone acting for Borrower, or of any tenant or other occupant, or failure to comply with the provisions of any Policy, which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Lender is concerned; (ii) the Policies on which Lender is listed as a Mortgagee shall not be canceled without at least thirty (30) days' notice to Lender; (iii) Lender shall not be liable for any Insurance Premiums thereon or subject to any assessments thereunder; and (iv) shall contain a waiver of subrogation in favor of Lender.

(f) If at any time Lender is not in receipt of written evidence that all Policies are in full force and effect, Lender shall have the right, without notice to Borrower, to take such action as Lender deems necessary to protect its interest in the Property, including, without limitation, the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate. 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 Security Instrument and shall bear interest at the Default Rate. Provided no Event of Default exists, Lender shall promptly provide Borrower with notice of any such premiums incurred.

(g) Without limitation, Borrower shall continue to maintain all insurance that is in effect as of the date hereof.

Section 6.2 Casualty. If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (a "**Casualty**"), Borrower shall (a) give prompt notice of such damage to Lender, and (b) promptly commence and diligently prosecute the completion of Restoration so that the Property resembles, as nearly as possible, the condition the Property was in immediately prior to such Casualty, with such alterations as may be reasonably approved by Lender and otherwise in accordance with Section 6.4. Borrower shall pay all costs of such Restoration whether or not such costs are covered by insurance. Lender may, but shall not be obligated to make proof of loss if not made promptly by Borrower. In addition, Lender may participate in (and have approval rights over) any settlement discussions with any insurance companies with respect to any Casualty in which the Net Proceeds or the costs of completing Restoration are equal to or greater than five percent (5%) of the applicable Allocated Loan Amount for the affected Individual Property and Borrower shall deliver to Lender all instruments required by Lender to permit such participation.

Section 6.3 Condemnation. Borrower shall promptly give Lender notice of the actual or threatened commencement of any proceeding in respect of Condemnation, and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings, and Borrower shall from time to time deliver to Lender all instruments requested by 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 taking by any public or quasi-public authority through Condemnation or otherwise (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to perform the Obligations at the time and in the manner provided in this Agreement and the other Loan Documents and the Outstanding Principal Balance shall not be reduced until any Award shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Obligations. Lender shall not be limited to the interest paid on the Award by the applicable 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 Property or any portion thereof is taken by a Governmental Authority, Borrower shall promptly commence and diligently prosecute Restoration and otherwise comply with the provisions of Section 6.4. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the Award, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the Award, or a portion thereof sufficient to pay the Debt.

Section 6.4 Restoration. If there are any Improvements on the Property, the following provisions shall apply:

(a) If the Net Proceeds and the costs of completing Restoration shall each be less than five percent (5%) of the applicable Allocated Loan Amount for the affected Individual Property, then the Net Proceeds will be disbursed by Lender to Borrower upon receipt, provided that all of the conditions set forth in Section 6.4(b)(i) are met and Borrower delivers to Lender a written undertaking to expeditiously commence and to satisfactorily complete with due diligence Restoration in accordance with the terms of this Agreement.

(b) If the Net Proceeds are equal to or greater than five percent (5%) of the applicable Allocated Loan Amount for the affected Individual Property, but less than twenty percent (20%) of the applicable Allocated Loan Amount for the affected Individual Property, or the costs of completing Restoration are equal to or greater than five percent (5%) of the applicable Allocated Loan Amount for the affected Individual Property, but less than twenty percent (20%) of the applicable Allocated Loan Amount for the affected Individual Property, then, in either case, the Net Proceeds will be held by Lender and Lender shall make the Net Proceeds available for Restoration in accordance with the provisions of this Section 6.4. The term "**Net Proceeds**" for purposes of this Section 6.4 shall mean: (i) the net amount of all insurance proceeds received by Lender pursuant to Section 6.1 (a)(i), (iv), (vi), (ix) and (x) as a result of such damage or destruction, after deduction of Lender's reasonable costs and expenses (including, but not limited to, reasonable counsel costs and fees), if any, in collecting same ("**Insurance Proceeds**"), or (ii) the net amount of the Award, after deduction of Lender's reasonable costs and expenses (including, but not limited to, reasonable counsel costs and fees), if any, in collecting same ("**Condemnation Proceeds**"), whichever the case may be.

(i) The Net Proceeds shall be made available to Borrower for Restoration upon the determination of Lender in its sole discretion that the following conditions are met:

(A) no Event of Default shall have occurred and be continuing;

(B) in the event the Net Proceeds are Condemnation Proceeds, 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 Property, and no portion of the Improvements is located on such land;

(C) if applicable, Leases demising in the aggregate a percentage amount equal to or greater than ninety percent (90%) of the total rentable space in the affected Individual Property which has been demised under executed and delivered Leases in effect as of the date of the occurrence of such Casualty or Condemnation, whichever the case may be, shall remain in full force and effect during and after the completion of Restoration, notwithstanding the occurrence of any such Casualty or Condemnation, whichever the case may be, and will make all necessary repairs and restorations thereto at their sole cost and expense;

(D) Borrower shall commence Restoration as soon as reasonably practicable (but in no event later than sixty (60) days after such Casualty or Condemnation, whichever the case may be, occurs) and shall diligently pursue the same to satisfactory completion;

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

(F) Lender shall be satisfied that Restoration will be completed on or before the earliest to occur of (1) four (4) months prior to the Maturity Date, (2) the earliest date required for such completion under the terms of any Leases, (3) such time as may be required under all applicable Legal Requirements in order to repair and restore the affected Individual Property to the condition it was in immediately prior to such Casualty or to as nearly as possible the condition it was in immediately prior to such Condemnation, as applicable, or (4) the expiration of the insurance coverage referred to in Section 6.1(a)(iii);

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

(H) Restoration shall be done and completed by Borrower in an expeditious and diligent fashion and in compliance with all applicable Legal Requirements;

(I) such Casualty or Condemnation, as applicable, does not result in the loss of access to the affected Individual Property or the related Improvements;

(J) Borrower shall deliver, or cause to be delivered, to Lender a signed detailed budget approved in writing by Borrower's architect or engineer stating the entire cost of completing Restoration, which budget shall be acceptable to Lender; and

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

(ii) The Net Proceeds shall be paid directly to Lender for deposit in an interest-bearing account (the "*Net Proceeds Account*") and, until disbursed in accordance with the provisions of this Section 6.4(b), shall constitute additional security for the Debt and the Other Obligations. The Net Proceeds shall be disbursed by Lender to, or as directed by, Borrower from time to time during the course of Restoration, upon receipt of evidence satisfactory to Lender that (A) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with Restoration have been paid for in full, and (B) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Property which have not either been fully bonded to the satisfaction of Lender and discharged of record or in the alternative fully insured to the satisfaction of Lender by the Title Company.

(iii) All plans and specifications required in connection with Restoration shall be subject to prior review and acceptance in all respects by Lender in its discretion and by an independent consulting engineer selected by Lender (the "*Casualty Consultant*"). Lender shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with Restoration. The identity of the contractor engaged in Restoration, as well as the contracts under which it has been engaged, shall be subject to prior review and acceptance by Lender in its discretion and the Casualty Consultant. All costs and expenses incurred by Lender in connection with making the Net Proceeds available for Restoration including, without limitation, reasonable counsel fees and disbursements and the Casualty Consultant's fees, shall be paid by Borrower.

(iv) In no event shall 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 Restoration, as certified by the Casualty Consultant, minus the Retention Amount. The term "*Retention Amount*" shall mean, as to each contractor, subcontractor or materialman engaged in Restoration, an amount equal to ten percent (10%) of the costs actually incurred for work in place as part of Restoration, as certified by the Casualty Consultant, until Restoration has been completed. The Retention Amount shall in no event, and notwithstanding anything to the contrary set forth above in this Section 6.4(b), be less than the amount actually held back by Borrower from contractors, subcontractors and materialmen engaged in Restoration. The Retention Amount shall not be released until the Casualty Consultant certifies to Lender that Restoration has been completed in accordance with the provisions of this Section 6.4(b) and that all approvals necessary for the re-occupancy and use of the Property have been obtained from all appropriate Governmental Authorities, and Lender receives evidence satisfactory to Lender that the costs of Restoration have been paid in full or will be paid in full out of the Retention Amount; *provided, however*, that Lender will release the portion of the Retention Amount being held with respect to any contractor, subcontractor or materialman engaged in 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 Security Instrument and evidence of payment of any premium payable for such endorsement. If required by Lender, the release of any such portion of the Retention Amount shall be approved by the surety company, if any, which has issued a payment or performance bond with respect to the contractor, subcontractor or materialman.

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

(vi) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the 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 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 Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this Section 6.4(b) shall constitute additional security for the Debt and the Other Obligations.

(vii) The excess, if any, of the Net Proceeds and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Lender after the Casualty Consultant certifies to Lender that Restoration has been completed in accordance with the provisions of this Section 6.4(b), and the receipt by Lender of evidence satisfactory to Lender that all costs incurred in connection with Restoration have been paid in full, shall be remitted by Lender to Borrower, provided no Event of Default shall have occurred and shall be continuing.

(c) If Net Proceeds are (i) equal to or greater than twenty percent (20%) of the applicable Allocated Loan Amount for the affected Individual Property, (ii) not required to be made available for Restoration (due to Borrower's inability to satisfy the conditions set forth in Section 6.4(b)(i) or otherwise), or (iii) not to be returned to Borrower as excess Net Proceeds pursuant to Section 6.4(b)(vii), then in any such event all Net Proceeds may be retained and applied by Lender in accordance with Section 2.4.2 hereof toward reduction of the Outstanding Principal Balance whether or not then due and payable in such order, priority and proportions as Lender in its sole discretion shall deem proper, or, in the sole discretion of Lender, the same may be paid, either in whole or in part, to Borrower for such purposes as Lender shall approve, in its sole discretion. No prepayment charge shall be payable by Borrower by reason of a Casualty or Condemnation.

(d) In the event of foreclosure of the Security Instrument, or other transfer of title to the Property in extinguishment in whole or in part of the Debt all right, title and interest of Borrower in and to the Policies that are not blanket Policies then in force concerning the Property and all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure or Lender or other transferee in the event of such other transfer of title.

ARTICLE VII

RESERVE FUNDS

Section 7.1 [Intentionally Omitted]

Section 7.2 [Intentionally Omitted]

Section 7.3 Reserve Funds, Generally.

(a) Borrower (i) hereby grants to Lender a first priority security interest in all of the Reserve Funds and any and all monies now or hereafter deposited in each Reserve Account as additional security for payment and performance of the Obligations and (ii) will take all actions necessary to maintain in favor of Lender a perfected first priority security interest in the Reserve Funds, including, without limitation, filing or authorizing Lender to file UCC-1 financing statements and continuations thereof. Until expended or applied in accordance herewith, the Reserve Funds shall constitute additional security for the Obligations.

(b) Upon the occurrence of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in any or all of the Reserve Funds to the reduction of the Outstanding Principal Balance or the payment of any other amounts then due and owing under this Agreement or any of the other Loan Documents in any order in its sole discretion.

(c) Borrower shall not further pledge, assign or grant any security interest in any Reserve Fund or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 financing statements, except those naming Lender as the secured party, to be filed with respect thereto.

(d) The Reserve Funds shall not constitute trust funds and may be commingled with other monies held by Lender. No earnings or interest on the Reserve Funds shall be payable to Borrower. Lender shall not have any obligation to keep or maintain such Reserve Funds or any funds deposited therein in interest bearing accounts.

(e) Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys' fees and expenses) (collectively, "**Claims**") arising from or in any way connected with the Reserve Funds or the performance of the obligations for which the Reserve Funds were established; provided, however, Borrower shall not be obligated to indemnify Lender for any such Claims to the extent arising from Lender's gross negligence or willful misconduct. Borrower shall assign to Lender all rights and claims Borrower may have against all Persons supplying labor, materials or other services which are to be paid from or secured by the Reserve Funds; *provided, however*, that Lender may not pursue any such right or claim unless an Event of Default has occurred and remains uncured.

(f) Upon payment in full of the Debt in accordance with the terms of this Agreement and the other Loan Documents, Lender shall return any remaining Reserve Funds to Borrower.

Section 7.4 Project Reserve Funds.

7.4.1 Deposits of Project Reserve Funds. Borrower shall deposit with Lender (which amount may be net funded by Lender but deemed disbursed) an amount equal to \$35,000.00 on the Closing Date for the purpose of funding Project Costs, which amounts shall be deposited into a Reserve Account (the "**Project Reserve Account**"). Amounts deposited from time to time into the Project Reserve Account pursuant to this Section 7.4.1 are referred to herein as the "**Project Reserve Funds**". The allocated amount of Project Reserve Funds with respect to each Individual Property, are set forth on Schedule 1.1(a) hereof.

7.4.2 Disbursement of Project Reserve Funds.

(a) Disbursements Upon Completion of Project at Individual Property. Each disbursement of Project Reserve Funds shall be released subject to satisfaction of the following conditions, any of which may be waived by Lender in Lender's sole discretion:

(i) Any request for a disbursement of Project Reserve Funds shall be submitted to Lender on Lender's form of request, not less than ten (10) Business Days prior to the anticipated date for the disbursement of Project Reserve Funds, and shall be accompanied by all evidence required to be approved by Lender as a condition to such disbursement, including an Officer's Certificate stating that said conditions are then satisfied;

(ii) Disbursement of Project Reserve Funds shall only be used for the portion of the Project at the Individual Property to which the request for disbursement of Project Reserve Funds relates shall not exceed the amount of the Project Reserve Funds allocated to the applicable Individual Property;

(iii) Borrower shall be in compliance with the terms and conditions of Section 5.1.24;

(iv) The relevant portion of the Project at an Individual Property to which the requested disbursement of Project Reserve Funds relates shall be Complete;

(v) At Lender's election, Lender shall have received certificates of Lender's consultant, any Architect and the General Contractor that the such portion of the Project is Complete;

(vi) Evidence reasonably acceptable to Lender, together with all other appropriate certificates and other documentation that Lender may require from, and as are customarily issued by, applicable Governmental Authorities, evidencing (i) compliance with all applicable Legal Requirements, including final certificates of occupancy and all consents or approvals required from third parties or any Governmental Authority have been obtained, and (ii) that no petitions, actions or proceedings are pending or threatened which could reasonably be expected to materially alter or declare invalid any approvals, consents, permits or certificates for or relating to the Project, or any part thereof;

(vii) Final unconditional waivers of lien (and evidence of payment) from all other contractors, subcontractors and materialmen as required by Lender or the Title Company; and

(viii) Lender shall have received notices of title continuation showing that since the date of the last disbursement of Project Reserve Funds there has been no adverse change in the state of title to the applicable Individual Property not approved by Lender, and, to the extent that any new improvements have been constructed at the applicable Individual Property outside their footprint on the date of the most recent survey, no adverse survey exceptions with respect to the Property not theretofore approved by Lender, and Lender may, in its discretion, require an endorsement to the Title Insurance Policy, in form and content satisfactory to Lender, insuring, in effect, that such disbursement has the same priority as the initial disbursement of the Loan and that there has been no Material Adverse Change in the condition of title to the Property since the issuance of the Title Insurance Policy;

(ix) No actions, suits or proceedings shall then be pending nor have any been threatened against or which affect Borrower, any Guarantor or the Property which could have a Material Adverse Change on Borrower, Guarantor or the Property;

(x) No Default or Event of Default shall have occurred and be continuing and all representations and warranties set forth in this Agreement and in any other Loan Document shall be materially true and correct as of the date of Borrower's request for the disbursement, the date the disbursement is made, and immediately following the making of the disbursement;

(xi) No substantial unrepaired damage to any portion of the Property by fire or other casualty which is not in Lender's judgment adequately covered by collectible proceeds of insurance; and

(xii) Borrower shall have paid all of the costs and expenses incurred by Lender, including reasonable attorneys' fees and expenses, all title premiums and other title and survey charges in connection with the proposed disbursement and a nonrefundable rehabilitation management in the amount of Two Hundred Ninety-Five and No/100 Dollars (\$295.00) payable to Lender with respect to each disbursement of Project Reserve Funds.

(b) Disbursement by Wire Transfer. Disbursement of Project Reserve Funds shall be made at Lender's election by wire transfer, at Borrower's cost and expense, or by check. Lender may, in its election, make payments of the Project Reserve Funds directly to the contractor, subcontractor, or material supplier. Lender may also require, at Lender's election, in its sole discretion, at Borrower's sole cost and expense, that disbursements of Project Reserve Funds be made through (a) the Title Company pursuant to a construction loan disbursement escrow agreement or (b) a vending control company. Any such arrangement with the Title Company or a vending control company shall be in Lender's sole discretion

(c) Waiver of Conditions. Lender may from time to time, in its sole discretion, waive any condition or conditions to any disbursement of Project Reserve Funds without such waiver or series of waivers constituting a course of dealing or any amendment to this Agreement or a prohibition against subsequent imposition of such condition or conditions or a waiver of a default.

ARTICLE VIII

DEFAULTS

Section 8.1 Event of Default

8.1.1 Generally.

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

(i) if any portion of the Debt is not paid when due (including, without limitation, the failure of Borrower to repay the entire outstanding principal balance of the Note in full on the Maturity Date);

(ii) if any of the Taxes or Other Charges are not paid when the same are due and payable without payment of a penalty;

(iii) if the Policies are not kept in full force and effect, or if copies of the certificates evidencing the Policies (or certified copies of the Policies if requested by Lender) are not delivered to Lender within thirty (30) days after written request therefor;

(iv) the occurrence of any Transfer (except a Permitted Transfer) or other encumbrance with respect to any portion of the Property or the Collateral in violation of the provisions of this Agreement or Article 6 of the Security Instrument, or the occurrence of any Transfer in violation of the provisions of Section 5.2.10 hereof;

(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 or deemed remade;

(vi) if Borrower or any Guarantor shall (i) make an assignment for the benefit of creditors or (ii) generally not be paying its debts as they become due;

(vii) if a receiver, liquidator or trustee shall be appointed for Borrower, or if Borrower shall be adjudicated bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to Federal bankruptcy law, or any similar Federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower, or if any proceeding for the dissolution or liquidation of Borrower shall be instituted; *provided, however*, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, upon the same not being discharged, stayed or dismissed within ninety (90) days;

(viii) if a receiver, liquidator or trustee shall be appointed for any Guarantor or if any 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 Guarantor, or if any proceeding for the dissolution or liquidation of any Guarantor shall be instituted; *provided, however*, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by the applicable Guarantor, upon the same not being discharged, stayed or dismissed within ninety (90) days; provided, further, however, it shall be at Lender’s option to determine whether any of the foregoing shall be an Event of Default;

(ix) 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;

(x) if Borrower breaches any representation, warranty or covenant contained in Section 4.1.26 or any of its respective negative covenants contained in Section 5.2;

(xi) with respect to any term, covenant or provision set forth herein which specifically contains a notice requirement or grace period, if Borrower shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

(xii) Borrower breaches any covenant contained in Section 5.1.11 and such breach continues for ten (10) days after notice from Lender;

(xiii) 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 (xi) 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 thirty (30) day period and provided further that Borrower shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed ninety (90) days; or

(xiv) if there shall be a Default under any of the other Loan Documents beyond any applicable cure periods contained in such documents, whether as to Borrower, Guarantor or the Property.

(b) Upon the occurrence of an Event of Default (other than an Event of Default described in clauses (vi), (vii) or (viii) above) and at any time thereafter, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, Lender may take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, without limitation, declaring the Obligations to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents against Borrower and the Property, including, without limitation, all rights or remedies available at law or in equity; 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.

8.1.2 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 (including, without limitation, Lender may accelerate the Loan and declare the Outstanding Principal Balance and all other amounts under the Loan Documents due and payable and institute foreclosure proceedings), 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. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by 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. To the fullest extent permitted by law or equity, without limiting the generality of the foregoing, Borrower agrees that if an Event of Default is continuing (i) Lender shall not be 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 Property and the Security Instrument has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Debt or the Obligations have been paid in full.

(b) With respect to Borrower and the Property, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to the Property for the satisfaction of any of the Debt in any preference or priority, and Lender may seek satisfaction out of the 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 Security Instrument in any manner and for any amounts secured by the Security Instrument then due and payable as determined by Lender in its sole discretion, including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose the Security Instrument to recover such delinquent payments or (ii) in the event Lender elects to accelerate less than the entire Outstanding Principal Balance, Lender may foreclose the Security Instrument to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by the Security Instrument as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to the Security Instrument to secure payment of sums secured by the Security Instrument and not previously recovered.

(c) Lender shall have the right from time to time to partially foreclose the Security Instrument in any manner and for any amounts secured by the Security Instrument then due and payable as determined by Lender in its sole discretion, including the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and/or interest, Lender may foreclose the Security Instrument to recover such delinquent payments, or (ii) in the event Lender elects to accelerate less than the entire Outstanding Principal Balance, Lender may foreclose the Security Instrument to recover so much of the Debt as Lender may accelerate and such other sums secured by the Security Instrument as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to the Security Instrument to secure payment of sums secured by the Security Instrument and not previously recovered.

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

(e) If an Event of Default exists, Lender may (directly or by its agents, employees, contractors, engineers, architects, nominees, attorneys or other representatives), but without any obligation to do so and without notice to Borrower and without releasing Borrower from any obligation hereunder, cure the Event of Default in such manner and to such extent as Lender may deem necessary to protect the security hereof. Subject to Tenants' rights under the Leases, Lender (and its agents, employees, contractors, engineers, architects, nominees, attorneys or other representatives) are authorized to enter upon the Property to cure such Event of Default, and Lender is authorized to appear in, defend, or bring any action or proceeding reasonably necessary to maintain, secure or otherwise protect the Property or the priority of the Lien granted by the Security Instrument.

(f) Lender may appear in and defend any action or proceeding brought with respect to the Property and may bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its sole discretion, decides should be brought to protect its interest in the Property. Lender shall, at its option, be subrogated to the Lien of any mortgage or other security instrument discharged in whole or in part by the Obligations, and any such subrogation rights shall constitute additional security for the payment of the Obligations.

(g) As used in this Section 8.1.2, a "foreclosure" shall include, without limitation, a power of sale.

8.1.3 Remedies Cumulative; Waivers. The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or to impair any remedy, right or power consequent thereon.

8.1.4 **CONFESSION OF JUDGMENT.** THE FOLLOWING PARAGRAPH SETS FORTH A WARRANT OF AUTHORITY FOR ANY ATTORNEY TO CONFESS JUDGMENT AGAINST THE BORROWER. IN GRANTING THIS WARRANT OF ATTORNEY TO CONFESS JUDGMENT AGAINST THE BORROWER, BORROWER, FOLLOWING CONSULTATION WITH (OR DECISION NOT TO CONSULT) COUNSEL FOR BORROWER AND WITH KNOWLEDGE OF THE LEGAL EFFECT HEREOF, HEREBY KNOWINGLY, INTENTIONALLY, VOLUNTARILY AND UNCONDITIONALLY WAIVES ANY AND ALL RIGHTS BORROWER HAS OR MAY HAVE TO PRIOR NOTICE AND AN OPPORTUNITY OF REHEARING UNDER THE RESPECTIVE CONSTITUTIONS AND LAWS OF THE UNITED STATES OF AMERICA, THE COMMONWEALTH OF PENNSYLVANIA, OR ELSEWHERE. IT IS SPECIFICALLY ACKNOWLEDGED BY BORROWER THAT LENDER HAS RELIED ON THIS WARRANT OF ATTORNEY AS AN INDUCEMENT TO GRANT FINANCIAL ACCOMMODATIONS TO BORROWER. UPON AND FOLLOWING THE OCCURRENCE OF AN UNCURED EVENT OF DEFAULT, BORROWER HEREBY AUTHORIZES AND EMPOWERS ANY ATTORNEY OF ANY COURT OF RECORD OR THE PROTHONOTARY OR CLERK OF ANY COUNTY IN THE COMMONWEALTH OF PENNSYLVANIA, OR IN ANY JURISDICTION WHERE PERMITTED BY LAW OR THE CLERK OF ANY UNITED STATES DISTRICT COURT, TO APPEAR FOR BORROWER IN ANY AND ALL ACTIONS WHICH MAY BE BROUGHT HEREUNDER AND ENTER AND CONFESS JUDGMENT AGAINST BORROWER OR ANY OF THEM IN FAVOR OF LENDER FOR SUCH SUMS AS ARE DUE OR MAY BECOME DUE HEREUNDER OR UNDER ANY OTHER LOAN DOCUMENT, TOGETHER WITH COSTS OF SUIT AND ACTUAL COLLECTION COSTS INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES EQUAL TO FIVE PERCENT (5%) OF THE LIABILITIES THEN DUE AND OWING BUT IN NO EVENT LESS THAN \$5,000, WITH OR WITHOUT DECLARATION, WITHOUT PRIOR NOTICE, WITHOUT STAY OF EXECUTION AND WITH RELEASE OF ALL PROCEDURAL ERRORS AND THE RIGHT TO ISSUE EXECUTIONS FORTHWITH. IF A COPY OF THIS NOTE VERIFIED BY AFFIDAVIT OF ANY OFFICER OF LENDER SHALL HAVE BEEN FILED IN SUCH ACTION, IT SHALL NOT BE NECESSARY TO FILE THE ORIGINAL THEREOF AS A WARRANT OF ATTORNEY, ANY PRACTICE OR USAGE TO THE CONTRARY NOTWITHSTANDING. THE AUTHORITY HEREIN GRANTED TO CONFESS JUDGMENT SHALL NOT BE EXHAUSTED BY ANY SINGLE EXERCISE THEREOF, BUT SHALL CONTINUE AND MAY BE EXERCISED FROM TIME TO TIME AS OFTEN AS LENDER SHALL FIND IT NECESSARY AND DESIRABLE AND AT ALL TIMES UNTIL FULL PAYMENT OF ALL AMOUNTS DUE HEREUNDER AND UNDER THE OTHER LOAN DOCUMENTS. LENDER MAY CONFESS ONE OR MORE JUDGMENTS IN THE SAME OR DIFFERENT JURISDICTIONS FOR ALL OR ANY PART OF BORROWER'S OBLIGATIONS ARISING HEREUNDER OR UNDER ANY OTHER LOAN DOCUMENT TO WHICH BORROWER IS A PARTY, WITHOUT REGARD TO WHETHER JUDGMENT HAS THERETOFORE BEEN CONFESSED ON MORE THAN ONE OCCASION FOR THE SAME OBLIGATIONS. IN THE EVENT THAT ANY JUDGMENT CONFESSED AGAINST BORROWER IS STRICKEN OR OPENED UPON APPLICATION BY OR ON BEHALF OF BORROWER FOR ANY REASONS, LENDER IS HEREBY AUTHORIZED AND EMPOWERED TO AGAIN APPEAR FOR AND CONFESS JUDGMENT AGAINST BORROWER FOR ANY PART OR ALL OF THE LIABILITIES DUE AND OWING UNDER THIS NOTE AND THE OTHER LOAN DOCUMENTS, AS HEREIN PROVIDED.

ARTICLE IX

SPECIAL PROVISIONS

Section 9.1 Transfer of Loan. Lender may, at any time, sell, transfer or assign this Agreement, the Note, the Security Instrument and the other Loan Documents, and any or all servicing rights with respect thereto, or grant participations therein or issue mortgage pass-through certificates or other securities (the "*Securities*") evidencing a beneficial interest in a rated or unrated public offering or private placement (such sales, participation, offering and/or placement, collectively, a "*Lender Assignment*"). Lender may forward to each purchaser, transferee, assignee, servicer, participant or investor in such participations or Securities (collectively, the "*Investor*"), each prospective Investor, and any organization maintaining databases on the underwriting and performance of commercial mortgage loans, all documents and information which Lender now has or may hereafter acquire relating to the Loan or to Borrower, any Guarantor or the Property, whether furnished by Borrower, any Guarantor or otherwise, as Lender determines necessary or desirable, including, without limitation, financial statements relating to Borrower, Guarantor, the Property and any Tenant at the Property. Borrower irrevocably waives any and all rights it may have under law or in equity to prohibit such disclosure, including but not limited to any right of privacy.

Section 9.2 Severed Loan Documents. 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 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 (and cause other parties who executed any of the Loan Documents to execute and deliver) to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender may reasonably request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender and Borrower. 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 the parties thereto only as of the Closing Date.

Section 9.3 Servicer. At the option of Lender, the Loan may be serviced by a master servicer, primary servicer, special servicer and/or trustee (any such master servicer, primary servicer, special servicer, and trustee, together with its agents, nominees or designees, are collectively referred to as "**Servicer**") selected by Lender and Lender may delegate all or any portion of its responsibilities under this Agreement and the other Loan Documents to Servicer pursuant to a pooling and servicing agreement, servicing agreement, special servicing agreement or other agreement providing for the servicing of one or more mortgage loans (collectively, the "**Servicing Agreement**") between Lender and Servicer. Without limitation, Borrower shall promptly reimburse Lender on demand for (a) interest payable on advances made by Servicer with respect to delinquent debt service payments (to the extent interest at the Default Rate actually paid by Borrower in respect of such payments are insufficient to pay the same) or expenses paid by Servicer or trustee in respect of the protection and preservation of the Property (including, without limitation, on account of Basic Carrying Costs), (b) all costs and expenses, liquidation fees, workout fees, special servicing fees, operating advisor fees or any other similar fees payable by Lender to Servicer which may be due and payable under the Servicing Agreement (whether on a periodic or a continuing basis) as a result of an Event of Default under the Loan, the Loan becoming specially serviced, the commencement or continuance of any enforcement action of any kind with respect to the Loan or any of the Loan Documents, a refinancing or a restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" of the Loan Documents, or any Bankruptcy Action involving Borrower, Principal, Guarantor or any of their respective principals or Affiliates, (c) all costs and expenses of any Property inspections and/or appraisals (or any updates to any existing inspection or appraisal) that Servicer or the trustee may be required to obtain (but not more than one appraisal in any twelve months unless an Event of Default exists), and (d) all costs and expenses relating to or arising from any special requests made by Borrower or Guarantor during the term of the Loan including, without limitation, in connection with a prepayment, defeasance, assumption or modification of the Loan.

Section 9.4 Cooperation. Borrower and Guarantor agree to reasonably cooperate with Lender (and agree to cause their respective officers and representatives to cooperate) in connection with any Lender Assignment or potential Lender Assignment.

ARTICLE X

MISCELLANEOUS

Section 10.1 Survival. This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Obligations are outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the legal representatives, successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Lender.

Section 10.2 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 and absolute discretion of Lender and shall be final and conclusive.

Section 10.3 Governing Law. THIS AGREEMENT WAS NEGOTIATED IN THE COMMONWEALTH OF PENNSYLVANIA, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE COMMONWEALTH OF PENNSYLVANIA, AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE COMMONWEALTH OF PENNSYLVANIA, 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 COMMONWEALTH OF PENNSYLVANIA APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT TO THE SECURITY INSTRUMENT AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE COMMONWEALTH OF PENNSYLVANIA SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND/OR THE OTHER LOAN DOCUMENTS, AND THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA.

(a) EXCEPTIONS. NOTWITHSTANDING THE FOREGOING CHOICE OF LAW:

(i) THE PROCEDURES GOVERNING THE ENFORCEMENT BY LENDER OF ITS FORECLOSURE AND OTHER REMEDIES AGAINST BORROWER AND GUARANTOR UNDER THE SECURITY INSTRUMENT AND UNDER THE OTHER LOAN DOCUMENTS WITH RESPECT TO THE REAL PROPERTY ASSETS OF BORROWER, INCLUDING BY WAY OF ILLUSTRATION, BUT NOT IN LIMITATION, ACTIONS FOR FORECLOSURE, FOR INJUNCTIVE RELIEF OR FOR THE APPOINTMENT OF A RECEIVER SHALL BE GOVERNED BY THE LAWS OF THE STATE WHERE SUCH PROPERTY OR OTHER ASSETS ARE LOCATED;

(ii) LENDER SHALL COMPLY WITH APPLICABLE LAW IN THE STATE WHERE THE PROPERTY OR OTHER ASSETS ARE LOCATED TO THE EXTENT REQUIRED BY THE LAW OF SUCH JURISDICTION IN CONNECTION WITH THE FORECLOSURE OF THE SECURITY INTERESTS AND LIENS CREATED UNDER THE SECURITY INSTRUMENT;

(iii) PROVISIONS OF FEDERAL LAW AND THE LAW OF THE STATE WHERE THE PROPERTY IS LOCATED SHALL APPLY IN DEFINING THE TERMS HAZARDOUS SUBSTANCES, ENVIRONMENTAL STATUTES, AND LEGAL REQUIREMENTS AS SUCH TERMS ARE USED IN THIS LOAN AGREEMENT, AND THE OTHER LOAN DOCUMENTS, WITH RESPECT TO THE PROPERTY, BORROWER AND GUARANTOR; AND

(iv) MATTERS OF REAL ESTATE, LANDLORD-TENANT AND PROPERTY LAW SHALL BE GOVERNED BY THE LAWS OF THE STATE WHERE THE PROPERTY IS SITUATED.

(b) AGENT FOR SERVICE OF PROCESS. ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY AT LENDER'S SOLE OPTION BE INSTITUTED IN ANY FEDERAL DISTRICT COURT OR STATE COURT IN THE COMMONWEALTH OF PENNSYLVANIA, COUNTY OF NORTHAMPTON, PURSUANT TO PENNSYLVANIA LAW, AND BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY OBJECTIONS WHICH BORROWER MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

FTE Networks, Inc.
237 West 35th Street, Suite 806
New York, NY 10001
Attn: CEO
Phone: 646-755-3605
Email: mbeys@blmlp.com

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON BORROWER'S 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 THE COMMONWEALTH OF PENNSYLVANIA, AND BORROWER 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 CONCLUSIVELY BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE COMMONWEALTH OF PENNSYLVANIA. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN THE COMMONWEALTH OF PENNSYLVANIA (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN THE COMMONWEALTH OF PENNSYLVANIA OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR. NOTHING CONTAINED HEREIN SHALL AFFECT THE RIGHT OF AGENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST BORROWER IN ANY OTHER JURISDICTION.

Section 10.4 Modification, Waiver in Writing. No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Note, or of any other Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances.

Section 10.5 Delay Not a Waiver. Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

Section 10.6 Notices. All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested, (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, or (c) facsimile (with answer back acknowledged) or as a PDF or similar attachment to an e-mail, provided that such facsimile or email attachment shall be followed within one (1) business day by delivery of such notice pursuant to clause (a) or (b) above, in each case addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a notice to the other parties hereto in the manner provided for in this Section 10.6):

If to Lender: DLP Lending Fund LLC
95 Highland Avenue, Suite 300
Bethlehem, PA 28017
Attention: Barry W. DeGroot, Esq.
E-Mail: barry@dlpre.com

with a copy to: Pircher, Nichols & Meeks LLP
1901 Avenue of the Stars, Suite 1200
Los Angeles, California 90067
Attention: Real Estate Notices (WBT: 6004.2)
Facsimile No.: (310) 201-8922
E-Mail: realestatenotices@pircher.com

If to Borrower: FTE Legal
237 West 35th Street, Suite 806
New York, NY 10001
Attn: Corporate Counsel
Phone: (239) 315-3161
Email: legal@ftenet.com

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; in the case of expedited prepaid delivery, upon the first attempted delivery on a Business Day; or in the case of facsimile or PDF or similar attachment to an e-mail, upon sender's receipt of a machine-generated confirmation of successful transmission after advice by telephone to recipient that a facsimile or e-mail notice is forthcoming. Any failure to deliver a notice by reason of a change of address not given in accordance with this Section 10.6, or any refusal to accept a notice, shall be deemed to have been given when delivery was attempted. Any notice required or permitted to be given by any party hereunder or under any other Loan Document may be given by its respective counsel.

Section 10.7 Waiver of Trial by Jury. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER.

Section 10.8 Headings. The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 10.9 Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Section 10.10 Preferences. 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 Debt. 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 10.11 Waiver of Notice. Borrower hereby expressly waives, and 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.

Section 10.12 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, Borrower agrees that neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment. The parties hereto agree that any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment. Further, it is agreed Lender shall not be in default under this Agreement, or under any other Loan Document, unless a written notice specifically setting forth the claim of Borrower shall have been given to Lender within thirty (30) days after Borrower first had knowledge of the occurrence of the event which Borrower alleges gave rise to such claim and Lender does not remedy or cure the default, if any there be, promptly thereafter. Failure to give such notice shall constitute a waiver of such claim.

Section 10.13 Expenses; Indemnity.

(a) Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender upon receipt of notice from Lender for all costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Lender in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including without limitation any opinions requested by Lender as to any legal matters arising under this Agreement or the other Loan Documents with respect to the Property); (ii) Borrower's ongoing performance of and compliance with Borrower's respective agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date, including, without limitation, confirming compliance with environmental and insurance requirements; (iii) Lender's ongoing performance and compliance with all agreements and conditions contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date; (iv) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters requested by Lender; (v) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement; (vi) the filing and recording fees and expenses, title insurance and 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; (vii) enforcing or preserving any rights, either in response to third party claims or in prosecuting or defending any action or proceeding or other litigation, in each case against, under or affecting Borrower, this Agreement, the other Loan Documents, the Property, or any other security given for the Loan; and (viii) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the 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 or any other amounts required under Section 9.3; *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 cost and expenses due and payable to Lender may be paid by Lender from any Reserve Account.

(b) Borrower shall indemnify, defend and hold harmless the Indemnified Parties from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for Lender in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not Lender shall be designated a party thereto), that may be imposed on, incurred by, or asserted against any Indemnified Party in any manner relating to or arising out of (i) any breach by Borrower of its Obligations under, or any 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 (the liabilities, losses, costs, expenses and other matters described in this subparagraph (b), collectively, the “**Indemnified Liabilities**”); *provided, however*, that Borrower shall not have any obligation to an Indemnified Party hereunder to the extent that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of such Indemnified Party. To the extent that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall pay the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by the Indemnified Parties.

Section 10.14 Exhibits and Schedules Incorporated. Any Exhibits and Schedules annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

Section 10.15 Offsets, Counterclaims and Defenses. Any assignee of Lender’s interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses solely to the extent such offsets, counterclaims or defenses are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

Section 10.16 No Joint Venture or Partnership; No Third Party Beneficiaries.

(a) Borrower 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 Property other than that of mortgagee, beneficiary or lender.

(b) This Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the Obligations contained herein or therein. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender’s sole discretion, Lender deems it advisable or desirable to do so.

Section 10.17 Publicity. All news releases, publicity or advertising by Borrower or its Affiliates through any media intended to reach the general public which refers to the Loan Documents or the financing evidenced by the Loan Documents, to Lender or any of its Affiliates shall be subject to the prior approval of Lender.

Section 10.18 Waiver of Marshalling of Assets; Homestead Waiver. 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 Property, or to a sale in inverse order of alienation in the event of foreclosure of the Security Instrument, 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 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 Property in preference to every other claimant whatsoever. To the extent permitted by applicable law, Borrower hereby waives any Homestead protections that may be available to Borrower under the law of the state in which the Property is located.

Section 10.19 Waiver of Counterclaim. Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents.

Section 10.20 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 its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any 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 10.21 Brokers and Financial Advisors. Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement other than Direct Lending Partners LLC, which arranged the Loan. Borrower hereby agrees to 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 10.21 shall survive the expiration and termination of this Agreement and the payment of the Debt.

Section 10.22 Prior Agreements. This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, including, without limitation, the Term Sheet dated April 13, 2020 between Borrower (or an agent or representative of Borrower) and Lender, are superseded by the terms of this Agreement and the other Loan Documents.

Section 10.23 Cumulative Rights. All of the rights of Lender under this Agreement hereunder and under each of the other Loan Documents and any other agreement now or hereafter executed in connection herewith or therewith, shall be cumulative and may be exercised singly, together, or in such combination as Lender may determine in its sole judgment.

Section 10.24 Counterparts; Electronic Delivery. This Agreement and all of the other Loan Documents may be executed in several counterparts, each of which when executed and delivered is an original, but all of which together shall constitute one instrument. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart which is executed by the party against whom enforcement of this Agreement is sought. The delivery of an executed counterpart of this Agreement or any other Loan Document (other than Note) by facsimile or as a PDF or similar attachment to an email shall constitute effective delivery of such counterpart for all purposes with the same force and effect as the delivery of an original, executed counterpart.

Section 10.25 Time is of the Essence. Time is of the essence of each provision of this Agreement and the other Loan Documents.

Section 10.26 Consent of Holder. Wherever this Agreement refers to Lender's consent or discretion or other rights, such references to Lender shall be deemed to refer to any holder of the Loan. The holder of the Loan may from time to time appoint a trustee or servicer, and Borrower shall be entitled to rely upon written instructions executed by a purported officer of the holder of the Loan as to the extent of authority delegated to any such trustee or from time to time and determinations made by such trustee or servicer to the extent identified as within the delegated authority of such trustee or servicer, unless and until such instructions are superseded by further written instructions from the holder of the Loan.

Section 10.27 Successor Laws. Any reference in this Agreement to any statute or regulation shall be deemed to include any successor statute or regulation.

Section 10.28 Reliance on Third Parties. Lender may perform any of its responsibilities hereunder through one or more agents, attorneys or independent contractors. In addition, Lender may conclusively rely upon the advice or determinations of any such agents, attorneys or independent contractors in performing any discretionary function under the terms of this Agreement.

Section 10.29 Joint Borrower. The representations, covenants, warranties and obligations of Borrower shall be joint and several. Each entity that constitutes Borrower acknowledges and agrees that it shall be jointly and severally liable for the Loan and all other Obligations arising under this Agreement and/or any of the other Loan Documents. In furtherance thereof, each Borrower acknowledges and agrees as follows:

(a) For the purpose of implementing the joint borrower provisions of the Loan Documents, each Borrower hereby irrevocably appoints each other Borrower as its agent and attorney-in-fact for all purposes of the Loan Documents, including the giving and receiving of notices and other communications.

(b) To induce Lender to make the Loan, and in consideration thereof, each Borrower hereby agrees to indemnify Lender against, and hold Lender harmless from, any and all liabilities, expenses, losses, damages and/or claims of damage or injury asserted against Lender by any Borrower or by any other Person arising from or incurred by reason of (i) reliance by Lender on any requests or instructions from any Borrower, or (ii) any other action taken by Lender in good faith with respect to this Agreement or the other Loan Documents.

(c) Each Borrower acknowledges that the liens and security interests created or granted herein and by the other Loan Documents will secure the Obligations of all Borrowers under the Loan Documents and, in full recognition of that fact, each Borrower consents and agrees that Lender may, at any time and from time to time, without notice or demand, and without affecting the enforceability or security hereof or of any other Loan Document:

(i) agree with any Borrower to supplement, modify, amend, extend, renew, accelerate, or otherwise change the time for payment or the terms of the Obligations or any part thereof, including any increase or decrease of the rate(s) of interest thereon;

(ii) agree with any Borrower to supplement, modify, amend or waive, or enter into or give any agreement, approval or consent with respect to, the Obligations or any part thereof or any of the Loan Documents or any additional security or guaranties, or any condition, covenant, default, remedy, right, representation or term thereof or thereunder;

(iii) accept new or additional instruments, documents or agreements in exchange for or relative to any of the Loan Documents or the Obligations or any part thereof;

(iv) accept partial payments on the Obligations;

(v) receive and hold additional security or guaranties for the Obligations or any part thereof;

(vi) release, reconvey, terminate, waive, abandon, subordinate, exchange, substitute, transfer and enforce any security for or guaranties of the Obligations, and apply any security and direct the order or manner of sale thereof as Lender, in its sole and absolute discretion may determine;

(vii) release any Person or any guarantor from any personal liability with respect to the Obligations or any part thereof; or

(viii) settle, release on terms satisfactory to Lender or by operation of applicable laws or otherwise liquidate or enforce any Obligations and any security therefor or guaranty thereof in any manner, consent to the transfer of any such security and bid and purchase at any sale; and consent to the merger, change or any other restructuring or termination of the corporate existence of any Borrower or any other Person, and correspondingly restructure the obligations of such Borrower or other Person, and any such merger, change, restructuring or termination shall not affect the liability of any Borrower or the continuing existence of any lien or security interest hereunder, under any other Loan Document to which any Borrower is a party or the enforceability hereof or thereof with respect to all or any part of the Obligations.

(d) Upon the occurrence of and during the continuance of any Event of Default, Lender may enforce this Agreement and the other Loan Documents independently as to each Borrower and independently of any other remedy or security Lender at any time may have or hold in connection with the Obligations, and in collecting on the Loan it shall not be necessary for Lender to marshal assets in favor of any Borrower or any other Person or to proceed upon or against and/or exhaust any other security or remedy before proceeding to enforce this Agreement and the other Loan Documents. Each Borrower expressly waives any right to require Lender, in connection with Lender's efforts to obtain repayment of the Loan and Other Obligations, to marshal assets in favor of any Borrower or any other Person or to proceed against any other Person or any collateral provided by any other Person, and agrees that Lender may proceed against any Persons and/or collateral in such order as it shall determine in its sole and absolute discretion in connection with Lender's efforts to obtain repayment of the Loan and other Obligations. Lender may file a separate action or actions against each Borrower to enforce the Obligations, whether action is brought or prosecuted with respect to any other security or against any other Person, or whether any other Person is joined in any such action or actions. Each Borrower agrees that Lender, each Borrower and/or any other Person may deal with each other in connection with the Obligations or otherwise, or alter any contracts or agreements now or hereafter existing between any of them, in any manner whatsoever, all without in any way altering or affecting the security of this Agreement or the other Loan Documents. The rights of Lender hereunder and under the other Loan Documents shall be reinstated and revived, and the enforceability of this Agreement and the other Loan Documents shall continue, with respect to any amount at any time paid on account of the Obligations which thereafter shall be required to be restored or returned by Lender as a result of the bankruptcy, insolvency or reorganization of any Borrower or any other Person, or otherwise, all as though such amount had not been paid. The enforceability of this Agreement and the other Loan Documents at all times shall remain effective even though any or all Obligations, or any other security or guaranty therefor, may be or hereafter may become invalid or otherwise unenforceable as against any Borrower or any other Person and whether or not any Borrower or any other Person shall have any personal liability with respect thereto. Each Borrower expressly waives any and all defenses to the enforcement of its Obligations under the Loan Documents now or hereafter arising or asserted by reason of (i) any disability or other defense of any Borrower or any other Person with respect to the Obligations, (ii) the unenforceability or invalidity of any security or guaranty for the Obligations or the lack of perfection or continuing perfection or failure of priority of any security for the Obligations, (iii) the cessation for any cause whatsoever of the liability of any Borrower or any other Person (other than by reason of the full and final payment and performance of all Obligations), (iv) any failure of Lender to marshal assets in favor of any of the Borrowers or any other Person, (v) any failure of Lender to give notice of sale or other disposition of any Collateral for the Obligations to any Borrower or to any other Person or any defect in any notice that may be given in connection with any such sale or disposition, (vi) any failure of Lender to comply in any non-material respect with applicable laws in connection with the sale or other disposition of any collateral or other security for any Obligation, (vii) any act or omission of Lender or others that directly or indirectly results in or aids the discharge or release of any Borrower or of any other Person or of any of the Obligations or any other security or guaranty therefor by operation of law or otherwise, (viii) any law which provides that the obligation of a surety or guarantor must neither be larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety's or guarantor's obligation in proportion to the principal obligation, (ix) any failure of Lender to file or enforce a claim in any bankruptcy or similar proceeding with respect to any Person, (x) the election by Lender, in any bankruptcy or similar proceeding of any Person, of the application or non-application of Section 1111(b)(2) of the Bankruptcy Code, (xi) any extension of credit or the grant of any lien under Section 364 of the Bankruptcy Code except to the extent otherwise provided in this Agreement, (xii) any use of cash collateral under Section 363 of the Bankruptcy Code, (xiii) any agreement or stipulation with respect to the provision of adequate protection in any bankruptcy or similar proceeding of any Person, (xiv) the avoidance of any lien or security interest in favor of Lender securing the Obligations for any reason, or (xv) any bankruptcy or similar proceeding commenced by or against any Person, including any discharge of, or bar or stay against collecting, all or any of the Obligations (or any interest thereon) in or as a result of any such proceeding. Without in any way limiting the foregoing, with respect to the Loan Documents and the Obligations, Borrower: (A) waives all rights and defenses arising out of an election of remedies by Lender even though that election of remedies, such as non-judicial foreclosure with respect to security for Borrowers' obligations, has destroyed each of their rights of subrogation and reimbursement against the other; and (B) waives any right to a fair value hearing or similar proceeding following a non-judicial foreclosure of the Obligations.

(e) Borrowers represent and warrant to Lender that they have established adequate means of obtaining from each other, on a continuing basis, financial and other information pertaining to their respective businesses, operations and condition (financial and otherwise) and their respective properties, and each now is and hereafter will be completely familiar with the businesses, operations and condition (financial and otherwise) of the other and their respective properties. Each Borrower hereby expressly waives and relinquishes any duty on the part of Lender to disclose to such Borrower any matter, fact or thing related to the businesses, operations or condition (financial or otherwise) of the other Borrowers or the other Borrowers' properties, whether now known or hereafter known by Lender during the life of this Agreement. With respect to any of the Obligations, Lender need not inquire into the powers of any Borrower or the officers, employees or other Persons acting or purporting to act on such Borrower's behalf.

(f) Without limiting the foregoing, or anything else contained in this Agreement, each Borrower waives all rights and defenses that it may have because the Obligations are secured by real property. This means, among other things:

(i) Lender may collect on the Obligations from any Borrower without first foreclosing on any real or personal property collateral pledged by the other Borrowers; and

(ii) If Lender foreclose on any real property collateral pledged by any Borrower for the Obligations: (A) the amount of the indebtedness owed by the other Borrowers may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; and (B) Lender may collect from any Borrower even if Lender, by foreclosing on the real property collateral, has destroyed any right any Borrower may have to collect from the other Borrowers.

(iii) This is an unconditional and irrevocable waiver of any rights and defenses each Borrower may have because the Obligations are secured by real property. Each Borrower expressly waives any right to receive notice of any judicial or nonjudicial foreclosure or sale of any real property collateral provided by the other Borrowers to secure the Obligations and failure to receive any such notice shall not impair or affect such Borrower's obligations hereunder or the enforceability of this Agreement or the other Loan Documents or any liens created or granted hereby or thereby.

(iv) Notwithstanding anything to the contrary elsewhere contained herein or in any other Loan Document to which any Borrower is a party, with respect to the Loan and all other Obligations, each Borrower hereby waives with respect to the other Borrowers and their successors and assigns (including any surety) and any other Person any and all rights at law or in equity, to subrogation, to reimbursement, to exoneration, to contribution, to set-off, to any other rights and defenses available to it or to any other rights that could accrue to a surety against a principal, to a guarantor against a maker or obligor, to an accommodation party against the party accommodated, or to a holder or transferee against a maker and which each of them may have or hereafter acquire against the other or any other Person in connection with or as a result of such Borrower's execution, delivery and/or performance of this Agreement or any other Loan Document to which it is a party until the Obligations are paid and performed in full. Each Borrower agrees that it shall not have or assert any such rights against any other Borrower or any other Borrower's successors and assigns or any other Person (including any surety), either directly or as an attempted set-off to any action commenced against such Borrower by any other Borrower (as borrower or in any other capacity) or any other Person until all the Obligations are paid and performed in full. Each Borrower hereby acknowledges and agrees that this waiver is intended to benefit Lender and shall not limit or otherwise affect any Borrower's liability under this Agreement or any other Loan Document to which it is a party, or the enforceability hereof or thereof.

EACH BORROWER WARRANTS AND AGREES THAT EACH OF THE WAIVERS AND CONSENTS SET FORTH HEREIN IS MADE WITH FULL KNOWLEDGE OF ITS SIGNIFICANCE AND CONSEQUENCES, WITH THE UNDERSTANDING THAT EVENTS GIVING RISE TO ANY DEFENSE WAIVED MAY DIMINISH, DESTROY OR OTHERWISE ADVERSELY AFFECT RIGHTS WHICH EACH OTHERWISE MAY HAVE AGAINST THE OTHER, AGAINST LENDER OR OTHERS, OR AGAINST ANY COLLATERAL. IF ANY OF THE WAIVERS OR CONSENTS HEREIN IS DETERMINED TO BE CONTRARY TO ANY APPLICABLE LAW OR PUBLIC POLICY, SUCH WAIVERS AND CONSENTS SHALL BE EFFECTIVE TO THE MAXIMUM EXTENT PERMITTED BY LAW.

[The Remainder of the Page is Intentionally Blank]

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

BORROWER:

DSV SPV1, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of DSV SPV1, LLC

DSV SPV2, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of DSV SPV2, LLC

DSV SPV3, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of DSV SPV3, LLC

RVFM 4 Series, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of RVFM 4 Series, LLC

Boom SC, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of Boom SC, LLC

(Signatures continue on following page)

Kaja Holdings, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of Kaja Holdings, LLC

Kaja Holdings 2, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of Kaja Holdings 2, LLC

(Signatures continue on following page)

LENDER:

DLP Lending Fund LLC,
a Delaware limited liability company

By: /s/ Donald Wenner
Donald Wenner
President

SCHEDULE 1

Borrower Entities

[to be inserted]

Schedule 1 - 1

SCHEDULE 1.1(a)

Allocated Loan Amounts

Attached.

Schedule 1.1(a) - 1

SCHEDULE 1.1(b)

List of Projects

[to be inserted]

Schedule 1.1(b) - 1

SCHEDULE 4.1.1

Organizational Chart

[to be inserted]

Schedule 4.1.1 - 1

PROMISSORY NOTE

\$1,278,178.24

August 26, 2020

FOR VALUE RECEIVED, the undersigned, jointly and severally (individually and collectively, "**Borrower**"), as maker, having its principal place of business at 16 Berryhill Road, Suite 200 Columbia, SC 29210, hereby unconditionally promises to pay to the order of DLP LENDING FUND LLC, a Delaware limited liability company, as lender, having an address at 95 Highland Avenue, St. Augustine, FL 32095 (together with its successors and assigns, collectively, "**Lender**"), or at such other place as the holder hereof may from time to time designate in writing, the principal sum of ONE MILLION TWO HUNDRED SEVENTY EIGHT THOUSAND ONE HUNDRED SEVENTY EIGHT and 24/100 Dollars (\$1,278,178.24), or so much thereof as is advanced pursuant to that certain Loan Agreement, dated the date hereof, between Borrower and Lender (as the same may be amended, modified, restated, replaced, supplemented or otherwise modified from time to time, the "**Loan Agreement**"), in lawful money of the United States of America, with interest thereon to be computed from the date of this Promissory Note (as the same may be amended, supplemented, restated, replaced or otherwise modified from time to time, this "**Note**") at the Interest Rate (as defined in the Loan Agreement), and to be paid in accordance with the terms of this Note and the Loan Agreement. All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement.

ARTICLE 1 – PAYMENT TERMS

Borrower agrees to pay the principal sum of this Note and interest on the unpaid principal sum of this Note and all other amounts due under the Loan Agreement and other Loan Documents from time to time outstanding without relief from valuation and appraisal laws at the rates and at the times specified in the Loan Agreement and the outstanding balance of the principal sum of this Note and all accrued and unpaid interest thereon and all other amounts due under the Loan Agreement and other Loan Documents shall be due and payable, in all events, on the Maturity Date. The obligations of each Borrower or party under this Note shall be joint and several.

ARTICLE 2 – DEFAULT AND ACCELERATION

The Debt shall without notice become immediately due and payable at the option of Lender, if any payment required in this Note is not paid (a) on or prior to the date when due, (b) on the Maturity Date or (c) on the happening of any other Event of Default.

ARTICLE 3 – LOAN DOCUMENTS

This Note is secured by the Security Instrument and the other Loan Documents. All of the terms, covenants and conditions contained in the Loan Agreement, the Security Instrument and the other Loan Documents are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. In the event of a conflict or inconsistency between the terms of this Note and the Loan Agreement, the terms and provisions of the Loan Agreement shall govern.

ARTICLE 4 – SAVINGS CLAUSE

Notwithstanding anything to the contrary contained herein, (a) all agreements and communications between Borrower and Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed interest, the interest contracted for, charged or received by Lender shall never exceed the Maximum Legal Rate or amount, (b) in calculating whether any interest exceeds the Maximum Legal Rate, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Borrower to Lender, and (c) if through any contingency or event Lender receives or is deemed to receive interest in excess of the Maximum Legal Rate, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Borrower to Lender.

ARTICLE 5 – NO ORAL CHANGE

This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

ARTICLE 6 – WAIVERS

Borrower and all others who may become liable for the payment of all or any part of the Debt do hereby jointly and severally waive presentment and demand for payment, notice of dishonor, notice of intention to accelerate, notice of acceleration, protest and notice of protest and non-payment and all other notices of any kind. No release of any security for the Debt or extension of time for payment, of this Note or any installment hereof, and no alteration, amendment or waiver of any provision of this Note, the Loan Agreement or the other Loan Documents made by agreement between Lender or any other Person shall release, modify, amend, waive, extend, change, discharge, terminate or affect the liability of Borrower, and any other Person who may become liable for the payment of all or any part of the Debt, under this Note, the Loan Agreement or the other Loan Documents. No notice to or demand on Borrower shall be deemed to be a waiver of the obligation of Borrower or of the right of Lender to take further action without further notice or demand as provided for in this Note, the Loan Agreement or the other Loan Documents. If Borrower is a partnership or limited liability company, the agreements herein contained shall remain in force and be applicable, notwithstanding any changes in the individuals or entities comprising the partnership or limited liability company, and the term "Borrower," as used herein, shall include any alternate or successor partnership or limited liability company, but any predecessor partnership or limited liability company and their partners or members shall not thereby be released from any liability. If Borrower is a corporation, the agreements contained herein shall remain in full force and be applicable notwithstanding any changes in the shareholders comprising, or the officers and directors relating to, the corporation, and the term "Borrower" as used herein, shall include any alternative or successor corporation, but any predecessor corporation shall not be relieved of liability hereunder. Nothing in the foregoing two sentences shall be construed as a consent to, or a waiver of, any prohibition or restriction on transfers of interests in such partnership, limited liability company or corporation, as applicable, which may be set forth in the Loan Agreement, the Security Instrument or any other Loan Document.

ARTICLE 7 – TRANSFER

Upon the transfer of this Note in whole or in part, Borrower hereby waiving notice of or consent to any such transfer, Lender may deliver all the collateral mortgaged, granted, pledged or assigned pursuant to the Loan Documents, or any part thereof, to the transferee who shall thereupon become vested with all the rights (and liabilities arising thereafter) herein or under Legal Requirements of and given to Lender with respect thereto, and Lender shall thereafter forever be relieved and fully discharged from any liability or responsibility in the matter; but Lender shall retain all rights hereby given to it with respect to any liabilities and the collateral not so transferred.

ARTICLE 8 – GOVERNING LAW AND WAIVER OF TRIAL BY JURY

This Note shall be governed in accordance with the terms and provisions of Section 10.3 and Section 10.7 of the Loan Agreement.

ARTICLE 9 – NOTICES

All notices or other written communications hereunder shall be delivered in accordance with Section 10.6 of the Loan Agreement.

ARTICLE 10 TRANSACTION ASSIGNMENT AND REGISTRAR

I. ASSIGNMENTS, PARTICIPATIONS

A. Assignments by Lender, etc. Subject to compliance with this Article 10, any Lender may on or after the date hereof sell and assign, or pledge, hypothecate or encumber, all or any portion of its Loans and all other Obligations with respect thereto, to or with Persons as may be selected by such Lender in its sole and absolute discretion (each an “*Assignee*”) and on terms and conditions satisfactory to in its sole and absolute discretion (which shall include the execution and delivery by the Assignee of assignment documentation in form and substance satisfactory to such assigning Lender). Borrower shall cooperate in all reasonable respects with such Lender in connection with the sale and assignment, or pledge, hypothecation or encumbrance, of all or any portion of such Lender’s interest in the Loan, and shall, in connection therewith, promptly execute and deliver such documents as may be reasonably requested by such Lender; provided, that such cooperation shall not include reimbursement of any Lender or any Assignee for any costs incurred in connection with such assignment or related documents.

A. Effect of Assignment. Pursuant to any assignment or participation of all or any portion of a Lender’s Loan as contemplated in this Article 10 to any Assignee, such Lender (a) may, subject to compliance with this Article 10, transfer its obligations hereunder and under the other Loan Documents (or may transfer the portion thereof corresponding to the transferred portion of the Obligations) and, except as otherwise specified herein, any Assignee shall succeed to the rights and obligations of Lender hereunder in respect of the transferred portion, and (b) shall relinquish its rights and be released from its obligations hereunder and under this Agreement and the other Loan Documents as to the transferred portion of its interest in the Loan.

B. Assignments by Borrower. No Borrower shall have any right to assign its rights or obligations hereunder or under the other Loan Documents or any interest herein or therein without the prior written consent of Lender and each of its successors and assigns, which consent may be withheld by in their sole and absolute discretion. Any attempted or purported assignment in contravention of this Article 10 shall be null and void ab initio.

C. Participations. Subject to compliance with this Article 10, any Lender may at any time, without the consent of, or notice to, Borrower, sell to one or more Persons as may be selected by such Lender in its sole and absolute discretion a participation (each a “*Participant*”) in all or a portion of such Lender’s rights and/or obligations under this Agreement (including all or a portion of the interest in the Loan owing to it); provided that (a) such Lender’s obligations under this Agreement shall remain unchanged, (b) such Lender shall remain solely responsible to the other Parties hereto for the performance of such obligations, (c) Borrower shall continue to deal solely and directly with Lender in connection with such Lender’s rights and obligations under this Agreement and the other Loan Documents, and (d) no Participant shall have any right to approve any amendment or waiver of any provision of any Loan Document, or any consent to any departure by Borrower or any other party therefrom, except to the extent that such amendment, waiver or consent would reduce the principal of, or interest on, the Loan or any fees or other amounts payable hereunder, in each case to the extent subject to such participation, or postpone any date fixed for any payment of any amount hereunder, to the extent subject to such participation.

II. REGISTRATION

A. Registered Obligation. Borrower hereby acknowledges and makes this Note (if any) a registered obligation for United States withholding tax purposes. DLP Lending Fund LLC, as Borrower's non-fiduciary agent for this purpose, shall be the registrar for this Note (if any) (the "**Registrar**") with full power of substitution. In the event the Registrar becomes unable or unwilling to act as registrar under this Agreement, Borrower shall reasonably designate a successor Registrar.

B. Register. The Registrar shall maintain, or cause to be maintained, a register (the "**Register**") for the recordation of the names and addresses of each Lender and any Assignee of all or any portion of such Lender's interest in the Loan and the principal amount outstanding of the Loan (and stated interest accrued but unpaid thereon) (the "**Registered Loan**") held by Lender and each Assignee from time to time. Borrower, each Lender and each Assignee shall treat each Person whose name is recorded in the Register as a "Lender" hereunder for all purposes of this Agreement. The Register shall be available for inspection by Borrower at any reasonable time and from time to time upon reasonable prior notice.

C. Registration of Assignment. A Registered Loan (and the registered Note evidencing the same, if any) may be assigned or sold in whole or in part only by registration of such assignment or sale on the Register (and each registered Note, if any, shall expressly so provide), which registration the Registrar shall effect immediately upon receipt of assignment documentation. Any assignment or sale of all or part of such Registered Loan (and the registered Note evidencing the same, if any) may be effected only by registration of such assignment or sale on the Register, together with the surrender of the registered Note evidencing the same, if any, duly endorsed by (or accompanied by a written instrument of assignment or sale duly executed by) the holder of such registered Note, if any, whereupon, at the request of the designated assignee(s) or transferee(s), one or more new registered Notes in the same aggregate principal amount shall be issued to the designated assignee(s) or transferee(s). Prior to the registration of assignment or sale of any Registered Loan (and the registered Note evidencing the same, if any), Borrower shall treat the Person in whose name such Registered Loan (and the registered Note evidencing the same, if any) is registered as the owner thereof for the purpose of receiving all payments thereon and for all other purposes, notwithstanding notice to the contrary.

D. Participant Register. If any Lender sells a participation or participations in the Loan to a Participant, such Lender shall report such sale of a participation to the Registrar and the Registrar shall, acting solely for this purpose as a non-fiduciary agent of Borrower, maintain a register on which it enters the name and the address of each Participant and the principal amounts of each Participant's participation interest in the Loan (or other rights or obligations) held by it (the "**Participant Register**"). The entries in the Participant Register shall be conclusive, absent manifest error, and each Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation interest as the owner thereof for all purposes notwithstanding any notice to the contrary. In maintaining the Participant Register, the Registrar shall be acting as the agent of Borrower solely for purposes of applicable United States federal income tax law and undertakes no duty, responsibility or obligation to Borrower and, without limitation, in no event shall the Registrar be a fiduciary of Borrower for any purpose, except that the Registrar shall maintain the Participant Register and, upon reasonable prior notice from Borrower, shall make the Participant Register available for inspection by Borrower at any reasonable time and from time to time.

[The Remainder of the Page is Intentionally Blank]

IN WITNESS WHEREOF, Borrower has duly executed this Promissory Note as of the day and year first above written.

BORROWER:

DSV SPV1, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of DSV SPV1, LLC

DSV SPV2, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of DSV SPV2, LLC

DSV SPV3, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of DSV SPV3, LLC

RVFM 4 Series, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of RVFM 4 Series, LLC

Boom SC, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of Boom SC, LLC

Kaja Holdings, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of Kaja Holdings, LLC

Kaja Holdings 2, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of Kaja Holdings 2, LLC

Signature Page – Continued – Promissory Note

LOAN AGREEMENT

Dated as of August 26, 2020

among

THE ENTITIES SET FORTH ON SCHEDULE 1 ATTACHED HERETO,

individually and collectively, as Borrower

and

DLP LENDING FUND LLC,

as Lender

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LOAN AGREEMENT

This LOAN AGREEMENT, dated as of August 26, 2020 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this “*Agreement*”), between DLP LENDING FUND LLC, a Delaware limited liability company (“*Lender*”), having an address at 95 Highland Avenue, St. Augustine, FL 32095, and THE ENTITIES SET FORTH ON SCHEDULE 1 ATTACHED HERETO, jointly and severally (individually and collectively, “*Borrower*”), having its principal place of business at 16 Berryhill Road, Suite 200 Columbia, SC 29210

WITNESSETH:

WHEREAS, Borrower desires to obtain a loan in the original principal amount of TWO MILLION TWO HUNDRED TWENTY FIVE THOUSAND FIVE HUNDRED NINETY THREE and 30/100 Dollars (\$2,225,593.30) from Lender pursuant to this Agreement (the “*Loan*”); and

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

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

ARTICLE I

DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1 Definitions. For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

“*Accrued Interest*” shall mean all accrued and unpaid interest on the outstanding principal balance of the Loan from time to time.

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

“*Agreement*” shall mean this Loan Agreement, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“*Allocated Loan Amount*” shall mean, with respect to each Individual Property, the amount set forth on Schedule 1.1(a) hereof.

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

“*Approved Plans*” means complete plans, drawings, specifications and scope of work, that comply with applicable Legal Requirements and have been approved in writing by Lender, for the Project.

“*Assignment of Management Agreement*” shall mean individually and collectively as applicable, an Assignment of Management Agreement and Subordination of Management Fees, dated as of the date hereof or thereafter, as applicable, among Lender, Borrower and Manager, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

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

“Bankruptcy Action” shall mean with respect to any Person (a) such Person filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (b) the filing of an involuntary petition against such Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition against such Person; (c) such Person filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition from any Person; (d) such Person consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, assignee, sequestrator (or similar official), liquidator, or examiner for such Person or any portion of the Property; (e) the filing of a petition against a Person seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code or any other applicable law, (f) under the provisions of any other law for the relief or aid of debtors, an action taken by any court of competent jurisdiction that allows such court to assume custody or Control of a Person or of the whole or any substantial part of its property or assets or (g) such Person making an assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due.

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

“Basic Carrying Costs” shall mean, for any period, the sum of the following costs: (a) Taxes, (b) Other Charges and (c) Insurance Premiums.

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

“Business Day” shall mean any day other than a Saturday, Sunday or any other day on which any of the following institutions is not open for business: (i) banks and savings and loan institutions in New York or Pennsylvania, (ii) the financial institution that maintains any collection account for or on behalf of any Reserve Funds, (iii) the New York Stock Exchange or (iv) the Federal Reserve Bank of New York.

“Casualty” shall have the meaning set forth in Section 6.2 hereof.

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

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

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

“Collateral” shall have the meaning ascribed to such term in the Security Instrument.

“Completion” or **“Complete”** shall mean one hundred percent (100%) completion of construction, renovation, rehabilitation of a Project, as applicable, subject to usual and customary punch list items, in a good and workmanlike manner and in compliance with all Legal Requirements, and in a manner consistent and compliant in all material respects with the applicable Project Documents as approved by Lender, and free and clear of all liens, claims, encumbrances and rights of others, other than Permitted Encumbrances, as evidenced by the issuance of certificates of completion by Lender’s consultant or inspecting architect or engineer, if any, in each case in form and substance acceptable to Lender and, if available or required under applicable Legal Requirements, a final or partial certificate of occupancy and, as applicable, acceptance of completion by the applicable tenant.

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

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

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

“**Debt**” shall mean the Outstanding Principal Balance together with all interest accrued and unpaid thereon and all other sums due to Lender in respect of the Loan under the Note, this Agreement, the Security Instrument or any other Loan Document.

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

“**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 twenty-four percent (24%) per annum.

“**Distribution**” means (i) any dividend, distribution or other payment of any kind on any shares of capital stock or other securities or partnership, membership, economic or other interests, or (ii) any fee, payment, bonus or other remuneration of any kind, or (iii) any repayment of or debt service on loans or other indebtedness other than the Loan.

“**Dollars**” and the sign “\$” shall mean lawful money of the United States of America.

“**Embargoed Person**” shall mean any person, entity or government subject to trade restrictions under U.S. law, including, but not limited to, The USA Patriot Act (including the anti-terrorism provisions thereof), the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701, et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder including those related to Specially Designated Nationals and Specially Designated Global Terrorists, with the result that the investment in Borrower or any Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan made by Lender is in violation of law.

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

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

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

“**ERISA Affiliate**” shall mean each person (as defined in section 3(9) of ERISA) that together with Borrower would be deemed to be a “single employer” within the meaning of Section 414(b), (c), (m) or (o) of the Code.

“**Event of Default**” shall have the meaning set forth in Section 8.1.1(a) hereof.

“**Exchange Act**” shall mean the Securities Exchange Act of 1934, as the same may be amended, modified or replaced, from time to time.

“**Exchange Act Filing**” shall have the meaning set forth in Section 5.1.11(f) hereof.

“**Extended Maturity Date**” shall have the meaning set forth in Section 2.6.1 hereof.

“**Extension Notice**” shall have the meaning set forth in Section 2.6.1 hereof.

“**First Extension Option**” shall have the meaning set forth in Section 2.6.1 hereof.

“**First Payment Date**” shall have the meaning set forth in Section 2.3.2 hereof.

“**Fiscal Year**” shall mean each twelve (12) month period commencing on January 1 and ending on December 31 during each year of the term of the Loan.

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

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

“**Guarantor**” shall mean, jointly and severally, and, as the context requires, individually and collectively, Alexander Szkaradek, Antoni Szkaradek, Michael P. Beys each an individual; US Home Rentals, LLC, a Delaware limited liability company and FTE Networks, Inc., a Delaware corporation.

“**Guaranty**” shall mean that certain Guaranty dated as of the date hereof, from Guarantor in favor of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

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

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

“**In Balance**” means, with respect to each Project, no Deficiency then exists with respect to such Project.

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

“**Indemnified Parties**” shall mean Lender and any of its Affiliates and any of their officers, directors, members, partners, employees, representatives and consultants.

“**Indemnifying Person**” shall mean Borrower and each Guarantor, on a joint and several basis.

“**Individual Property**” shall mean all parcels of land, the Improvements thereon and all personal property owned by the Borrower and encumbered by a Security Instrument, together with all rights pertaining to such property and Improvements, as more particularly described in the granting clauses of each such Security Instrument and referred to therein as the “Property”.

“**Interest Period**” shall mean (i) initially, the period commencing on and including the date of the funding of the Loan and ending on and including the last day of the calendar month of the Closing Date, and (ii) thereafter, for any specified Payment Date including the Maturity Date, the period commencing on and including the first (1st) day of the calendar month prior to such Payment Date and ending on the last day of the calendar month in which such Payment Date occurs.

“**Interest Rate**” shall mean a fixed rate of Eleven and Ninety-Nine Hundredths percent (11.99%) per annum.

“**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 Property by or on behalf of Borrower, and (a) every modification, amendment or other agreement relating to such lease, sublease, subsublease, or other agreement entered into in connection with such lease, sublease, subsublease, or other agreement, and (b) every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto.

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

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

“**Lien**” shall mean any mortgage, deed of trust, deed to secure debt, indemnity deed of trust, lien (statutory or otherwise), pledge, hypothecation, easement, restrictive covenant, preference, assignment, security interest, or any other encumbrance, charge or transfer of, or any agreement to enter into or create any of the foregoing, on or affecting Borrower, the Property, or any portion thereof or any interest therein, or any direct or indirect 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 have the meaning set forth in the recitals hereof.

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

“**Management Agreement**” shall mean any property management agreement or similar agreement entered into by and between Borrower and Manager, pursuant to which Manager is to provide management and other services with respect to the Property, and any successor property management approved by Lender, in writing, in Lender’s sole discretion.

“**Manager**” shall mean, the individual or entity who provides management and other services with respect to the Property pursuant to a Management Agreement.

“**Material Adverse Change**” or “**Materially Adverse Effect**” shall mean that the business, operations, property, assets, liabilities or financial condition of any applicable Person and each of their subsidiaries, taken as a whole, or the ability of any such Person to perform its obligations under the Loan Documents, has changed in a manner which could materially impair the value of Lender’s security for the Loan or prevent timely repayment of the Loan or otherwise prevent the applicable person or entity from timely performing any of its material obligations under the Loan Documents or any Lease, as the case may be, as determined by Lender.

“**Material Agreements**” shall have the meaning set forth in Section 15.20 hereof.

“**Maturity Date**” shall mean the Stated Maturity Date, provided that (a) in the event of the exercise by Borrower of the First Extension Option pursuant to Section 2.6, the Maturity Date shall be the First Extended Maturity Date, and (b) in the event of the exercise by Borrower of the Second Extension Option pursuant to Section 2.6, the Maturity Date shall be the Second Extended Maturity Date, or such earlier date on which the final payment of principal of the Note becomes due and payable as herein or therein provided, whether at the Stated Maturity Date, by declaration of acceleration, or otherwise.

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

“**Multiemployer Plan**” shall mean a multiemployer plan, as defined in Section 4001(a)(3) of ERISA to which Borrower or any ERISA Affiliate is making or accruing an obligation to make contributions or has within any of the preceding three plan years made or accrued an obligation to make contributions.

“**Multiple Employer Plan**” shall mean an employee benefit plan, other than a Multiemployer Plan, to which Borrower or any ERISA Affiliate, and one or more employers other than Borrower or an ERISA Affiliate, is making or accruing an obligation to make contributions or, in the event that any such plan has been terminated, to which Borrower or an ERISA Affiliate made or accrued an obligation to make contributions during any of the five plan years preceding the date of termination of such plan.

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

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

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

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

“**Obligations**” shall mean, collectively, Borrower’s obligations for the payment of the Debt and the performance of the Other Obligations.

“**OFAC**” shall mean the Office of Foreign Asset Control of the Department of the Treasury of the United States of America.

“**Officer’s Certificate**” shall mean a certificate delivered to Lender by Borrower which is signed by an authorized officer of (i) Borrower, or (ii) any direct or indirect general partner or member of Borrower with authority to act on behalf of and bind Borrower.

“**Operations Agreements**” shall mean any covenants, restrictions, easements, declarations or agreements of record relating to the construction, operation or use of the Property, together with all amendments, modifications or supplements thereto.

“**Other Charges**” shall mean all ground rents, maintenance charges, impositions other than Taxes, any “common expenses” or expenses allocated to and required to be paid by Borrower under any Operations Agreements and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property, now or hereafter levied or assessed or imposed against the Property or any part thereof.

“**Other Obligations**” shall mean (a) the performance of all obligations of Borrower contained herein; (b) the performance of each obligation of Borrower or any Guarantor contained in any other Loan Document; (c) the payment of all costs, expenses, legal fees and liabilities incurred by Lender in connection with the enforcement of any of Lender’s rights or remedies under the Loan Documents, or any other instrument, agreement or document which evidences or secures any other Obligations or collateral therefor, whether now in effect or hereafter executed; and (d) the payment, performance, discharge and satisfaction of all other liabilities and obligations of Borrower and/or Guarantor to Lender, whether now existing or hereafter arising, direct or indirect, absolute or contingent, and including, without limitation, each liability and obligation of Borrower and each Guarantor under any one or more of the Loan Documents and any amendment, extension, modification, replacement or recasting of any one or more of the instruments, agreements and documents referred to herein or therein or executed in connection with the transactions contemplated hereby or thereby.

“**Outstanding Principal Balance**” shall mean, as of any date, the outstanding principal balance of the Loan. For the avoidance of doubt, the outstanding principal balance of the Loan shall include Project Reserve Funds and all other funds held by lender or escrow agent.

“**Payment Date**” shall mean, commencing with the First Payment Date, the first (1st) day of each calendar month during the term of the Loan until and including the Maturity Date or, for purposes of making payments hereunder, but not for purposes of calculating Interest Periods, if such day is not a Business Day, the immediately preceding Business Day.

“**Permitted Encumbrances**” shall mean, collectively (a) the Liens and security interests created by the Loan Documents, (b) all Liens, encumbrances and other matters disclosed in “Schedule B-I” of the Title Insurance Policy, (c) Liens, if any, for Taxes imposed by any Governmental Authority which are not yet due or delinquent, and (d) such other title and survey exceptions as Lender has approved or may approve in writing in Lender’s sole discretion, which Permitted Encumbrances in the aggregate do not materially adversely affect the value or use of the Property or Borrower’s ability to repay the Loan.

“**Permitted Transfer**” means any of the following: (a) any Transfer, directly as a result of the death of a natural person, of stock, membership interests, partnership interests or other ownership interests previously held by the decedent in question to the Person or Persons lawfully entitled thereto; (b) any Transfer, directly as a result of the legal incapacity of a natural person, of stock, membership interests, partnership interests or other ownership interests previously held by such natural person to the Person or Persons lawfully entitled thereto; and (c) any Transfer expressly permitted by and completed strictly in accordance with Section 5.2.10.

“**Person**” shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any Governmental Authority, and any fiduciary acting in such capacity on behalf of any of the foregoing.

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

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

“**Prohibited Transaction**” shall mean any action or 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.

“**Project**” shall mean and refer to, individually and collectively as applicable, the rehabilitation improvements to each Individual Property more particularly described on Schedule 1.1(b) hereto, that will be funded, in whole or in part, with disbursements of Project Reserve Funds.

“**Project Budget**” shall mean a budget for construction of each Project approved by Lender in its sole discretion and any modifications thereof approved by Lender in writing in its sole and absolute discretion.

“**Project Contracts**” shall mean each contract or agreement to which Borrower or any agent of Borrower is a party, providing for the provision of construction services (including architect’s or engineering services), labor or material in connection with a Project.

“**Project Costs**” shall mean all costs and expenses of every kind and nature whatsoever to be incurred by Borrower in connection with the Completion of a Project, including such reserves and contingencies as Lender shall reasonably require.

“**Project Documents**” shall mean each of the following as approved by Lender with respect to each Project: the Approved Plans and the applicable Project Contracts.

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

“**Project Reserve Funds**” shall have the meaning set forth in Section 7.4.1 hereof.

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

“**Release Amount**” shall mean, for an Individual Property, the lesser of:

(a) the Debt; or

(b) an amount equal to the Allocated Loan Amount for such Individual Property set forth on Schedule 1.1(a) (as adjusted pursuant to Sections 2.4.1(c) and 2.4.2(a) if applicable) multiplied by one hundred and ten percent (110%).

“**Release Property**” shall have the meaning set forth in Section 2.7 hereof.

“**Rents**” shall mean all rents (including additional rents of any kind and percentage rents), rent equivalents, moneys payable as damages (including payments by reason of the rejection of a Lease in a Bankruptcy Action) or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other payments and consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower or any of their agents or employees from any and all sources arising from or attributable to the Property, and the Improvements, including charges for oil, gas, water, steam, heat, ventilation, air-conditioning, electricity, license fees, maintenance fees, charges for Taxes, operating expenses or other amounts payable to Borrower (or for the account of Borrower), revenues from telephone services, vending and all receivables, customer obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of the Property or rendering of services by Borrower, or any of its agents or employees and proceeds, if any, from business interruption or other loss of income insurance.

“**Reserve Accounts**” shall mean, collectively, the Project Reserve Account, the Net Proceeds Account, and any other escrow or reserve account established pursuant to the Loan Documents

“**Reserve Funds**” shall mean, collectively, the Project Reserve Funds and any other escrow or reserve funds established pursuant to the Loan Documents.

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

“**Retention Amount**” shall have the meaning set forth in Section 6.4(b)(iv) hereof.

“**Second Extension Option**” shall have the meaning set forth in Section 2.6.1 hereof.

“**Securities**” shall have the meaning set forth in Section 9.1 hereof.

“**Security Instrument**” shall mean those certain first priority Deeds of Trust, Security Agreements, Assignment of Leases and Fixture Filings of even date herewith, made by Borrower for the benefit of Lender as security for the Obligations and encumbering the Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Servicer**” shall have the meaning set forth in Section 9.3 hereof.

“**Servicing Agreement**” shall have the meaning set forth in Section 9.3 hereof.

“**Severed Loan Documents**” shall have the meaning set forth in Section 9.2 hereof.

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

“**Stated Maturity Date**” shall mean August 31, 2021.

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

“**Taxes**” shall mean all taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against (a) the Property or part thereof, together with all interest and penalties thereon and (b) against the rents, issues, income or profits thereof or upon the lien or estate hereby created, whether any or all of said taxes, assessments or charges be levied directly or indirectly or as excise taxes or ad valorem real estate or personal property taxes or as income taxes.

“**Tenant**” shall mean the lessee of all or any portion of the Property under a Lease.

“**Title Company**” shall mean the title insurance company which issued the Title Insurance Policy.

“**Title Insurance Policy**” shall mean an ALTA mortgagee title insurance policy in a form acceptable to Lender (or, if the State does not permit the issuance of such ALTA policy, such form as shall be permitted in the State and acceptable to Lender) with respect to the Property and insuring the Lien of any of the Security Instrument encumbering the Property.

“**Transfer**” shall mean means the sale, transfer, hypothecation, pledge, encumbrance, mortgage, conveyance, lease, alienation, assignment, disposition, divestment, or leasing with option to purchase, or assignment of the Property, or any portion thereof or interest therein or in Borrower (whether direct or indirect, legal or equitable including the issuance, sale, assignment, alienation, conveyance, divestment, transfer, disposition, hypothecation, pledge, mortgage or encumbrance of any ownership interest in Borrower or in any entity having an ownership interest in Borrower, whether direct or indirect); or entering into any agreement or contract to do any of the foregoing which is not conditioned on compliance with the terms of the Loan Documents with respect to Transfers, or undertaking, suffering or causing any of the foregoing to occur voluntarily, involuntarily or by operation of law.

“**UCC**” shall mean the Uniform Commercial Code as in effect in the State in which the Property is located, as the same may be amended from time to time *provided, however*, that if by reason of mandatory provisions of law, the perfection or the effect of perfection or non-perfection or priority of the security interest in any item or portion of the collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State in which the Property is located (“**Other UCC State**”), “**UCC**” means the Uniform Commercial Code as in effect in such Other UCC State, as the same may be amended from time to time, for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection or priority.

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

Section 1.2 Principles of Construction. All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All uses of the word “including” shall mean “including, without limitation” unless the context shall indicate otherwise. Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined.

ARTICLE II

GENERAL TERMS

Section 2.1 Loan Commitment; Disbursement to Borrower.

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

2.1.2 Single Disbursement to Borrower. Borrower may request and receive only one disbursement hereunder in respect of the Loan and any amount borrowed and repaid in respect of the Loan may not be re-borrowed. Borrower acknowledges and agrees that the Loan has been fully funded as of the Closing Date.

2.1.3 The Note, Security Instrument and Loan Documents. The Loan shall be evidenced by the Note and secured by the Security Instrument, and the other Loan Documents.

2.1.4 Use of Proceeds. Borrower shall use the proceeds of the Loan to (a) refinance the Property, (b) make deposits of Reserve Funds into the Reserve Accounts on the Closing Date in the amounts provided herein (Borrower hereby authorizing Lender to reserve a portion of the proceeds of the Loan in the amount of the Reserve Funds from disbursement of the proceeds of the Loan on the date hereof), (c) pay costs and expenses incurred in connection with the closing of the Loan, as approved by Lender, and (d) pay for Project Costs.

2.1.5 Upfront Payment. At Closing, Borrower shall pay to Lender an upfront fee (the "*Upfront Payment*") in an amount equal to Seventy-Five Thousand and No/100 Dollars (\$75,000.00), less any portion of the Upfront Fee paid to Lender prior to the Closing. The Upfront Payment is fully earned and non-refundable.

Section 2.2 Interest Rate.

2.2.1 Interest Rate. Subject to Section 2.2.4 hereof, interest on the Outstanding Principal Balance shall accrue from the date of the funding of the Loan to but excluding the Maturity Date at the Interest Rate.

2.2.2 Interest Calculation. With respect to any applicable period, interest on the Outstanding Principal Balance 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 the Interest Rate and a three hundred sixty (360) day year by (c) the average Outstanding Principal Balance in effect for the applicable period as calculated by Lender.

2.2.3 Default Rate. In the event that, and for so long as, any Event of Default shall have occurred and be continuing, the Outstanding Principal Balance and, to the extent permitted by law, all accrued and unpaid interest in respect thereof and any other amounts due pursuant to the Loan Documents, shall accrue interest at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained herein.

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

Section 2.3 Debt Service Payments.

2.3.1 Payments Generally. For purposes of making payments hereunder, but not for purposes of calculating Interest Periods, if the day on which such payment is due is not a Business Day, then amounts due on such date shall be due on the immediately succeeding Business Day. All amounts due pursuant to this Agreement and the other Loan Documents shall be payable without setoff, counterclaim, defense or any other deduction whatsoever.

2.3.2 Monthly Debt Service Payment. On the Closing Date, Borrower shall make a payment of interest only for the period commencing on and including the date of the funding of the Loan through and including September 30, 2020. Beginning on October 1, 2020 (the "*First Payment Date*") and each subsequent Payment Date up to and including the Maturity Date, Borrower shall make a payment to Lender of principal (if any) and interest in an amount equal to the Monthly Debt Service Payment Amount, which payments shall be applied to accrued and unpaid interest.

2.3.3 Payment on Maturity Date. Borrower shall pay to Lender not later than 3:00 P.M., Philadelphia city time, on the Maturity Date the Outstanding Principal Balance, all accrued and unpaid interest and all other amounts due hereunder and under the Note, the Security Instrument and the other Loan Documents.

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

2.3.5 Method and Place of Payment Except as otherwise specifically provided herein, all payments and prepayments under this Agreement and the Note shall be made to Lender not later than 2:00 P.M., Philadelphia city time, on the date when due and shall be made in Dollars in immediately available funds at Lender's office or as otherwise directed by Lender, 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. Any prepayments required to be made hereunder shall be deemed to have been timely made for purposes of this Section 2.3.5.

2.3.6 ACH Payment All payments due and owing under this Agreement or any other Loan Documents shall be made by wire transfer to an account designated by Lender to Borrower from time to time, or at Lender's election, shall be made through automated clearing house ("**ACH**") transfers from the Borrower directly to Lender. In this regard, if Lender elects to receive payments through ACH, shall execute and deliver to Lender an authorization agreement for direct payments whereby, among other things, Lender shall be irrevocably authorized to initiate ACH transfers from the a payment account designated by Borrower to Lender in the amounts required or permitted under this Agreement and all other Loan Documents. Lender's authorization for direct ACH transfers as hereby provided shall be irrevocable and such ACH transfers shall continue until all Obligations are paid in full. For so long as any Obligations remain outstanding, Borrower shall: (i) not revoke Lender's authority to initiate ACH transfers as hereby contemplated; (ii) not change, modify, close or otherwise affect the designated payment account; (iii) deposit all revenues of any nature or kind whatsoever relating to Borrower or its business only into the designated payment account; and (iv) be responsible for all costs, expenses or other fees and charges incurred by Lender as a result of any failed or returned ACH transfers, whether resulting from insufficient sums being available in the designated payment account, or otherwise. Borrower shall undertake any and all required actions, execute any required documents, instruments or agreements, or to otherwise do any other thing required or requested by Lender in order to effectuate the requirements of this Section 2.3.6.

Section 2.4 Prepayments.

2.4.1 Voluntary Prepayments.

(a) Except as otherwise provided in this Section 2.4, Borrower shall not have the right to prepay the Loan in whole or in part. Provided no Event of Default has occurred and is continuing, Borrower may prepay the Loan in whole upon the satisfaction of the following conditions:

(b) Borrower shall provide a written notice to Lender of such prepayment no less than thirty (30) days, and no more than sixty (60) days, prior to the date of such prepayment, specifying the Business Day on which a prepayment of the Debt (the "**Prepayment Date**") is to be made; and

(c) Borrower shall pay to Lender on the Prepayment Date, together with any portion of the Outstanding Principal Balance being repaid:

(i) all accrued and unpaid interest on the amount of the Outstanding Principal Balance being prepaid, which, for the avoidance of doubt, shall include interest on such amount calculated at the applicable Interest Rate through the end of the Interest Period in which such prepayment occurs; and

(ii) without duplication of any of the foregoing, all other sums, then due under the Note, this Agreement, the Security Instrument, and the other Loan Documents.

(d) If for any reason Borrower fails to prepay the Loan on the Prepayment Date (including if such notice is revoked), Borrower shall pay to Lender any actual out-of-pocket losses, costs, damages or expenses (including reasonable attorneys' fees and expenses) incurred by Lender in connection therewith.

(e) Upon receipt by Lender of a voluntary prepayment permitted pursuant to the terms of this Agreement, except for a prepayment made (i) in connection with a release of any Individual Property from the Lien of any of the Security Instruments or (ii) any Casualty/Condemnation Prepayment up to the Allocated Loan Amount of the applicable Individual Property, the Allocated Loan Amount for each Individual Property that is then subject to the Lien of any of the Security Instruments shall be reduced on a pro rata basis by such amount.

2.4.2 Mandatory Prepayments.

(a) 90-Day Principal Payments. On December 1, 2020, Borrower shall make a payment to Lender (the “**Initial 90-Day Principal Payment**”) in an amount equal to five percent (5%) of the Outstanding Principal Balance. Beginning on March 1, 2021 and on each third (3rd) Payment Date thereafter (i.e., on June 1, September 1, December 1 and March 1 of each calendar year), Borrower shall make a payment to Lender (each such payment, and together with the Initial 90-Day Principal Payment, collectively the “**90-Day Principal Payments**”) in an amount (but not less than zero) equal to (a) ten percent (10%) of the Outstanding Principal Balance, less (b) all Release Amounts paid to Lender pursuant to and in accordance with Section 2.7 hereof and applied to pay down the Outstanding Principal Balance but only to the extent such Release Amounts have not been applied to reduce any prior 90-Day Principal Payments. Provided no Event of Default exists, Lender shall apply the 90-Day Principal Payments to the Outstanding Principal Balance.

(b) Net Proceeds Payments. On the Payment Date immediately succeeding the date on which Lender actually receives any Net Proceeds, and if Lender is not required to make such Net Proceeds available to Borrower for a Restoration in accordance with the terms of this Agreement, Borrower shall prepay or authorize Lender to apply the Net Proceeds as a prepayment of the Outstanding Principal Balance in an amount equal to one hundred percent (100%) of such Net Proceeds provided that Borrower shall simultaneously therewith pay to Lender all accrued and unpaid interest on the principal amount being repaid (which, for the avoidance of doubt, shall include interest accruing on such amounts through the last day of the Interest Period in which such repayment occurs). Notwithstanding anything herein to the contrary, so long as no Event of Default has then occurred and is continuing, no or any other prepayment premium, penalty or fee shall be due in connection with any prepayment made pursuant to this Section 2.4.2.

2.4.3 Prepayments After Default. If, during the continuance of an Event of Default, payment of all or any part of the Debt is tendered by Borrower and accepted by Lender or is otherwise recovered by Lender (including through application of any Reserve Funds), such tender or recovery shall be deemed to be a voluntary prepayment by Borrower in violation of the prohibition against prepayment set forth in Section 2.4.1 hereof, and Borrower shall pay, as part of the Debt, all of the interest calculated at the Interest Rate on the amount of principal being prepaid through and including the end of the Interest Period in which such prepayment occurs.

Section 2.5 Release of Property. Except as set forth in Section 2.7 below, no repayment, prepayment 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 of the Security Instruments. Lender shall, upon the written request and at the expense of Borrower, upon payment in full of the Debt in accordance with the terms of this Agreement and the other Loan Documents, release the Lien of the Security Instruments.

Section 2.6 Extension Option(s).

2.6.1 Extension Option(s). Subject to the provisions of this Section 2.6.1, Borrower shall have the option (the “**First Extension Option**”), by irrevocable written notice (the “**First Extension Notice**”) delivered to Lender no later than thirty (30) days prior to the Stated Maturity Date, to extend the Maturity Date to August 31, 2022 (the “**First Extended Maturity Date**”). Borrower’s right to so extend the Maturity Date shall be subject to the satisfaction of the following conditions precedent prior to the effectiveness of any such extension:

(a) (i) no Event of Default shall have occurred and be continuing on the date Borrower delivers the First Extension Notice or the Second Extension Notice, as applicable, and (ii) no Default or Event of Default shall have occurred and be continuing on the Stated Maturity Date and the First Extended Maturity Date, as applicable;

(b) All amounts due and payable by Borrower and any other Person pursuant to this Agreement or the other Loan Documents as of the Stated Maturity Date or the First Maturity Date, as applicable, and all costs and expenses of Lender, including fees and expenses of Lender’s counsel, in connection with the Loan and/or the extension shall have been paid in full;

(c) Borrower shall deliver an Officer's Certificate to Lender (i) certifying that all representations and warranties set forth in this Agreement remain true, correct and complete in all material respects as of the commencement of the applicable Extension Option, and (ii) waiving any claims, counterclaims, rights of rescission, set-offs or defenses, known or unknown, against Lender as of the commencement of the applicable Extension Option.

If Borrower is unable to satisfy all of the foregoing conditions within the applicable time frames for each, Lender shall have no obligation to extend the Stated Maturity Date hereunder.

2.6.2 Extension Documentation. If requested by Lender, Borrower shall execute and deliver an agreement in form and substance reasonably acceptable to Lender commemorating the extension of the Maturity Date upon the exercise of an Extension Option and satisfaction of all applicable conditions to such extension as provided in Section 2.6.1; provided that no such agreement shall materially increase or alter the obligations of Borrower pursuant to the Loan Documents (it being acknowledged that a ratification by Borrower or any Guarantor of its respective obligations under the Loan Documents to which it is a party or a certification by Borrower and/or any Guarantor that its respective representations and warranties set forth in the Loan Documents to which it is a party remain true and correct in all material respects as of the first day of any extension term shall not constitute an increase in Borrower's obligations for such purpose).

2.7 Release of Individual Property. At any time Borrower may obtain the release of an Individual Property from the Lien of the applicable Security Instrument thereon and related Loan Documents (each such Individual Property, a "**Release Property**") and the release of Borrower's obligations under the Loan Documents with respect to such Release Property (other than those expressly stated to survive), upon the satisfaction of each of the following conditions:

(a) Not more than ninety (90) calendar days and not less than ten (10) calendar days prior to the date of the release, Borrower delivers a notice to Lender setting forth (i) the date of the proposed release and (ii) a description of the Release Property that will be subject to the release;

(b) no Event of Default shall be continuing on the date that the Release Property is released from the Lien of the Security Instrument thereon other than as expressly permitted below;

(c) Borrower shall have paid to Lender the applicable Release Amount;

(d) Borrower shall submit to Lender, not less than ten (10) days prior to the date of such release, a release of Lien (and related Loan Documents) for such Release Property for execution by Lender. Such release shall be in a form appropriate in each jurisdiction in which such Release Property is located and that would be reasonably satisfactory to a prudent lender. In addition, Borrower shall provide all documentation Lender reasonably requires to be delivered by Borrower in connection with such release, together with an Officer's Certificate certifying that such documentation (A) will effect such release in accordance with the terms of this Agreement, and (B) will not impair or otherwise adversely affect the Liens, security interests and other rights of Lender under the Loan Documents not being released (or as to the parties to the Loan Documents and Individual Properties subject to the Loan Documents not being released);

(e) Borrower shall have paid or reimbursed Lender for all reasonable out of pocket costs and expenses incurred by Lender (including, without limitation, reasonable attorneys' fees and disbursements) in connection with any release effectuated pursuant to this Section 2.7, and Borrower shall have paid all third-party fees, costs and expenses incurred in connection with any such release, including but not limited to, the payment of all recording charges, filing fees, taxes or other similar expenses incurred in the reasonable judgment of Lender in order to effectuate the release;

(f) [Intentionally omitted]

(g) At Lender's request, Borrower shall deliver to Lender (i) an endorsement to the Title Insurance Policy for the remaining Property (to the extent reasonably available in the State in which the remaining Property is located) insuring the Security Instrument, which endorsement (A) extends the effective date of such Title Insurance Policy for the remaining Property to the effective date of the release, (B) confirms no change in the priority of the Security Instrument on the balance of the Property (exclusive of the Release Parcel); and (C) lists any Permitted Encumbrances; and (ii) at Lender's request, a survey in form and substance reasonably acceptable to Lender of the remaining portion of the Property; and

(h) Notwithstanding the foregoing provisions of this Section 2.7, if the Loan is included in a REMIC Trust, as a condition to such release, Borrower shall have established to Lender's reasonable satisfaction that the loan-to-value ratio of the Loan (expressed as a percentage) based upon valuations obtained by Borrower at its sole cost and expense using (i) an existing appraisal (if such release occurs within twenty-four (24) months of the Closing Date), (ii) a new appraisal or (iii) a broker's price opinion or other written determination of value using a commercially reasonable valuation method (provided, in each case, that such appraisal, opinion or other determination constitutes a commercially reasonable method permitted to a REMIC Trust, and provided, further, that such valuation shall be based solely on the value of real property and shall exclude personal property and going-concern value) does not exceed 125% immediately after the release of the Release Property, no such release will be permitted unless the Borrower pays down the principal balance of the Loan by an amount not less than the greater of (A) the Release Amount or (B) the least of one of the following amounts: (i) if the Individual Property is sold, the net proceeds of an arm's-length sale of the Release Property to an unrelated Person, (ii) the fair market value of the Release Property at the time of the release, or (iii) an amount such that the loan-to-value ratio of the Loan as so determined by Lender after the release is not greater than the loan-to-value ratio of the Loan immediately prior to the release, unless the Lender receives an opinion of counsel that, if (B) is not followed, the Securitization will not fail to maintain its status as a REMIC Trust as a result of the release.

ARTICLE III

[**Intentionally Omitted**]

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

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

4.1.1 Organization. Borrower has been duly organized and is validly existing and in good standing with requisite power and authority to own its properties and to transact the business in which it is now engaged and as contemplated by this Agreement, including, without limitation, the power and authority to do business in the State. Borrower is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations. Borrower possesses all rights, licenses, permits and authorizations, governmental or otherwise, necessary to entitle it to own its properties and to transact the businesses in which it is now engaged. The sole business of Borrower is the ownership, management and operation of the Property. The ownership interests of Borrower are as set forth on the organizational chart attached hereto as Schedule 4.1.1. Borrower (a) has complied in all respects with its articles of organization or limited liability company agreement; (b) has maintained complete books and records and bank accounts separate from those of its Affiliates; and (c) has obeyed all formalities required to maintain its status as, and at all times has held itself out to the public as, a legal entity separate and distinct from any other entity (including, but not limited to, any Affiliate thereof). The signatory hereto has all necessary power, authority and legal right to execute this Agreement, the Note and the other Loan Documents on Borrower's behalf to which Borrower is a party. Guarantor has the necessary power, authority and legal right to execute, deliver and perform its obligations under the Guaranty.

4.1.2 Proceedings. Borrower has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents. This Agreement and the other Loan Documents to which it is a party have been duly executed and delivered by or on behalf of Borrower and constitute the legal, valid and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

4.1.3 No Conflicts. The execution, delivery and performance of this Agreement and the other Loan Documents by Borrower and/or Guarantor, as applicable, will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any Lien, charge or encumbrance (other than pursuant to the Loan Documents) upon any of the property or assets of Borrower pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, partnership agreement, management agreement or other agreement or instrument to which Borrower is a party or by which any of Borrower's property or assets is subject, nor will such action result in any violation of the provisions of any Legal Requirements of any Governmental Authority having jurisdiction over Borrower or any of Borrower's properties or assets, and any consent, approval, authorization, order, registration or qualification of or with any court or any such Governmental Authority required for the execution, delivery and performance by Borrower and/or any Guarantor, as applicable, of this Agreement or any other Loan Documents has been obtained and is in full force and effect.

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

4.1.5 Agreements. Borrower is not a party to any agreement or instrument or subject to any restriction which might materially and adversely affect Borrower or the Property, or Borrower's business, properties or assets, operations or condition, financial or otherwise. Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party or by which Borrower or the Property are bound. Borrower has no material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower is a party or by which Borrower or the Property is otherwise bound, other than as permitted by this Agreement.

4.1.6 Title. Borrower has good, marketable and insurable fee simple title to the real property comprising part of the Property and good title to the balance of the Property, free and clear of all Liens whatsoever except the Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. The Security Instrument, when properly recorded in the appropriate records, together with any UCC-1 financing statements required to be filed in connection therewith, will create (a) a valid, perfected first priority lien on the Property, subject only to Permitted Encumbrances and the Liens created by the Loan Documents, and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty, solely to the extent such security interests can be perfected by the filing of a UCC-1 financing statement, all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. There are no claims for payment for work, labor or materials affecting the Property which are or may become a Lien prior to, or of equal priority with, the Liens created by the Loan Documents.

4.1.7 Solvency. Borrower has (a) not entered into the transaction contemplated by this Agreement or executed the Note, this Agreement or any other Loan Documents with the actual intent to hinder, delay or defraud any creditor and (b) received reasonably equivalent value in exchange for its obligations under such Loan Documents. After 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 liabilities (including contingent liabilities, if any), 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 incur debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debts 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 the obligations of Borrower). No Bankruptcy Action exists against Borrower and Borrower has never been a debtor party in a Bankruptcy Action. No Bankruptcy Action exists against any Guarantor, and neither Borrower nor has any Guarantor has ever been a debtor party in a Bankruptcy Action. Neither Borrower nor any Guarantor is contemplating either a Bankruptcy Action or the liquidation of all or a major portion of Borrower's or Guarantor's respective assets or properties, and Borrower has no knowledge of any Person contemplating the filing of any petition against Borrower or any Guarantor.

4.1.8 Full and Accurate Disclosure. No statement of fact made by or on behalf of Borrower in this Agreement or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no material information that has not been disclosed to Lender which adversely affects, nor as far as Borrower can reasonably foresee, might materially adversely affect, the Property or the business, operations or condition (financial or otherwise) of Borrower or any Guarantor.

4.1.9 No Plan Assets. Borrower is not an “employee benefit plan,” as defined in Section 3(3) of ERISA, subject to Title I of ERISA or Section 4975 of the Code, and none of the assets of Borrower constitutes or will constitute “plan assets” of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101. Compliance by Borrower and each Guarantor with the provisions hereof will not involve any Prohibited Transaction. Neither Guarantor nor Borrower has any pension, profit sharing, stock option, insurance or other arrangement or plan for employees covered by Title IV of ERISA, and no “Reportable Event” as defined in ERISA has occurred and is now continuing with respect to any such plan. The performance by Borrower of its obligations under the Loan Documents and Borrower’s conducting of its operations do not violate any provisions of ERISA. In addition, (a) Borrower is not a “governmental plan” within the meaning of Section 3(32) of ERISA, (b) transactions by or with Borrower are not subject to any state statute or regulation regulating investments of, or fiduciary obligations with respect to, governmental plans within the meaning of Section 2(32) of ERISA which is similar to the provisions of Section 406 of ERISA or Section 4975 of the Code currently in effect, which prohibit or otherwise restrict the transactions contemplated by this Agreement, and (c) none of Borrower, Guarantor or ERISA Affiliate is at the date hereof, or has been at any time within the two years preceding the date hereof, an employer required to contribute to any Multiemployer Plan or Multiple Employer Plan, or a “contributing sponsor” (as such term is defined in Section 4001 of ERISA) in any Multiemployer Plan or Multiple Employer Plan; and none of Borrower, Guarantor or any ERISA Affiliate has any contingent liability with respect to any post-retirement “welfare benefit plan” (as such term is defined in ERISA) except as disclosed to Lender in writing.

4.1.10 Compliance. Borrower and the Property (including the use thereof) comply in all material respects with all applicable Legal Requirements, including, without limitation, building and zoning ordinances and codes. Borrower is not in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority, including, without limitation, any order of a bankruptcy court or plan approved thereby. There has not been committed by Borrower (or any other Person), any act or omission affording any Governmental Authority the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower’s obligations under any of the Loan Documents. Neither the Improvements, if any, as constructed, nor the use of the Property or any contemplated accessory uses, will violate (a) any Legal Requirements (including subdivision, zoning, building, environmental protection and wetland protection Legal Requirements), or (b) any building permits, restrictions or records, or agreements affecting the Property or any part thereof. Neither the zoning authorizations, approvals or variances nor any other right to construct or to use the Property is to any extent dependent upon or related to any real estate other than the Property.

4.1.11 Financial Information. All financial data with respect to the Property and Guarantor, including, without limitation, the statements of cash flow and income and operating expense, that have been delivered to Lender in connection with the Loan (a) are true, complete and correct in all material respects, (b) fairly and accurately represent the financial condition of the Property and each Guarantor as of the date of such reports, and (c) to the extent prepared or audited by an independent certified public accounting firm, have been prepared in accordance with GAAP (or such other accounting basis acceptable to Lender) throughout the periods covered, except as disclosed therein. Except for Permitted Encumbrances, Borrower does not have any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and reasonably likely to have a Materially Adverse Effect on the Property or the Project. Since the date of such financial statements, there has been no Material Adverse Change (or any other material change) in the financial condition, operation or business of Borrower or any Guarantor from that set forth in said financial statements.

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

4.1.13 Federal Reserve Regulations. No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulation U or any other Regulations of such Board of Governors, or for any purposes prohibited by any Legal Requirements or by the terms and conditions of this Agreement or the other Loan Documents.

4.1.14 Public Access. The Property has rights of access to public ways and, upon construction thereon, will be served by water, sewer, sanitary sewer and storm drain facilities adequate to service the Property for its intended uses. All public utilities necessary or convenient to the full use and enjoyment of the Property are located either in the public right-of-way abutting the Property (which will be connected so as to serve the Property without passing over other property) or in recorded easements serving the Property and such easements are set forth in and insured by the Title Insurance Policy. All roads necessary for the use of the Property for its current purpose have been completed and dedicated to public use and accepted by all Governmental Authorities. There is no on-site sewage disposal system and, upon construction thereon, the Property will be served by a sewer system maintained by a Governmental Authority or property owners association.

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

4.1.16 Separate Lots. The Property is comprised of multiple parcels more particularly described on Schedule 1.1(a) which each constitute(s) a separate tax lot or lots and does not constitute a portion of any other tax lot not a part of the Property.

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

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

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

4.1.20 Insurance. Borrower has obtained and has delivered to Lender evidence of all Policies, with all premiums paid thereunder, reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. No claims have been made or are currently pending, outstanding or otherwise remain unsatisfied under any such Policies, and neither Borrower nor any other Person, has done, by act or omission, anything which would impair the coverage of any such Policies.

4.1.21 Flood Zone. None of the Improvements on the Property are located in an area as identified by the Federal Emergency Management Agency as an area having special flood hazards or, if so located, the flood insurance required pursuant to Section 6.1(a)(i) hereof is in full force and effect with respect to the Property.

4.1.22 Leases. Any and all Leases at the Property (a) provide for rental rates comparable to existing local market rates, contain reasonable market rate terms and do not contain any terms which would materially adversely affect Lender's rights under the Loan Documents, (b) are for a lease term not exceeding one year, including all extensions, (c) are with individual, residential, non-commercial tenants, and (d) have been entered into by Borrower in its ordinary course of business. No Person has any possessory interest in the Property or right to occupy the same other than tenants pursuant to the express terms of the Leases.

4.1.23 Survey. Each Survey for the Property delivered to Lender is accurate.

4.1.24 Principal Place of Business; State of Organization. Borrower's principal place of business as of the date hereof is the address set forth in the introductory paragraph of this Agreement. Borrower is organized under the laws of the State of Delaware and is qualified to do business in the all states in which Borrower is required to be qualified.

4.1.25 Filing and Recording Taxes. All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the transfer of the Property to Borrower have been paid. All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Security Instrument, have been paid or are being paid simultaneously with the disbursement of the proceeds of the Loan to Borrower.

4.1.26 [Intentionally omitted].

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

4.1.28 No Change in Facts or Circumstances; Disclosure. All information submitted by Borrower and any Guarantor to Lender including, but not limited to, all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan or in satisfaction of the terms thereof and all statements of fact made by Borrower and each Guarantor in this Agreement or in any other Loan Document, are accurate, complete and correct in all material respects. There has been no Material Adverse Change in any condition, fact, circumstance or event that would make any such information inaccurate, incomplete or otherwise misleading in any material respect or that otherwise materially and adversely affects or might materially and adversely affect the use, operation or value of the Property or the business operations and/or the financial condition of Borrower or any Guarantor. Borrower and each Guarantor have disclosed to Lender all material facts and have not failed to disclose any material fact that could cause any information provided to Lender or representation or warranty made herein to be materially misleading.

4.1.29 Investment Company Act. Borrower is not (a) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; (b) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 2005, as amended; or (c) subject to any other Federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

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

4.1.31 Filing of Returns. Borrower and each Guarantor have filed all Federal income tax returns and all other material tax returns, domestic and foreign, or extensions, as the case may be, required to be filed by it and have paid all material taxes and assessments payable by it that have become due, other than those not yet delinquent and except for those being contested in good faith. Borrower and each Guarantor have each established on its books such charges, accruals and reserves in respect of taxes, assessments, fees and other governmental charges for all fiscal periods as are required by sound accounting principles consistently applied. Neither Borrower, nor any Guarantor knows of any proposed assessment for additional Federal, foreign or state taxes for any period, or of any basis therefor, that, individually or in the aggregate, taking into account such charges, accruals and reserves in respect thereof as such Person has made, could reasonably be expected to cause a Material Adverse Change with respect to Borrower, Guarantor or the Property.

4.1.32 Operations Agreements. Each Operations Agreement is in full force and effect and neither Borrower nor, to the best of Borrower's knowledge, any other party to any such Operations Agreement, 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.

Section 4.2 Survival of Representations. Borrower agrees that all of the representations and warranties of Borrower set forth in Section 4.1 and elsewhere in this Agreement and in the other Loan Documents shall survive for so long as any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

ARTICLE V

BORROWER COVENANTS

Section 5.1 Affirmative Covenants. From the date hereof and until payment and performance in full of all Obligations, Borrower hereby covenants and agrees with Lender that:

5.1.1 Existence; Compliance with Legal Requirements. Borrower shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, licenses, permits and franchises and comply with all Legal Requirements applicable to Borrower and the Property. There shall never be committed by Borrower, and Borrower shall not permit any other Person in occupancy of or involved with the operation or use of the Property to commit, any act or omission affording any Governmental Authority the right of forfeiture against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. Borrower shall not commit, permit or suffer to exist any act or omission affording such right of forfeiture. Borrower shall at all times maintain, preserve and protect all franchises and trade names, preserve all the remainder of its property used or useful in the conduct of its business, and shall keep the Property in good working order and repair, and from time to time make, or cause to be made, all reasonably necessary repairs, renewals, replacements, betterments and improvements thereto, all as more fully provided in the Security Instrument. Borrower shall keep the Property insured at all times by financially sound and reputable insurers, to such extent and against such risks, and maintain liability and such other insurance, as is more fully provided in this Agreement. After prior notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding promptly initiated and conducted in good faith and with due diligence, the validity of any Legal Requirement, the applicability of any Legal Requirement to Borrower or the Property or any alleged violation of any Legal Requirement, provided, that: (a) no Default or Event of Default has occurred and is continuing; (b) such proceeding shall be permitted under, and be conducted in accordance with, the provisions of any instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances; (c) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (d) Borrower shall, upon final determination thereof, promptly comply with any such Legal Requirement determined to be valid or applicable or cure any violation of any Legal Requirement; (e) such proceeding shall suspend the enforcement of the contested Legal Requirement against Borrower and the Property; and (f) Borrower shall furnish such security as may be required in the proceeding, or as may be requested by Lender, to insure compliance with such Legal Requirement, together with all interest and penalties payable in connection therewith. Lender may apply any such security, as necessary to cause compliance with such Legal Requirement at any time when, in the judgment of Lender, the validity, applicability or violation of such Legal Requirement is finally established or the Property (or any part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost.

5.1.2 Taxes and Other Charges. Borrower shall pay, all Taxes and Other Charges now or hereafter levied or assessed or imposed against the Property, or any part thereof, as the same become due and payable. Borrower will deliver or cause to be delivered to Lender receipts for payment or other evidence satisfactory to Lender that the Taxes and Other Charges have been so paid or are not then delinquent no later than ten (10) days prior to the date on which the Taxes and/or Other Charges would otherwise be delinquent if not paid. Borrower shall not suffer and shall promptly pay or cause to be paid and discharged any Lien or charge whatsoever which may be or become a Lien or charge against the Property, and shall promptly pay or cause to be paid all utility services provided to the Property. After prior notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Taxes or Other Charges, provided that (a) no Default or Event of Default has occurred and remains uncured; (b) such proceeding shall be permitted under, and be conducted in accordance with, the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances; (c) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (d) Borrower shall promptly upon final determination thereof pay or cause to be paid the amount of any such Taxes or Other Charges, together with all costs, interest and penalties which may be payable in connection therewith; (e) such proceeding shall suspend the collection of such contested Taxes or Other Charges from the Property (except that if such Taxes or Other Charges must be paid sooner in order to avoid being delinquent, then Borrower shall pay or cause the same to be paid prior to delinquency, and upon making such payment or causing such payment to be made prior to delinquency Borrower may continue such contest); and (f) Borrower shall furnish such security as may be required in the proceeding, or as may be requested by Lender, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon. Lender may pay over any such cash deposit or part thereof held by Lender to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established or the Property (or part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost or there shall be any danger of the Lien of the Security Instrument being primed by any related Lien.

5.1.3 Litigation. Borrower shall give prompt notice to Lender of any litigation or proceedings by any Governmental Authority pending or threatened against Borrower and/or any Guarantor which might have a Materially Adverse Effect on Borrower's or any Guarantor's condition (financial or otherwise) or business or the Property.

5.1.4 Access to Property. Borrower shall permit agents, representatives and employees of Lender to inspect the Property or any part thereof at reasonable hours upon reasonable advance notice (which may be given verbally).

5.1.5 Notice of Default. Borrower shall promptly advise Lender of any Material Adverse Change in Borrower's or any Guarantor's condition, financial or otherwise, or of the occurrence of any Default or Event of Default of which Borrower has knowledge.

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

5.1.7 Perform Loan Documents. Borrower shall observe, perform and satisfy all the terms, provisions, covenants and conditions of, and shall pay when due all costs, fees and expenses to the extent required under the Loan Documents. Payment of the costs and expenses associated with any of the foregoing shall be in accordance with the terms and provisions of this Agreement, including, without limitation, the provisions of Section 10.13 hereof.

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

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

(a) furnish to Lender all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements, and each and every other document, certificate, agreement and instrument required to be furnished by Borrower pursuant to the terms of the Loan Documents or which are reasonably requested by Lender in connection therewith;

(b) authorize the filing or recording of or execute and deliver to Lender such documents, instruments, certificates, assignments, financing statements 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 under the Loan Documents, as Lender may reasonably require; and

(c) 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. In furtherance hereof, Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of protecting, perfecting, preserving and realizing upon the interests granted pursuant to this Agreement and to effect the intent hereof, all as fully and effectually as Borrower might or could do; and Borrower hereby ratifies all that Lender shall lawfully do or cause to be done by virtue hereof. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other applicable Loan Document, and in the case of the Note, receipt of an indemnity from Lender, Borrower will issue, in lieu thereof, a replacement Note or other applicable Loan Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Loan Document in the same principal amount thereof and otherwise of like tenor. Borrower hereby authorizes Lender to file an "all assets" financing statement with respect to the Collateral.

5.1.10 Mortgage Taxes. Borrower shall simultaneously with the disbursement of the proceeds of the Loan pay all state, county and municipal recording and all other taxes imposed upon the execution and recordation of the Security Instrument.

5.1.11 Financial Reporting.

(a) Borrower will keep and maintain or will cause to be kept and maintained on a Fiscal Year basis in accordance with GAAP (or such other accounting basis selected by Borrower and reasonably acceptable to Lender), proper and accurate books, records and accounts reflecting all of the financial affairs of Borrower and all items of income and expense in connection with the operation of the Property. Lender shall have the right from time to time at all times during normal business hours upon reasonable notice (which may be verbal) to examine such books, records and accounts at the office of Borrower or any other Person maintaining such books, records and accounts and to make such copies or extracts thereof as Lender shall desire. After the occurrence of an Event of Default, Borrower shall pay any costs and expenses incurred by Lender to examine Borrower's accounting records with respect to the Property, as Lender shall reasonably determine to be necessary or appropriate in the protection of Lender's interest. Upon Lender's request, Borrower shall furnish to Lender such other information reasonably necessary and sufficient to fairly represent the financial condition of Borrower and the Property.

(b) Borrower will furnish to Lender annually, within one hundred twenty (120) days following the end of each Fiscal Year of Borrower, and within thirty (30) days of the end of each calendar quarter, a complete copy of Borrower's and each Guarantor's annual (or quarterly, as applicable) financial statements certified as true and correct by the party providing such statements (and, for the annual of statements of Borrower prepared by an independent certified public accountant acceptable to Lender) in accordance with GAAP (or such other accounting basis acceptable to Lender, consistently applied) covering the Property for such Fiscal Year (or calendar quarter) and containing statements of profit and loss for Borrower, Guarantor and the Property and a balance sheet for Borrower and each Guarantor. Such statements of Borrower shall set forth the financial condition and the results of operations for the Property for such Fiscal Year (or calendar quarter), and an Officer's Certificate certifying that each annual financial statement of Borrower fairly presents the financial condition and the results of operations of Borrower and the Property subject to such reporting, and that such financial statements have been prepared in accordance with GAAP and as of the date thereof whether 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. Guarantor's annual financial statements shall be accompanied by a certificate executed and delivered by Guarantor (if such Guarantor is a natural person) or an officer or other duly authorized representative of Guarantor (if such Guarantor is an entity) certifying that each annual financial statement presents fairly the financial condition and the results of operations of Guarantor being reported upon and that such financial statements have been prepared in accordance with GAAP (or such other accounting basis acceptable to Lender, and, for Guarantors, Lender hereby approves sound and prudent cash based financial statements consistently applied) and as of the date thereof whether there exists an event or circumstance which constitutes a Default or Event of Default by Guarantor under the Loan Documents, and if such Default or an 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 shall also provide such monthly reports and statements as are reasonably required by Lender within twenty (20) days after the end of each calendar month.

(d) Borrower shall furnish to Lender, within twenty (20) days after request (or as soon thereafter as may be reasonably possible), such further detailed information with respect to the operation of the Property and the financial affairs of Borrower as may be reasonably requested by Lender.

(e) Any reports, statements or other information required to be delivered under this Agreement shall be delivered in electronic form (or such other form as required by Lender) and Borrower agrees that Lender may disclose information regarding the Property and Borrower that is provided to Lender pursuant to this Section 5.1.11 in connection with any Lender Assignment to such parties requesting such information in connection with such Lender Assignment.

(f) Without limitation on other requirements of this Agreement, Lender may require, at Borrower's cost and expense, quarterly valuations of the Loan and Borrower shall cooperate in connection therewith; provided, however, so long as no Event of Default exists, Borrower shall not be required to reimburse Lender more than \$2,500 for the cost of any such quarterly valuation.

5.1.12 Business and Operations. Borrower will continue to engage in the businesses presently conducted by it as and to the extent the same are necessary for the ownership, maintenance, management and operation of the 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, maintenance, management and operation of the Property or ownership and management of an interest in Borrower (as applicable).

5.1.13 Title to the Property. Borrower will warrant and defend (a) the title to the Property and every part thereof, subject only to Permitted Encumbrances, and (b) the validity and priority of the Lien of each of the Security Instruments, subject only to Permitted Encumbrances, in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any losses, costs, damages or expenses (including attorneys' fees and expenses, and court costs) incurred by Lender if an interest in the Property, other than as permitted hereunder, is claimed by another Person.

5.1.14 Costs of Enforcement. In the event (a) that the Security Instrument is foreclosed in whole or in part or that the Security Instrument is put into the hands of an attorney for collection, suit, action or foreclosure, (b) of the foreclosure of any mortgage prior to or subsequent to the Security Instrument in which proceeding Lender is made a party, or (c) of a Bankruptcy Action related to Borrower or an assignment by Borrower for the benefit of its creditors, Borrower, on behalf of itself and its successors and assigns, agrees that it/they shall be chargeable with and shall pay all costs of collection and defense, including attorneys' fees and expenses, and court costs, incurred by Lender or Borrower in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, together with all required service or use taxes.

5.1.15 Estoppel Statement.

(a) After request by Lender, Borrower shall within ten (10) days furnish Lender with a statement, duly acknowledged and certified, setting forth (i) the original principal amount of the Loan, (ii) the Outstanding Principal Balance, (iii) the Interest Rate of the Loan, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the performance of the Obligations, if any, and (vi) that the Note, this Agreement, the Security Instrument and the other Loan Documents are valid, legal and binding obligations of Borrower and have not been modified or if modified, giving particulars of such modification.

(b) Borrower shall use commercially reasonable efforts to deliver to Lender upon request, tenant estoppel certificates from each commercial Tenant, if any, in form and substance reasonably satisfactory to Lender provided that Borrower shall not be required to deliver such certificates more frequently than once in any calendar year.

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

5.1.17 Performance by Borrower. Borrower shall in a timely manner observe, perform and fulfill each and every covenant, term and provision of each Loan Document executed and delivered by, or applicable to, Borrower and shall not enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Loan Document without the prior written consent of Lender.

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

5.1.19 Leasing Matters. Any Lease executed after the date hereof (and any amendment or termination thereof) shall require the prior written consent of Lender, which consent shall be in Lender's sole and absolute discretion. Borrower shall furnish Lender with true, correct and complete executed copies of all Leases, amendments thereof and any related agreements. Without limitation, and as applicable, Lender shall be deemed to have approved all renewals of Leases and all proposed Leases so long as the same (a) provide for rental rates comparable to existing local market rates, contain reasonable market rate terms and do not contain any terms which would materially adversely affect Lender's rights under the Loan Documents, (b) are for a lease term not exceeding one year, including all extensions, (c) are with individual, residential, non-commercial tenants, and (d) have been entered into by Borrower in its ordinary course of business. All Leases executed after the date hereof shall provide that they are subordinate to the Security Instrument and the Liens created thereby and that the Tenant thereunder agrees to attorn to Lender or any other purchaser of the Property at a sale by foreclosure (or deed in lieu thereof) or power of sale. Borrower (a) shall observe and perform the obligations imposed upon the lessor under the Leases in a commercially reasonable manner; (b) shall enforce the terms, covenants and conditions contained in the Leases upon the part of the Tenant thereunder to be observed or performed in a commercially reasonable manner and in a manner which does not impair the value of the Property involved, provided that in no event shall Borrower terminate or accept the surrender of any Lease by a Tenant unless by reason of a Tenant default and then only in a commercially reasonable manner to preserve and protect the Property; *provided, however*, that no such termination or surrender of any Lease will be permitted without the prior written consent of Lender or unless such termination or surrender is specifically provided for in the Lease; (c) shall not collect any of the Rents more than one (1) month in advance (other than security deposits required pursuant to such Lease); (d) shall not execute any other assignment of the lessor's interest in the Leases or the Rents (except to Lender pursuant to the Loan Documents); (e) shall not alter, modify or change the terms of the Leases; and (f) shall execute and deliver at the request of Lender all such further assurances, confirmations and assignments in connection with the Leases as Lender shall from time to time reasonably require. Lender shall have the right to require each new Tenant to execute and deliver to Lender a subordination, non-disturbance of possession and attornment agreement in form, content and manner of execution reasonably acceptable to Lender.

5.1.20 Operation of Property.

(a) Borrower shall: (i) promptly perform and/or observe in all material respects all of the covenants and agreements required to be performed and observed by it under any of the Operations Agreements and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Lender of any material default under any Operations Agreement of which it is aware; and (iii) enforce the performance and observance of all of the covenants and agreements required to be performed and/or observed by any party (other than Borrower) under the Operations Agreements, in a commercially reasonable manner.

(b) All Material Agreements shall be subject to the prior review and approval, not to be unreasonably withheld, of Lender. As used herein, “**Material Agreements**” shall mean each contract and agreement relating to the ownership, management, development, use, operation, leasing, maintenance, repair or improvement of the Property, as to which either (a) there is an obligation of Borrower to pay more than \$50,000 in the aggregate, or (b) the term thereof extends beyond one year (unless cancelable on thirty (30) days or less notice without requiring the payment of termination fees or payments of any kind).

5.1.21 Changes in the Legal Requirements Regarding Taxation. If any Legal Requirement or other law, order, requirement or regulation of any Governmental Authority is enacted or adopted or amended after the date the Loan is funded which imposes a tax, either directly or indirectly, on the Obligations or Lender’s interest in the Property, Borrower must pay or cause to be paid such tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of such tax or interest and penalties by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then in any such event, Lender may, by written notice to Borrower of not less than ninety (90) days, declare the Obligations immediately due and payable.

5.1.22 No Credits on Account of the Obligations. Borrower will not claim or demand or be entitled to any credit or credits on account of the Obligations for any payment of Taxes assessed against the Property and no deduction shall otherwise be made or claimed from the assessed value of the Property for real estate tax purposes because of the Loan Documents or the Obligations. If Legal Requirements or other laws, orders, requirements or regulations require such claim, credit or deduction, Lender may, by written notice to Borrower of not less than ninety (90) days, declare the Obligations immediately due and payable.

5.1.23 Personal Property. Borrower shall cause all of its personal property, fixtures, attachments and equipment delivered upon, attached to or used in connection with the operation of the Property to always be located at the Property and shall be kept free and clear of all Liens, encumbrances and security interests, except Permitted Encumbrances.

5.1.24 Rehabilitation Project.

(a) Project Documents. Borrower shall diligently and continuously undertake to Complete each Project in conformance with the applicable Project Documents. Borrower will perform its obligations under the Project Documents and will enforce the terms of the Project Documents.

(b) Permits. Borrower shall pay for and obtain or cause to be paid for and obtained all permits, licenses and approvals required by applicable Legal Requirements with regard to each Project.

(c) Lender Consultants. At Borrower’s expense, Lender shall have the right to employ an inspecting architect, engineer or consultant with respect to a Project. Borrower shall pay immediately upon demand the fees and expenses of any architect, engineer or consultant employed by Lender for the purpose of reviewing plans or otherwise engaged by Lender with respect to any Project.

(d) Performance by Lender. Upon the occurrence of an Event of Default, Lender shall have the right, without limitation of Lender’s other remedies under the Loan Documents, upon written notice to Borrower, either before or after accelerating the Debt or commencing foreclosure, either directly or through Lender’s agents and contractors to (i) enter onto the Property, (ii) complete the Project, (iii) modify the Project as Lender deems necessary, (iv) hire or replace any contractor or vendor retained by Borrower in connection with the Project as Lender deems necessary, (v) expend such sums as Lender determines necessary to Complete such Project and (vi) purchase any insurance coverage deemed appropriate by Lender in its sole discretion relating to the Project or Lender’s exercise of its rights under this Section 5.1.24(d). Borrower hereby waives any right to contest any such costs or expenses incurred by Lender in the exercise of Lender’s rights under this Section 5.1.24(d), and such costs and expenses (a) shall be added to the Debt, (b) shall be secured by the Security Instrument, (c) shall accrue interest at the Default Rate, and (d) shall be payable to Lender upon demand. Borrower hereby agrees to indemnify and hold harmless Lender for any such costs or expenses. Borrower hereby grants Lender an irrevocable power of attorney, coupled with an interest, to exercise Lender’s rights under this Section 5.1.24(d). Lender does not have and shall not have any obligation to complete any Project.

Section 5.2 Negative Covenants. From the date hereof until payment and performance in full of the Obligations, Borrower covenants and agrees with Lender that it will not do, directly or indirectly, any of the following:

5.2.1 Operation of Property. Borrower shall not, without Lender's prior consent (which consent shall be in Lender's sole and absolute discretion): enter into, amend, surrender, terminate, waive any rights under or cancel any Management Agreement.

5.2.3 Liens. Borrower shall not create, incur, assume, permit or suffer to exist any Lien on any portion of the Property or permit any such action to be taken, except for Permitted Encumbrances.

5.2.4 Dissolution. Borrower shall not (a) engage in any dissolution, liquidation, consolidation or merger with or into any other business entity, (b) engage in any business activity not related to the ownership and operation of the Property, (c) transfer, lease or sell, in one transaction or any combination of transactions, the assets or all or substantially all of the properties or assets of Borrower except to the extent permitted by the Loan Documents, or (d) modify, amend, waive or terminate its organizational documents or its qualification and good standing in any jurisdiction.

5.2.5 Change in Business. Borrower shall not enter into any line of business other than the ownership and operation of the Property, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business.

5.2.6 Debt Cancellation. Borrower shall not cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to Borrower by any Person, except for adequate consideration and in the ordinary course of Borrower's business.

5.2.7 Zoning. Borrower shall not initiate or consent to any zoning reclassification of any portion of the Property or seek any variance under any existing zoning ordinance, or use or permit the use of any portion of the 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, in each case, without the prior written consent of Lender.

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

5.2.9 Principal Place of Business and Organization. Borrower shall not change its principal place of business set forth in the introductory paragraph of this Agreement without first giving Lender at least thirty (30) days prior notice. Borrower shall not change the place of its organization as set forth in Section 4.1.24 without the consent of Lender, which consent shall not be unreasonably withheld. Upon Lender's request, Borrower shall execute and deliver additional financing statements, security agreements and other instruments which may be necessary to effectively evidence or perfect Lender's security interest in the Property as a result of such change of principal place of business or place of organization.

5.2.10 ERISA.

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

(b) Borrower further covenants and agrees to 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 (1) Borrower is not an “employee benefit plan” as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a “governmental plan” within the meaning of Section 3(32) of ERISA; (2) Borrower is not subject to any state statute regulating investments of, or fiduciary obligations with respect to, governmental plans; and (3) one or more of the following circumstances is true: (i) Equity interests in Borrower are publicly offered securities, within the meaning of 29 C.F.R. §2510.3-101(b)(2); (ii) Less than twenty-five percent (25%) of each outstanding class of equity interests in Borrower is held by “benefit plan investors” within the meaning of 29 C.F.R. §2510.3-101(f)(2); (iii) Borrower qualifies as an “operating company” or a “real estate operating company” within the meaning of 29 C.F.R. §2510.3-101(c) or (e); or (iv) The Loan meets the requirements of PTE 95-60, 90-1, 84-14 or similar exemption.

5.2.11 Transfers; Assumptions.

(a) Without the prior written consent of Lender and except to the extent otherwise set forth in this Section 5.2.10, no Transfer may occur without the prior written consent of Lender in its sole and absolute discretion.

(b) Notwithstanding the provisions of this Section 5.2.10, Lender’s consent shall not be required in connection with a Permitted Transfer; *provided, however*, that all of the following conditions are satisfied with respect to any such Transfers: (1) Borrower shall provide Lender thirty (30) days’ prior written notice thereof (other than a Permitted Transfer for which notice shall occur within thirty (30) days’ after such Transfer), (2) such Transfer shall not result in a change in the day-to-day management and operations of the Property, (3) [intentionally omitted], and (4) such Transfer shall not result in a breach of Section 5.2.9 or 5.2.13. Notwithstanding anything set forth herein, and without limiting any restrictions on any Transfer set forth herein, if any proposed transfer of any direct or indirect interests in Borrower would otherwise be a Permitted Transfer or not require Lender’s consent but shall result in any Person owning more than twenty percent (20%) of the direct or indirect legal, beneficial or economic interest in Borrower (other than Persons currently owning more than twenty percent (20%) of the direct or indirect legal, beneficial or economic interest in Borrower), approval of such transferee is required so that Lender can confirm the transfer and transferee complies with all legal and regulatory requirements and Lender policies relating to such transfer and transferee, including, without limitation, the Patriot Act and federal regulations issued with respect thereto and to ensure compliance with the representations in Section 4.1.30 hereof.

(c) Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon a Transfer without Lender’s consent. This provision shall apply to every Transfer regardless of whether voluntary or not, or whether or not Lender has consented to any previous Transfer.

5.2.12 Operations Agreements. Borrower shall not, without the prior written consent of Lender, modify any of the Operations Agreements.

5.2.13 [Intentionally omitted].

5.2.14 Embargoed Person; OFAC. As of the date hereof and at all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower and any Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person; (b) no Embargoed Person has any interest of any nature whatsoever in Borrower or any Guarantor, as applicable, with the result that the investment in Borrower or any Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of Borrower or any Guarantor, as applicable, have been derived from any unlawful activity with the result that the investment in Borrower or any Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law. Neither Borrower nor any Guarantor is (or will be) a Person with whom Lender is restricted from doing business under OFAC regulations (including those persons named on OFAC’s Specially Designated and Blocked Persons list) or under any statute, executive order (including the September 24, 2001 #13224 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and shall not engage in any dealings or transactions or otherwise be associated with such Persons. In addition, to help the US Government fight the funding of terrorism and money laundering activities, The USA Patriot Act (and the regulations thereunder) requires Lender to obtain, verify and record information that identifies its customers. Borrower shall provide Lender with any additional information that Lender deems necessary from time to time in order to ensure compliance with The USA Patriot Act and any other applicable Legal Requirements concerning money laundering and similar activities.

5.2.15 Distributions. Borrower shall not make or permit any Distribution.

5.2.16 Affiliate Agreements. Borrower shall not enter into any agreement with an Affiliate without Lender's prior written consent, in its sole and absolute discretion.

ARTICLE VI

INSURANCE; CASUALTY; CONDEMNATION

Section 6.1 Insurance.

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

(i) comprehensive "All Risk" or "Special Form" insurance on the Improvements and the Personal Property (A) in an amount equal to one hundred percent (100%) of the "**Full Replacement Cost**," which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations) with no depreciation; (B) containing an agreed amount endorsement with respect to the Improvements and Personal Property waiving all co-insurance provisions, or confirmation that co-insurance does not apply; and (C) providing for no deductible in excess of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) for all such insurance coverage. In addition, Borrower shall obtain: (x) if any portion of the Improvements is currently, or at any time in the future, located in a Federally designated "special flood hazard area", flood hazard insurance in an amount equal to the Outstanding Principal Balance or such other amount as Lender shall require; (y) earthquake insurance in amounts and in form and substance satisfactory to Lender in the event the Property is located in an area with a high degree of seismic activity; and (z) windstorm insurance in amounts and in form and substance satisfactory to Lender in the event such windstorm coverage is excluded under the Special Form Coverage, provided that the insurance pursuant to clauses (x), (y) and (z) hereof shall be on terms consistent with the comprehensive "All Risk" or "Special Form" insurance policy required under this subsection (i);

(ii) commercial general liability insurance, including a broad form comprehensive general liability endorsement and coverage against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, such insurance (A) to be on the so-called "occurrence" form with a combined limit of not less than Two Million and No/100 Dollars (\$2,000,000.00) in the aggregate and One Million and No/100 Dollars (\$1,000,000.00) per occurrence (and, if on a blanket policy, containing an "Aggregate Per Location" endorsement); (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 insured contracts; and (5) contractual liability covering the indemnities contained in Article VIII of the Security Instrument to the extent the same is available;

(iii) if there are tenants of the Property, rental loss insurance (A) with loss payable to Lender; (B) covering all risks required to be covered by the insurance provided for in subsection (i) above; and (C) for loss of Rents in an amount equal to one hundred percent (100%) of the projected rents from ` for a period of twelve (12) months from the date of such Casualty (assuming such Casualty had not occurred) and notwithstanding that the policy may expire prior to or at the end of such period. The amount of such loss of Rents or business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on Borrower's reasonable estimate of income to be derived from the Property for the succeeding twelve (12) month period. Notwithstanding anything to the contrary set forth herein, all proceeds payable to Lender pursuant to this subsection shall be held by Lender and shall be applied at Lender's sole discretion to (I) the Debt, or (II) operating expenses for the Property approved by Lender in its sole discretion; *provided, however*, that nothing herein contained shall be deemed to relieve Borrower of its obligations to pay the Debt, 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 forms do not otherwise apply, (A) owner's and contractor's 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 Property, and (4) with an agreed amount endorsement waiving co-insurance provision, or confirmation that co-insurance does not apply;

(v) if Borrower ever has any direct employees, worker's compensation insurance with respect to any employees of Borrower, as required by any Governmental Authority or Legal Requirement;

(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) if Borrower ever has any direct employees or owns any motor vehicles, motor vehicle liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence of not less than One Million and No/100 Dollars (\$1,000,000.00);

(viii) umbrella or excess liability insurance in an amount not less than Five Million and No/100 Dollars (\$5,000,000.00) per occurrence on terms consistent with the commercial general liability insurance policy required under subsection (ii) above;

(ix) if the Property is or becomes a legal "non-conforming" use or structure, ordinance or law coverage to compensate for the value of the undamaged portion of the Property, the cost of demolition and increased cost of construction in amounts as requested by Lender;

(x) if applicable, the commercial property, business income, general liability and umbrella or excess liability insurance required under Sections 6.1(a)(i), (ii), (iii) and (viii) above shall cover perils of terrorism and acts of terrorism and Borrower shall maintain commercial property and business income insurance for loss resulting from perils and acts of terrorism on terms (including amounts) consistent with those required under Sections 6.1(a)(i), (ii), (iii) and (viii) above at all times during the term of the Loan so long as Lender determines that either (I) prudent owners of real estate comparable to the Property are maintaining same or (II) prudent institutional lenders (including, without limitation, investment banks) to such owners are requiring that such owners maintain such insurance; and

(xi) upon sixty (60) days' notice, such other insurance and in such amounts as Lender from time to time may request against such other insurable hazards which at the time are commonly insured against for properties similar to the Property located in or around the region in which the Property is located.

(b) All insurance provided for in Section 6.1(a) shall be obtained under valid and enforceable policies (collectively, the "**Policies**" or in the singular, the "**Policy**"), and shall be subject to the approval of Lender as to insurance companies, amounts, deductibles, loss payees and insureds. The Policies shall be issued by financially sound and responsible insurance companies authorized to do business in the State and having a claims paying ability rating of "A-" or better by S&P or "A-X" or better by AM Best or "A3" or better by Moody's Investor Service, Inc.. Prior to the expiration dates of the Policies theretofore furnished to Lender, certificates of insurance evidencing the renewal or successor Policies accompanied by evidence satisfactory to Lender of payment of the premiums due thereunder (the "**Insurance Premiums**"), shall be delivered by Borrower to Lender. Borrower shall supply an original or certified copy of the original policy within ten (10) days of request by Lender, provided that the policy is available.

(c) Any blanket insurance Policy shall specifically allocate to the 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 Property in compliance with the provisions of Section 6.1(a).

(d) All Policies provided for or contemplated by Section 6.1(a), except for the Policy referenced in Section 6.1(a)(v), shall name Borrower as the insured and Lender (and its successors and assigns) as Mortgagee, Loss Payee and Additional Insured, as its interests may appear, and in the case of property damage, boiler and machinery, flood and earthquake insurance, shall contain a standard non-contributing mortgagee clause in favor of Lender providing that the loss thereunder shall be payable to Lender.

(e) All Policies provided for in this Section 6.1 shall contain clauses or endorsements to the effect that: (i) no act or negligence of Borrower, or anyone acting for Borrower, or of any tenant or other occupant, or failure to comply with the provisions of any Policy, which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Lender is concerned; (ii) the Policies on which Lender is listed as a Mortgagee shall not be canceled without at least thirty (30) days' notice to Lender; (iii) Lender shall not be liable for any Insurance Premiums thereon or subject to any assessments thereunder; and (iv) shall contain a waiver of subrogation in favor of Lender.

(f) If at any time Lender is not in receipt of written evidence that all Policies are in full force and effect, Lender shall have the right, without notice to Borrower, to take such action as Lender deems necessary to protect its interest in the Property, including, without limitation, the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate. 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 Security Instrument and shall bear interest at the Default Rate. Provided no Event of Default exists, Lender shall promptly provide Borrower with notice of any such premiums incurred.

(g) Without limitation, Borrower shall continue to maintain all insurance that is in effect as of the date hereof.

Section 6.2 Casualty. If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (a "**Casualty**"), Borrower shall (a) give prompt notice of such damage to Lender, and (b) promptly commence and diligently prosecute the completion of Restoration so that the Property resembles, as nearly as possible, the condition the Property was in immediately prior to such Casualty, with such alterations as may be reasonably approved by Lender and otherwise in accordance with Section 6.4. Borrower shall pay all costs of such Restoration whether or not such costs are covered by insurance. Lender may, but shall not be obligated to make proof of loss if not made promptly by Borrower. In addition, Lender may participate in (and have approval rights over) any settlement discussions with any insurance companies with respect to any Casualty in which the Net Proceeds or the costs of completing Restoration are equal to or greater than five percent (5%) of the applicable Allocated Loan Amount for the affected Individual Property and Borrower shall deliver to Lender all instruments required by Lender to permit such participation.

Section 6.3 Condemnation. Borrower shall promptly give Lender notice of the actual or threatened commencement of any proceeding in respect of Condemnation, and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings, and Borrower shall from time to time deliver to Lender all instruments requested by 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 taking by any public or quasi-public authority through Condemnation or otherwise (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to perform the Obligations at the time and in the manner provided in this Agreement and the other Loan Documents and the Outstanding Principal Balance shall not be reduced until any Award shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Obligations. Lender shall not be limited to the interest paid on the Award by the applicable 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 Property or any portion thereof is taken by a Governmental Authority, Borrower shall promptly commence and diligently prosecute Restoration and otherwise comply with the provisions of Section 6.4. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the Award, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the Award, or a portion thereof sufficient to pay the Debt.

Section 6.4 Restoration. If there are any Improvements on the Property, the following provisions shall apply:

(a) If the Net Proceeds and the costs of completing Restoration shall each be less than five percent (5%) of the applicable Allocated Loan Amount for the affected Individual Property, then the Net Proceeds will be disbursed by Lender to Borrower upon receipt, provided that all of the conditions set forth in Section 6.4(b)(i) are met and Borrower delivers to Lender a written undertaking to expeditiously commence and to satisfactorily complete with due diligence Restoration in accordance with the terms of this Agreement.

(b) If the Net Proceeds are equal to or greater than five percent (5%) of the applicable Allocated Loan Amount for the affected Individual Property, but less than twenty percent (20%) of the applicable Allocated Loan Amount for the affected Individual Property, or the costs of completing Restoration are equal to or greater than five percent (5%) of the applicable Allocated Loan Amount for the affected Individual Property, but less than twenty percent (20%) of the applicable Allocated Loan Amount for the affected Individual Property, then, in either case, the Net Proceeds will be held by Lender and Lender shall make the Net Proceeds available for Restoration in accordance with the provisions of this Section 6.4. The term "**Net Proceeds**" for purposes of this Section 6.4 shall mean: (i) the net amount of all insurance proceeds received by Lender pursuant to Section 6.1 (a)(i), (iv), (vi), (ix) and (x) as a result of such damage or destruction, after deduction of Lender's reasonable costs and expenses (including, but not limited to, reasonable counsel costs and fees), if any, in collecting same ("**Insurance Proceeds**"), or (ii) the net amount of the Award, after deduction of Lender's reasonable costs and expenses (including, but not limited to, reasonable counsel costs and fees), if any, in collecting same ("**Condemnation Proceeds**"), whichever the case may be.

(i) The Net Proceeds shall be made available to Borrower for Restoration upon the determination of Lender in its sole discretion that the following conditions are met:

(A) no Event of Default shall have occurred and be continuing;

(B) in the event the Net Proceeds are Condemnation Proceeds, 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 Property, and no portion of the Improvements is located on such land;

(C) if applicable, Leases demising in the aggregate a percentage amount equal to or greater than ninety percent (90%) of the total rentable space in the affected Individual Property which has been demised under executed and delivered Leases in effect as of the date of the occurrence of such Casualty or Condemnation, whichever the case may be, shall remain in full force and effect during and after the completion of Restoration, notwithstanding the occurrence of any such Casualty or Condemnation, whichever the case may be, and will make all necessary repairs and restorations thereto at their sole cost and expense;

(D) Borrower shall commence Restoration as soon as reasonably practicable (but in no event later than sixty (60) days after such Casualty or Condemnation, whichever the case may be, occurs) and shall diligently pursue the same to satisfactory completion;

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

(F) Lender shall be satisfied that Restoration will be completed on or before the earliest to occur of (1) four (4) months prior to the Maturity Date, (2) the earliest date required for such completion under the terms of any Leases, (3) such time as may be required under all applicable Legal Requirements in order to repair and restore the affected Individual Property to the condition it was in immediately prior to such Casualty or to as nearly as possible the condition it was in immediately prior to such Condemnation, as applicable, or (4) the expiration of the insurance coverage referred to in Section 6.1(a)(iii);

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

(H) Restoration shall be done and completed by Borrower in an expeditious and diligent fashion and in compliance with all applicable Legal Requirements;

(I) such Casualty or Condemnation, as applicable, does not result in the loss of access to the affected Individual Property or the related Improvements;

(J) Borrower shall deliver, or cause to be delivered, to Lender a signed detailed budget approved in writing by Borrower's architect or engineer stating the entire cost of completing Restoration, which budget shall be acceptable to Lender; and

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

(ii) The Net Proceeds shall be paid directly to Lender for deposit in an interest-bearing account (the "**Net Proceeds Account**") and, until disbursed in accordance with the provisions of this Section 6.4(b), shall constitute additional security for the Debt and the Other Obligations. The Net Proceeds shall be disbursed by Lender to, or as directed by, Borrower from time to time during the course of Restoration, upon receipt of evidence satisfactory to Lender that (A) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with Restoration have been paid for in full, and (B) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Property which have not either been fully bonded to the satisfaction of Lender and discharged of record or in the alternative fully insured to the satisfaction of Lender by the Title Company.

(iii) All plans and specifications required in connection with Restoration shall be subject to prior review and acceptance in all respects by Lender in its discretion and by an independent consulting engineer selected by Lender (the "**Casualty Consultant**"). Lender shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with Restoration. The identity of the contractor engaged in Restoration, as well as the contracts under which it has been engaged, shall be subject to prior review and acceptance by Lender in its discretion and the Casualty Consultant. All costs and expenses incurred by Lender in connection with making the Net Proceeds available for Restoration including, without limitation, reasonable counsel fees and disbursements and the Casualty Consultant's fees, shall be paid by Borrower.

(iv) In no event shall 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 Restoration, as certified by the Casualty Consultant, minus the Retention Amount. The term "**Retention Amount**" shall mean, as to each contractor, subcontractor or materialman engaged in Restoration, an amount equal to ten percent (10%) of the costs actually incurred for work in place as part of Restoration, as certified by the Casualty Consultant, until Restoration has been completed. The Retention Amount shall in no event, and notwithstanding anything to the contrary set forth above in this Section 6.4(b), be less than the amount actually held back by Borrower from contractors, subcontractors and materialmen engaged in Restoration. The Retention Amount shall not be released until the Casualty Consultant certifies to Lender that Restoration has been completed in accordance with the provisions of this Section 6.4(b) and that all approvals necessary for the re-occupancy and use of the Property have been obtained from all appropriate Governmental Authorities, and Lender receives evidence satisfactory to Lender that the costs of Restoration have been paid in full or will be paid in full out of the Retention Amount; *provided, however*, that Lender will release the portion of the Retention Amount being held with respect to any contractor, subcontractor or materialman engaged in 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 Security Instrument and evidence of payment of any premium payable for such endorsement. If required by Lender, the release of any such portion of the Retention Amount shall be approved by the surety company, if any, which has issued a payment or performance bond with respect to the contractor, subcontractor or materialman.

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

(vi) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the 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 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 Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this Section 6.4(b) shall constitute additional security for the Debt and the Other Obligations.

(vii) The excess, if any, of the Net Proceeds and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Lender after the Casualty Consultant certifies to Lender that Restoration has been completed in accordance with the provisions of this Section 6.4(b), and the receipt by Lender of evidence satisfactory to Lender that all costs incurred in connection with Restoration have been paid in full, shall be remitted by Lender to Borrower, provided no Event of Default shall have occurred and shall be continuing.

(c) If Net Proceeds are (i) equal to or greater than twenty percent (20%) of the applicable Allocated Loan Amount for the affected Individual Property, (ii) not required to be made available for Restoration (due to Borrower's inability to satisfy the conditions set forth in Section 6.4(b)(i) or otherwise), or (iii) not to be returned to Borrower as excess Net Proceeds pursuant to Section 6.4(b)(vii), then in any such event all Net Proceeds may be retained and applied by Lender in accordance with Section 2.4.2 hereof toward reduction of the Outstanding Principal Balance whether or not then due and payable in such order, priority and proportions as Lender in its sole discretion shall deem proper, or, in the sole discretion of Lender, the same may be paid, either in whole or in part, to Borrower for such purposes as Lender shall approve, in its sole discretion. No prepayment charge shall be payable by Borrower by reason of a Casualty or Condemnation.

(d) In the event of foreclosure of the Security Instrument, or other transfer of title to the Property in extinguishment in whole or in part of the Debt all right, title and interest of Borrower in and to the Policies that are not blanket Policies then in force concerning the Property and all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure or Lender or other transferee in the event of such other transfer of title.

ARTICLE VII

RESERVE FUNDS

Section 7.1 [Intentionally Omitted]

Section 7.2 [Intentionally Omitted]

Section 7.3 Reserve Funds, Generally.

(a) Borrower (i) hereby grants to Lender a first priority security interest in all of the Reserve Funds and any and all monies now or hereafter deposited in each Reserve Account as additional security for payment and performance of the Obligations and (ii) will take all actions necessary to maintain in favor of Lender a perfected first priority security interest in the Reserve Funds, including, without limitation, filing or authorizing Lender to file UCC-1 financing statements and continuations thereof. Until expended or applied in accordance herewith, the Reserve Funds shall constitute additional security for the Obligations.

(b) Upon the occurrence of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in any or all of the Reserve Funds to the reduction of the Outstanding Principal Balance or the payment of any other amounts then due and owing under this Agreement or any of the other Loan Documents in any order in its sole discretion.

(c) Borrower shall not further pledge, assign or grant any security interest in any Reserve Fund or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 financing statements, except those naming Lender as the secured party, to be filed with respect thereto.

(d) The Reserve Funds shall not constitute trust funds and may be commingled with other monies held by Lender. No earnings or interest on the Reserve Funds shall be payable to Borrower. Lender shall not have any obligation to keep or maintain such Reserve Funds or any funds deposited therein in interest bearing accounts.

(e) Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys' fees and expenses) (collectively, "**Claims**") arising from or in any way connected with the Reserve Funds or the performance of the obligations for which the Reserve Funds were established; provided, however, Borrower shall not be obligated to indemnify Lender for any such Claims to the extent arising from Lender's gross negligence or willful misconduct. Borrower shall assign to Lender all rights and claims Borrower may have against all Persons supplying labor, materials or other services which are to be paid from or secured by the Reserve Funds; *provided, however*, that Lender may not pursue any such right or claim unless an Event of Default has occurred and remains uncured.

(f) Upon payment in full of the Debt in accordance with the terms of this Agreement and the other Loan Documents, Lender shall return any remaining Reserve Funds to Borrower.

Section 7.4 Project Reserve Funds.

7.4.1 Deposits of Project Reserve Funds. Borrower shall deposit with Lender (which amount may be net funded by Lender but deemed disbursed) an amount equal to \$175,000.00 on the Closing Date for the purpose of funding Project Costs, which amounts shall be deposited into a Reserve Account (the "**Project Reserve Account**"). Amounts deposited from time to time into the Project Reserve Account pursuant to this Section 7.4.1 are referred to herein as the "**Project Reserve Funds**". The allocated amount of Project Reserve Funds with respect to each Individual Property, are set forth on Schedule 1.1(a) hereof.

7.4.2 Disbursement of Project Reserve Funds.

(a) Disbursements Upon Completion of Project at Individual Property. Each disbursement of Project Reserve Funds shall be released subject to satisfaction of the following conditions, any of which may be waived by Lender in Lender's sole discretion:

(i) Any request for a disbursement of Project Reserve Funds shall be submitted to Lender on Lender's form of request, not less than ten (10) Business Days prior to the anticipated date for the disbursement of Project Reserve Funds, and shall be accompanied by all evidence required to be approved by Lender as a condition to such disbursement, including an Officer's Certificate stating that said conditions are then satisfied;

(ii) Disbursement of Project Reserve Funds shall only be used for the portion of the Project at the Individual Property to which the request for disbursement of Project Reserve Funds relates shall not exceed the amount of the Project Reserve Funds allocated to the applicable Individual Property;

(iii) Borrower shall be in compliance with the terms and conditions of Section 5.1.24;

(iv) The relevant portion of the Project at an Individual Property to which the requested disbursement of Project Reserve Funds relates shall be Complete;

(v) At Lender's election, Lender shall have received certificates of Lender's consultant, any Architect and the General Contractor that the such portion of the Project is Complete;

(vi) Evidence reasonably acceptable to Lender, together with all other appropriate certificates and other documentation that Lender may require from, and as are customarily issued by, applicable Governmental Authorities, evidencing (i) compliance with all applicable Legal Requirements, including final certificates of occupancy and all consents or approvals required from third parties or any Governmental Authority have been obtained, and (ii) that no petitions, actions or proceedings are pending or threatened which could reasonably be expected to materially alter or declare invalid any approvals, consents, permits or certificates for or relating to the Project, or any part thereof;

(vii) Final unconditional waivers of lien (and evidence of payment) from all other contractors, subcontractors and materialmen as required by Lender or the Title Company; and

(viii) Lender shall have received notices of title continuation showing that since the date of the last disbursement of Project Reserve Funds there has been no adverse change in the state of title to the applicable Individual Property not approved by Lender, and, to the extent that any new improvements have been constructed at the applicable Individual Property outside their footprint on the date of the most recent survey, no adverse survey exceptions with respect to the Property not theretofore approved by Lender, and Lender may, in its discretion, require an endorsement to the Title Insurance Policy, in form and content satisfactory to Lender, insuring, in effect, that such disbursement has the same priority as the initial disbursement of the Loan and that there has been no Material Adverse Change in the condition of title to the Property since the issuance of the Title Insurance Policy;

(ix) No actions, suits or proceedings shall then be pending nor have any been threatened against or which affect Borrower, any Guarantor or the Property which could have a Material Adverse Change on Borrower, Guarantor or the Property;

(x) No Default or Event of Default shall have occurred and be continuing and all representations and warranties set forth in this Agreement and in any other Loan Document shall be materially true and correct as of the date of Borrower's request for the disbursement, the date the disbursement is made, and immediately following the making of the disbursement;

(xi) No substantial unrepaired damage to any portion of the Property by fire or other casualty which is not in Lender's judgment adequately covered by collectible proceeds of insurance; and

(xii) Borrower shall have paid all of the costs and expenses incurred by Lender, including reasonable attorneys' fees and expenses, all title premiums and other title and survey charges in connection with the proposed disbursement and a nonrefundable rehabilitation management in the amount of Two Hundred Ninety-Five and No/100 Dollars (\$295.00) payable to Lender with respect to each disbursement of Project Reserve Funds.

(b) Disbursement by Wire Transfer. Disbursement of Project Reserve Funds shall be made at Lender's election by wire transfer, at Borrower's cost and expense, or by check. Lender may, in its election, make payments of the Project Reserve Funds directly to the contractor, subcontractor, or material supplier. Lender may also require, at Lender's election, in its sole discretion, at Borrower's sole cost and expense, that disbursements of Project Reserve Funds be made through (a) the Title Company pursuant to a construction loan disbursement escrow agreement or (b) a vending control company. Any such arrangement with the Title Company or a vending control company shall be in Lender's sole discretion

(c) Waiver of Conditions. Lender may from time to time, in its sole discretion, waive any condition or conditions to any disbursement of Project Reserve Funds without such waiver or series of waivers constituting a course of dealing or any amendment to this Agreement or a prohibition against subsequent imposition of such condition or conditions or a waiver of a default.

ARTICLE VIII

DEFAULTS

Section 8.1 Event of Default

8.1.1 Generally

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

(i) if any portion of the Debt is not paid when due (including, without limitation, the failure of Borrower to repay the entire outstanding principal balance of the Note in full on the Maturity Date);

(ii) if any of the Taxes or Other Charges are not paid when the same are due and payable without payment of a penalty;

(iii) if the Policies are not kept in full force and effect, or if copies of the certificates evidencing the Policies (or certified copies of the Policies if requested by Lender) are not delivered to Lender within thirty (30) days after written request therefor;

(iv) the occurrence of any Transfer (except a Permitted Transfer) or other encumbrance with respect to any portion of the Property or the Collateral in violation of the provisions of this Agreement or Article 6 of the Security Instrument, or the occurrence of any Transfer in violation of the provisions of Section 5.2.10 hereof;

(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 or deemed remade;

(vi) if Borrower or any Guarantor shall (i) make an assignment for the benefit of creditors or (ii) generally not be paying its debts as they become due;

(vii) if a receiver, liquidator or trustee shall be appointed for Borrower, or if Borrower shall be adjudicated bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to Federal bankruptcy law, or any similar Federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower, or if any proceeding for the dissolution or liquidation of Borrower shall be instituted; *provided, however*, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, upon the same not being discharged, stayed or dismissed within ninety (90) days;

(viii) if a receiver, liquidator or trustee shall be appointed for any Guarantor or if any 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 Guarantor, or if any proceeding for the dissolution or liquidation of any Guarantor shall be instituted; *provided, however*, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by the applicable Guarantor, upon the same not being discharged, stayed or dismissed within ninety (90) days; provided, further, however, it shall be at Lender's option to determine whether any of the foregoing shall be an Event of Default;

(ix) 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;

(x) if Borrower breaches any representation, warranty or covenant contained in Section 4.1.26 or any of its respective negative covenants contained in Section 5.2;

(xi) with respect to any term, covenant or provision set forth herein which specifically contains a notice requirement or grace period, if Borrower shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

(xii) Borrower breaches any covenant contained in Section 5.1.11 and such breach continues for ten (10) days after notice from Lender;

(xiii) 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 (xi) 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 thirty (30) day period and provided further that Borrower shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed ninety (90) days; or

(xiv) if there shall be a Default under any of the other Loan Documents beyond any applicable cure periods contained in such documents, whether as to Borrower, Guarantor or the Property.

(b) Upon the occurrence of an Event of Default (other than an Event of Default described in clauses (vi), (vii) or (viii) above) and at any time thereafter, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, Lender may take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, without limitation, declaring the Obligations to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents against Borrower and the Property, including, without limitation, all rights or remedies available at law or in equity; 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.

8.1.2 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 (including, without limitation, Lender may accelerate the Loan and declare the Outstanding Principal Balance and all other amounts under the Loan Documents due and payable and institute foreclosure proceedings), 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. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by 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. To the fullest extent permitted by law or equity, without limiting the generality of the foregoing, Borrower agrees that if an Event of Default is continuing (i) Lender shall not be 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 Property and the Security Instrument has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Debt or the Obligations have been paid in full.

(b) With respect to Borrower and the Property, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to the Property for the satisfaction of any of the Debt in any preference or priority, and Lender may seek satisfaction out of the 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 Security Instrument in any manner and for any amounts secured by the Security Instrument then due and payable as determined by Lender in its sole discretion, including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose the Security Instrument to recover such delinquent payments or (ii) in the event Lender elects to accelerate less than the entire Outstanding Principal Balance, Lender may foreclose the Security Instrument to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by the Security Instrument as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to the Security Instrument to secure payment of sums secured by the Security Instrument and not previously recovered.

(c) Lender shall have the right from time to time to partially foreclose the Security Instrument in any manner and for any amounts secured by the Security Instrument then due and payable as determined by Lender in its sole discretion, including the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and/or interest, Lender may foreclose the Security Instrument to recover such delinquent payments, or (ii) in the event Lender elects to accelerate less than the entire Outstanding Principal Balance, Lender may foreclose the Security Instrument to recover so much of the Debt as Lender may accelerate and such other sums secured by the Security Instrument as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to the Security Instrument to secure payment of sums secured by the Security Instrument and not previously recovered.

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

(e) If an Event of Default exists, Lender may (directly or by its agents, employees, contractors, engineers, architects, nominees, attorneys or other representatives), but without any obligation to do so and without notice to Borrower and without releasing Borrower from any obligation hereunder, cure the Event of Default in such manner and to such extent as Lender may deem necessary to protect the security hereof. Subject to Tenants' rights under the Leases, Lender (and its agents, employees, contractors, engineers, architects, nominees, attorneys or other representatives) are authorized to enter upon the Property to cure such Event of Default, and Lender is authorized to appear in, defend, or bring any action or proceeding reasonably necessary to maintain, secure or otherwise protect the Property or the priority of the Lien granted by the Security Instrument.

(f) Lender may appear in and defend any action or proceeding brought with respect to the Property and may bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its sole discretion, decides should be brought to protect its interest in the Property. Lender shall, at its option, be subrogated to the Lien of any mortgage or other security instrument discharged in whole or in part by the Obligations, and any such subrogation rights shall constitute additional security for the payment of the Obligations.

(g) As used in this Section 8.1.2, a "foreclosure" shall include, without limitation, a power of sale.

8.1.3 Remedies Cumulative; Waivers. The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or to impair any remedy, right or power consequent thereon.

8.1.4 **CONFESSION OF JUDGMENT.** THE FOLLOWING PARAGRAPH SETS FORTH A WARRANT OF AUTHORITY FOR ANY ATTORNEY TO CONFESS JUDGMENT AGAINST THE BORROWER. IN GRANTING THIS WARRANT OF ATTORNEY TO CONFESS JUDGMENT AGAINST THE BORROWER, BORROWER, FOLLOWING CONSULTATION WITH (OR DECISION NOT TO CONSULT) COUNSEL FOR BORROWER AND WITH KNOWLEDGE OF THE LEGAL EFFECT HEREOF, HEREBY KNOWINGLY, INTENTIONALLY, VOLUNTARILY AND UNCONDITIONALLY WAIVES ANY AND ALL RIGHTS BORROWER HAS OR MAY HAVE TO PRIOR NOTICE AND AN OPPORTUNITY OF REHEARING UNDER THE RESPECTIVE CONSTITUTIONS AND LAWS OF THE UNITED STATES OF AMERICA, THE COMMONWEALTH OF PENNSYLVANIA, OR ELSEWHERE. IT IS SPECIFICALLY ACKNOWLEDGED BY BORROWER THAT LENDER HAS RELIED ON THIS WARRANT OF ATTORNEY AS AN INDUCEMENT TO GRANT FINANCIAL ACCOMMODATIONS TO BORROWER. UPON AND FOLLOWING THE OCCURRENCE OF AN UNCURED EVENT OF DEFAULT, BORROWER HEREBY AUTHORIZES AND EMPOWERS ANY ATTORNEY OF ANY COURT OF RECORD OR THE PROTHONOTARY OR CLERK OF ANY COUNTY IN THE COMMONWEALTH OF PENNSYLVANIA, OR IN ANY JURISDICTION WHERE PERMITTED BY LAW OR THE CLERK OF ANY UNITED STATES DISTRICT COURT, TO APPEAR FOR BORROWER IN ANY AND ALL ACTIONS WHICH MAY BE BROUGHT HEREUNDER AND ENTER AND CONFESS JUDGMENT AGAINST BORROWER OR ANY OF THEM IN FAVOR OF LENDER FOR SUCH SUMS AS ARE DUE OR MAY BECOME DUE HEREUNDER OR UNDER ANY OTHER LOAN DOCUMENT, TOGETHER WITH COSTS OF SUIT AND ACTUAL COLLECTION COSTS INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES EQUAL TO FIVE PERCENT (5%) OF THE LIABILITIES THEN DUE AND OWING BUT IN NO EVENT LESS THAN \$5,000, WITH OR WITHOUT DECLARATION, WITHOUT PRIOR NOTICE, WITHOUT STAY OF EXECUTION AND WITH RELEASE OF ALL PROCEDURAL ERRORS AND THE RIGHT TO ISSUE EXECUTIONS FORTHWITH. IF A COPY OF THIS NOTE VERIFIED BY AFFIDAVIT OF ANY OFFICER OF LENDER SHALL HAVE BEEN FILED IN SUCH ACTION, IT SHALL NOT BE NECESSARY TO FILE THE ORIGINAL THEREOF AS A WARRANT OF ATTORNEY, ANY PRACTICE OR USAGE TO THE CONTRARY NOTWITHSTANDING. THE AUTHORITY HEREIN GRANTED TO CONFESS JUDGMENT SHALL NOT BE EXHAUSTED BY ANY SINGLE EXERCISE THEREOF, BUT SHALL CONTINUE AND MAY BE EXERCISED FROM TIME TO TIME AS OFTEN AS LENDER SHALL FIND IT NECESSARY AND DESIRABLE AND AT ALL TIMES UNTIL FULL PAYMENT OF ALL AMOUNTS DUE HEREUNDER AND UNDER THE OTHER LOAN DOCUMENTS. LENDER MAY CONFESS ONE OR MORE JUDGMENTS IN THE SAME OR DIFFERENT JURISDICTIONS FOR ALL OR ANY PART OF BORROWER'S OBLIGATIONS ARISING HEREUNDER OR UNDER ANY OTHER LOAN DOCUMENT TO WHICH BORROWER IS A PARTY, WITHOUT REGARD TO WHETHER JUDGMENT HAS THERETOFORE BEEN CONFESSED ON MORE THAN ONE OCCASION FOR THE SAME OBLIGATIONS. IN THE EVENT THAT ANY JUDGMENT CONFESSED AGAINST BORROWER IS STRICKEN OR OPENED UPON APPLICATION BY OR ON BEHALF OF BORROWER FOR ANY REASONS, LENDER IS HEREBY AUTHORIZED AND EMPOWERED TO AGAIN APPEAR FOR AND CONFESS JUDGMENT AGAINST BORROWER FOR ANY PART OR ALL OF THE LIABILITIES DUE AND OWING UNDER THIS NOTE AND THE OTHER LOAN DOCUMENTS, AS HEREIN PROVIDED.

ARTICLE IX

SPECIAL PROVISIONS

Section 9.1 Transfer of Loan. Lender may, at any time, sell, transfer or assign this Agreement, the Note, the Security Instrument and the other Loan Documents, and any or all servicing rights with respect thereto, or grant participations therein or issue mortgage pass-through certificates or other securities (the "*Securities*") evidencing a beneficial interest in a rated or unrated public offering or private placement (such sales, participation, offering and/or placement, collectively, a "*Lender Assignment*"). Lender may forward to each purchaser, transferee, assignee, servicer, participant or investor in such participations or Securities (collectively, the "*Investor*"), each prospective Investor, and any organization maintaining databases on the underwriting and performance of commercial mortgage loans, all documents and information which Lender now has or may hereafter acquire relating to the Loan or to Borrower, any Guarantor or the Property, whether furnished by Borrower, any Guarantor or otherwise, as Lender determines necessary or desirable, including, without limitation, financial statements relating to Borrower, Guarantor, the Property and any Tenant at the Property. Borrower irrevocably waives any and all rights it may have under law or in equity to prohibit such disclosure, including but not limited to any right of privacy.

Section 9.2 Severed Loan Documents. 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 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 (and cause other parties who executed any of the Loan Documents to execute and deliver) to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender may reasonably request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender and Borrower. 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 the parties thereto only as of the Closing Date.

Section 9.3 Servicer. At the option of Lender, the Loan may be serviced by a master servicer, primary servicer, special servicer and/or trustee (any such master servicer, primary servicer, special servicer, and trustee, together with its agents, nominees or designees, are collectively referred to as "**Servicer**") selected by Lender and Lender may delegate all or any portion of its responsibilities under this Agreement and the other Loan Documents to Servicer pursuant to a pooling and servicing agreement, servicing agreement, special servicing agreement or other agreement providing for the servicing of one or more mortgage loans (collectively, the "**Servicing Agreement**") between Lender and Servicer. Without limitation, Borrower shall promptly reimburse Lender on demand for (a) interest payable on advances made by Servicer with respect to delinquent debt service payments (to the extent interest at the Default Rate actually paid by Borrower in respect of such payments are insufficient to pay the same) or expenses paid by Servicer or trustee in respect of the protection and preservation of the Property (including, without limitation, on account of Basic Carrying Costs), (b) all costs and expenses, liquidation fees, workout fees, special servicing fees, operating advisor fees or any other similar fees payable by Lender to Servicer which may be due and payable under the Servicing Agreement (whether on a periodic or a continuing basis) as a result of an Event of Default under the Loan, the Loan becoming specially serviced, the commencement or continuance of any enforcement action of any kind with respect to the Loan or any of the Loan Documents, a refinancing or a restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" of the Loan Documents, or any Bankruptcy Action involving Borrower, Principal, Guarantor or any of their respective principals or Affiliates, (c) all costs and expenses of any Property inspections and/or appraisals (or any updates to any existing inspection or appraisal) that Servicer or the trustee may be required to obtain (but not more than one appraisal in any twelve months unless an Event of Default exists), and (d) all costs and expenses relating to or arising from any special requests made by Borrower or Guarantor during the term of the Loan including, without limitation, in connection with a prepayment, defeasance, assumption or modification of the Loan.

Section 9.4 Cooperation. Borrower and Guarantor agree to reasonably cooperate with Lender (and agree to cause their respective officers and representatives to cooperate) in connection with any Lender Assignment or potential Lender Assignment.

ARTICLE X

MISCELLANEOUS

Section 10.1 Survival. This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Obligations are outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the legal representatives, successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Lender.

Section 10.2 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 and absolute discretion of Lender and shall be final and conclusive.

Section 10.3 Governing Law. THIS AGREEMENT WAS NEGOTIATED IN THE COMMONWEALTH OF PENNSYLVANIA, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE COMMONWEALTH OF PENNSYLVANIA, AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE COMMONWEALTH OF PENNSYLVANIA, 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 COMMONWEALTH OF PENNSYLVANIA APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT TO THE SECURITY INSTRUMENT AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE COMMONWEALTH OF PENNSYLVANIA SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND/OR THE OTHER LOAN DOCUMENTS, AND THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA.

(a) EXCEPTIONS, NOTWITHSTANDING THE FOREGOING CHOICE OF LAW:

(i) THE PROCEDURES GOVERNING THE ENFORCEMENT BY LENDER OF ITS FORECLOSURE AND OTHER REMEDIES AGAINST BORROWER AND GUARANTOR UNDER THE SECURITY INSTRUMENT AND UNDER THE OTHER LOAN DOCUMENTS WITH RESPECT TO THE REAL PROPERTY ASSETS OF BORROWER, INCLUDING BY WAY OF ILLUSTRATION, BUT NOT IN LIMITATION, ACTIONS FOR FORECLOSURE, FOR INJUNCTIVE RELIEF OR FOR THE APPOINTMENT OF A RECEIVER SHALL BE GOVERNED BY THE LAWS OF THE STATE WHERE SUCH PROPERTY OR OTHER ASSETS ARE LOCATED;

(ii) LENDER SHALL COMPLY WITH APPLICABLE LAW IN THE STATE WHERE THE PROPERTY OR OTHER ASSETS ARE LOCATED TO THE EXTENT REQUIRED BY THE LAW OF SUCH JURISDICTION IN CONNECTION WITH THE FORECLOSURE OF THE SECURITY INTERESTS AND LIENS CREATED UNDER THE SECURITY INSTRUMENT;

(iii) PROVISIONS OF FEDERAL LAW AND THE LAW OF THE STATE WHERE THE PROPERTY IS LOCATED SHALL APPLY IN DEFINING THE TERMS HAZARDOUS SUBSTANCES, ENVIRONMENTAL STATUTES, AND LEGAL REQUIREMENTS AS SUCH TERMS ARE USED IN THIS LOAN AGREEMENT, AND THE OTHER LOAN DOCUMENTS, WITH RESPECT TO THE PROPERTY, BORROWER AND GUARANTOR; AND

(iv) MATTERS OF REAL ESTATE, LANDLORD-TENANT AND PROPERTY LAW SHALL BE GOVERNED BY THE LAWS OF THE STATE WHERE THE PROPERTY IS SITUATED.

(b) AGENT FOR SERVICE OF PROCESS. ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY AT LENDER'S SOLE OPTION BE INSTITUTED IN ANY FEDERAL DISTRICT COURT OR STATE COURT IN THE COMMONWEALTH OF PENNSYLVANIA, COUNTY OF NORTHAMPTON, PURSUANT TO PENNSYLVANIA LAW, AND BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY OBJECTIONS WHICH BORROWER MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

FTE Networks, Inc.
237 West 35th Street, Suite 806
New York, NY 10001
Attn: CEO
Phone: 646-755-3605
Email: mbeys@blmlp.com

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON BORROWER'S 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 THE COMMONWEALTH OF PENNSYLVANIA, AND BORROWER 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 CONCLUSIVELY BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE COMMONWEALTH OF PENNSYLVANIA. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN THE COMMONWEALTH OF PENNSYLVANIA (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN THE COMMONWEALTH OF PENNSYLVANIA OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR. NOTHING CONTAINED HEREIN SHALL AFFECT THE RIGHT OF AGENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST BORROWER IN ANY OTHER JURISDICTION.

Section 10.4 Modification, Waiver in Writing. No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Note, or of any other Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances.

Section 10.5 Delay Not a Waiver. Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

Section 10.6 Notices. All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested, (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, or (c) facsimile (with answer back acknowledged) or as a PDF or similar attachment to an e-mail, provided that such facsimile or email attachment shall be followed within one (1) business day by delivery of such notice pursuant to clause (a) or (b) above, in each case addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a notice to the other parties hereto in the manner provided for in this Section 10.6):

If to Lender:	DLP Lending Fund LLC 95 Highland Avenue, Suite 300 Bethlehem, PA 28017 Attention: Barry W. DeGroot, Esq. E-Mail: barry@dlpre.com
with a copy to:	Pircher, Nichols & Meeks LLP 1901 Avenue of the Stars, Suite 1200 Los Angeles, California 90067 Attention: Real Estate Notices (WBT: 6004.2) Facsimile No.: (310) 201-8922 E-Mail: realestatenotices@pircher.com
If to Borrower:	FTE Legal 237 West 35 th Street, Suite 806 New York, NY 10001 Attn: Corporate Counsel Phone: (239) 315-3161 Email: legal@fnet.com

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; in the case of expedited prepaid delivery, upon the first attempted delivery on a Business Day; or in the case of facsimile or PDF or similar attachment to an e-mail, upon sender's receipt of a machine-generated confirmation of successful transmission after advice by telephone to recipient that a facsimile or e-mail notice is forthcoming. Any failure to deliver a notice by reason of a change of address not given in accordance with this Section 10.6, or any refusal to accept a notice, shall be deemed to have been given when delivery was attempted. Any notice required or permitted to be given by any party hereunder or under any other Loan Document may be given by its respective counsel.

Section 10.7 Waiver of Trial by Jury. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER.

Section 10.8 Headings. The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 10.9 Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Section 10.10 Preferences. 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 Debt. 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 10.11 Waiver of Notice. Borrower hereby expressly waives, and 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.

Section 10.12 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, Borrower agrees that neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment. The parties hereto agree that any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment. Further, it is agreed Lender shall not be in default under this Agreement, or under any other Loan Document, unless a written notice specifically setting forth the claim of Borrower shall have been given to Lender within thirty (30) days after Borrower first had knowledge of the occurrence of the event which Borrower alleges gave rise to such claim and Lender does not remedy or cure the default, if any there be, promptly thereafter. Failure to give such notice shall constitute a waiver of such claim.

Section 10.13 Expenses; Indemnity.

(a) Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender upon receipt of notice from Lender for all costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Lender in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including without limitation any opinions requested by Lender as to any legal matters arising under this Agreement or the other Loan Documents with respect to the Property); (ii) Borrower's ongoing performance of and compliance with Borrower's respective agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date, including, without limitation, confirming compliance with environmental and insurance requirements; (iii) Lender's ongoing performance and compliance with all agreements and conditions contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date; (iv) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters requested by Lender; (v) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement; (vi) the filing and recording fees and expenses, title insurance and 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; (vii) enforcing or preserving any rights, either in response to third party claims or in prosecuting or defending any action or proceeding or other litigation, in each case against, under or affecting Borrower, this Agreement, the other Loan Documents, the Property, or any other security given for the Loan; and (viii) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the 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 or any other amounts required under Section 9.3; *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 cost and expenses due and payable to Lender may be paid by Lender from any Reserve Account.

(b) Borrower shall indemnify, defend and hold harmless the Indemnified Parties from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for Lender in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not Lender shall be designated a party thereto), that may be imposed on, incurred by, or asserted against any Indemnified Party in any manner relating to or arising out of (i) any breach by Borrower of its Obligations under, or any 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 (the liabilities, losses, costs, expenses and other matters described in this subparagraph (b), collectively, the “**Indemnified Liabilities**”); *provided, however*, that Borrower shall not have any obligation to an Indemnified Party hereunder to the extent that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of such Indemnified Party. To the extent that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall pay the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by the Indemnified Parties.

Section 10.14 Exhibits and Schedules Incorporated. Any Exhibits and Schedules annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

Section 10.15 Offsets, Counterclaims and Defenses. Any assignee of Lender’s interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses solely to the extent such offsets, counterclaims or defenses are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

Section 10.16 No Joint Venture or Partnership; No Third Party Beneficiaries.

(a) Borrower 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 Property other than that of mortgagee, beneficiary or lender.

(b) This Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the Obligations contained herein or therein. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender’s sole discretion, Lender deems it advisable or desirable to do so.

Section 10.17 Publicity. All news releases, publicity or advertising by Borrower or its Affiliates through any media intended to reach the general public which refers to the Loan Documents or the financing evidenced by the Loan Documents, to Lender or any of its Affiliates shall be subject to the prior approval of Lender.

Section 10.18 Waiver of Marshalling of Assets; Homestead Waiver. 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 Property, or to a sale in inverse order of alienation in the event of foreclosure of the Security Instrument, 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 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 Property in preference to every other claimant whatsoever. To the extent permitted by applicable law, Borrower hereby waives any Homestead protections that may be available to Borrower under the law of the state in which the Property is located.

Section 10.19 Waiver of Counterclaim. Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents.

Section 10.20 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 its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any 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 10.21 Brokers and Financial Advisors. Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement other than Direct Lending Partners LLC, which arranged the Loan. Borrower hereby agrees to 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 10.21 shall survive the expiration and termination of this Agreement and the payment of the Debt.

Section 10.22 Prior Agreements. This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, including, without limitation, the Term Sheet dated April 13, 2020 between Borrower (or an agent or representative of Borrower) and Lender, are superseded by the terms of this Agreement and the other Loan Documents.

Section 10.23 Cumulative Rights. All of the rights of Lender under this Agreement hereunder and under each of the other Loan Documents and any other agreement now or hereafter executed in connection herewith or therewith, shall be cumulative and may be exercised singly, together, or in such combination as Lender may determine in its sole judgment.

Section 10.24 Counterparts; Electronic Delivery. This Agreement and all of the other Loan Documents may be executed in several counterparts, each of which when executed and delivered is an original, but all of which together shall constitute one instrument. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart which is executed by the party against whom enforcement of this Agreement is sought. The delivery of an executed counterpart of this Agreement or any other Loan Document (other than Note) by facsimile or as a PDF or similar attachment to an email shall constitute effective delivery of such counterpart for all purposes with the same force and effect as the delivery of an original, executed counterpart.

Section 10.25 Time is of the Essence. Time is of the essence of each provision of this Agreement and the other Loan Documents.

Section 10.26 Consent of Holder. Wherever this Agreement refers to Lender's consent or discretion or other rights, such references to Lender shall be deemed to refer to any holder of the Loan. The holder of the Loan may from time to time appoint a trustee or servicer, and Borrower shall be entitled to rely upon written instructions executed by a purported officer of the holder of the Loan as to the extent of authority delegated to any such trustee or from time to time and determinations made by such trustee or servicer to the extent identified as within the delegated authority of such trustee or servicer, unless and until such instructions are superseded by further written instructions from the holder of the Loan.

Section 10.27 Successor Laws. Any reference in this Agreement to any statute or regulation shall be deemed to include any successor statute or regulation.

Section 10.28 Reliance on Third Parties. Lender may perform any of its responsibilities hereunder through one or more agents, attorneys or independent contractors. In addition, Lender may conclusively rely upon the advice or determinations of any such agents, attorneys or independent contractors in performing any discretionary function under the terms of this Agreement.

Section 10.29 Joint Borrower. The representations, covenants, warranties and obligations of Borrower shall be joint and several. Each entity that constitutes Borrower acknowledges and agrees that it shall be jointly and severally liable for the Loan and all other Obligations arising under this Agreement and/or any of the other Loan Documents. In furtherance thereof, each Borrower acknowledges and agrees as follows:

(a) For the purpose of implementing the joint borrower provisions of the Loan Documents, each Borrower hereby irrevocably appoints each other Borrower as its agent and attorney-in-fact for all purposes of the Loan Documents, including the giving and receiving of notices and other communications.

(b) To induce Lender to make the Loan, and in consideration thereof, each Borrower hereby agrees to indemnify Lender against, and hold Lender harmless from, any and all liabilities, expenses, losses, damages and/or claims of damage or injury asserted against Lender by any Borrower or by any other Person arising from or incurred by reason of (i) reliance by Lender on any requests or instructions from any Borrower, or (ii) any other action taken by Lender in good faith with respect to this Agreement or the other Loan Documents.

(c) Each Borrower acknowledges that the liens and security interests created or granted herein and by the other Loan Documents will secure the Obligations of all Borrowers under the Loan Documents and, in full recognition of that fact, each Borrower consents and agrees that Lender may, at any time and from time to time, without notice or demand, and without affecting the enforceability or security hereof or of any other Loan Document:

(i) agree with any Borrower to supplement, modify, amend, extend, renew, accelerate, or otherwise change the time for payment or the terms of the Obligations or any part thereof, including any increase or decrease of the rate(s) of interest thereon;

(ii) agree with any Borrower to supplement, modify, amend or waive, or enter into or give any agreement, approval or consent with respect to, the Obligations or any part thereof or any of the Loan Documents or any additional security or guaranties, or any condition, covenant, default, remedy, right, representation or term thereof or thereunder;

(iii) accept new or additional instruments, documents or agreements in exchange for or relative to any of the Loan Documents or the Obligations or any part thereof;

(iv) accept partial payments on the Obligations;

(v) receive and hold additional security or guaranties for the Obligations or any part thereof;

(vi) release, reconvey, terminate, waive, abandon, subordinate, exchange, substitute, transfer and enforce any security for or guaranties of the Obligations, and apply any security and direct the order or manner of sale thereof as Lender, in its sole and absolute discretion may determine;

(vii) release any Person or any guarantor from any personal liability with respect to the Obligations or any part thereof; or

(viii) settle, release on terms satisfactory to Lender or by operation of applicable laws or otherwise liquidate or enforce any Obligations and any security therefor or guaranty thereof in any manner, consent to the transfer of any such security and bid and purchase at any sale; and consent to the merger, change or any other restructuring or termination of the corporate existence of any Borrower or any other Person, and correspondingly restructure the obligations of such Borrower or other Person, and any such merger, change, restructuring or termination shall not affect the liability of any Borrower or the continuing existence of any lien or security interest hereunder, under any other Loan Document to which any Borrower is a party or the enforceability hereof or thereof with respect to all or any part of the Obligations.

(d) Upon the occurrence of and during the continuance of any Event of Default, Lender may enforce this Agreement and the other Loan Documents independently as to each Borrower and independently of any other remedy or security Lender at any time may have or hold in connection with the Obligations, and in collecting on the Loan it shall not be necessary for Lender to marshal assets in favor of any Borrower or any other Person or to proceed upon or against and/or exhaust any other security or remedy before proceeding to enforce this Agreement and the other Loan Documents. Each Borrower expressly waives any right to require Lender, in connection with Lender's efforts to obtain repayment of the Loan and Other Obligations, to marshal assets in favor of any Borrower or any other Person or to proceed against any other Person or any collateral provided by any other Person, and agrees that Lender may proceed against any Persons and/or collateral in such order as it shall determine in its sole and absolute discretion in connection with Lender's efforts to obtain repayment of the Loan and other Obligations. Lender may file a separate action or actions against each Borrower to enforce the Obligations, whether action is brought or prosecuted with respect to any other security or against any other Person, or whether any other Person is joined in any such action or actions. Each Borrower agrees that Lender, each Borrower and/or any other Person may deal with each other in connection with the Obligations or otherwise, or alter any contracts or agreements now or hereafter existing between any of them, in any manner whatsoever, all without in any way altering or affecting the security of this Agreement or the other Loan Documents. The rights of Lender hereunder and under the other Loan Documents shall be reinstated and revived, and the enforceability of this Agreement and the other Loan Documents shall continue, with respect to any amount at any time paid on account of the Obligations which thereafter shall be required to be restored or returned by Lender as a result of the bankruptcy, insolvency or reorganization of any Borrower or any other Person, or otherwise, all as though such amount had not been paid. The enforceability of this Agreement and the other Loan Documents at all times shall remain effective even though any or all Obligations, or any other security or guaranty therefor, may be or hereafter may become invalid or otherwise unenforceable as against any Borrower or any other Person and whether or not any Borrower or any other Person shall have any personal liability with respect thereto. Each Borrower expressly waives any and all defenses to the enforcement of its Obligations under the Loan Documents now or hereafter arising or asserted by reason of (i) any disability or other defense of any Borrower or any other Person with respect to the Obligations, (ii) the unenforceability or invalidity of any security or guaranty for the Obligations or the lack of perfection or continuing perfection or failure of priority of any security for the Obligations, (iii) the cessation for any cause whatsoever of the liability of any Borrower or any other Person (other than by reason of the full and final payment and performance of all Obligations), (iv) any failure of Lender to marshal assets in favor of any of the Borrowers or any other Person, (v) any failure of Lender to give notice of sale or other disposition of any Collateral for the Obligations to any Borrower or to any other Person or any defect in any notice that may be given in connection with any such sale or disposition, (vi) any failure of Lender to comply in any non-material respect with applicable laws in connection with the sale or other disposition of any collateral or other security for any Obligation, (vii) any act or omission of Lender or others that directly or indirectly results in or aids the discharge or release of any Borrower or of any other Person or of any of the Obligations or any other security or guaranty therefor by operation of law or otherwise, (viii) any law which provides that the obligation of a surety or guarantor must neither be larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety's or guarantor's obligation in proportion to the principal obligation, (ix) any failure of Lender to file or enforce a claim in any bankruptcy or similar proceeding with respect to any Person, (x) the election by Lender, in any bankruptcy or similar proceeding of any Person, of the application or non-application of Section 1111(b)(2) of the Bankruptcy Code, (xi) any extension of credit or the grant of any lien under Section 364 of the Bankruptcy Code except to the extent otherwise provided in this Agreement, (xii) any use of cash collateral under Section 363 of the Bankruptcy Code, (xiii) any agreement or stipulation with respect to the provision of adequate protection in any bankruptcy or similar proceeding of any Person, (xiv) the avoidance of any lien or security interest in favor of Lender securing the Obligations for any reason, or (xv) any bankruptcy or similar proceeding commenced by or against any Person, including any discharge of, or bar or stay against collecting, all or any of the Obligations (or any interest thereon) in or as a result of any such proceeding. Without in any way limiting the foregoing, with respect to the Loan Documents and the Obligations, Borrower: (A) waives all rights and defenses arising out of an election of remedies by Lender even though that election of remedies, such as non-judicial foreclosure with respect to security for Borrowers' obligations, has destroyed each of their rights of subrogation and reimbursement against the other; and (B) waives any right to a fair value hearing or similar proceeding following a non-judicial foreclosure of the Obligations.

(e) Borrowers represent and warrant to Lender that they have established adequate means of obtaining from each other, on a continuing basis, financial and other information pertaining to their respective businesses, operations and condition (financial and otherwise) and their respective properties, and each now is and hereafter will be completely familiar with the businesses, operations and condition (financial and otherwise) of the other and their respective properties. Each Borrower hereby expressly waives and relinquishes any duty on the part of Lender to disclose to such Borrower any matter, fact or thing related to the businesses, operations or condition (financial or otherwise) of the other Borrowers or the other Borrowers' properties, whether now known or hereafter known by Lender during the life of this Agreement. With respect to any of the Obligations, Lender need not inquire into the powers of any Borrower or the officers, employees or other Persons acting or purporting to act on such Borrower's behalf.

(f) Without limiting the foregoing, or anything else contained in this Agreement, each Borrower waives all rights and defenses that it may have because the Obligations are secured by real property. This means, among other things:

(i) Lender may collect on the Obligations from any Borrower without first foreclosing on any real or personal property collateral pledged by the other Borrowers; and

(ii) If Lender foreclose on any real property collateral pledged by any Borrower for the Obligations: (A) the amount of the indebtedness owed by the other Borrowers may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; and (B) Lender may collect from any Borrower even if Lender, by foreclosing on the real property collateral, has destroyed any right any Borrower may have to collect from the other Borrowers.

(iii) This is an unconditional and irrevocable waiver of any rights and defenses each Borrower may have because the Obligations are secured by real property. Each Borrower expressly waives any right to receive notice of any judicial or nonjudicial foreclosure or sale of any real property collateral provided by the other Borrowers to secure the Obligations and failure to receive any such notice shall not impair or affect such Borrower's obligations hereunder or the enforceability of this Agreement or the other Loan Documents or any liens created or granted hereby or thereby.

(iv) Notwithstanding anything to the contrary elsewhere contained herein or in any other Loan Document to which any Borrower is a party, with respect to the Loan and all other Obligations, each Borrower hereby waives with respect to the other Borrowers and their successors and assigns (including any surety) and any other Person any and all rights at law or in equity, to subrogation, to reimbursement, to exoneration, to contribution, to set-off, to any other rights and defenses available to it or to any other rights that could accrue to a surety against a principal, to a guarantor against a maker or obligor, to an accommodation party against the party accommodated, or to a holder or transferee against a maker and which each of them may have or hereafter acquire against the other or any other Person in connection with or as a result of such Borrower's execution, delivery and/or performance of this Agreement or any other Loan Document to which it is a party until the Obligations are paid and performed in full. Each Borrower agrees that it shall not have or assert any such rights against any other Borrower or any other Borrower's successors and assigns or any other Person (including any surety), either directly or as an attempted set-off to any action commenced against such Borrower by any other Borrower (as borrower or in any other capacity) or any other Person until all the Obligations are paid and performed in full. Each Borrower hereby acknowledges and agrees that this waiver is intended to benefit Lender and shall not limit or otherwise affect any Borrower's liability under this Agreement or any other Loan Document to which it is a party, or the enforceability hereof or thereof.

EACH BORROWER WARRANTS AND AGREES THAT EACH OF THE WAIVERS AND CONSENTS SET FORTH HEREIN IS MADE WITH FULL KNOWLEDGE OF ITS SIGNIFICANCE AND CONSEQUENCES, WITH THE UNDERSTANDING THAT EVENTS GIVING RISE TO ANY DEFENSE WAIVED MAY DIMINISH, DESTROY OR OTHERWISE ADVERSELY AFFECT RIGHTS WHICH EACH OTHERWISE MAY HAVE AGAINST THE OTHER, AGAINST LENDER OR OTHERS, OR AGAINST ANY COLLATERAL. IF ANY OF THE WAIVERS OR CONSENTS HEREIN IS DETERMINED TO BE CONTRARY TO ANY APPLICABLE LAW OR PUBLIC POLICY, SUCH WAIVERS AND CONSENTS SHALL BE EFFECTIVE TO THE MAXIMUM EXTENT PERMITTED BY LAW.

[The Remainder of the Page is Intentionally Blank]

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

BORROWER:

Alan Investments III, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of Alan Investments III, LLC

(Signatures continue on following page)

LENDER:

DLP Lending Fund LLC,
a Delaware limited liability company

By: /s/ Donald Wenner
Donald Wenner
President

SCHEDULE 1

Borrower Entities

[to be inserted]

Schedule 1 - 1

SCHEDULE 1.1(a)

Allocated Loan Amounts

Attached.

Schedule 1.1(a) - 1

SCHEDULE 1.1(b)

List of Projects

[to be inserted]

Schedule 1.1(b) - 1

SCHEDULE 4.1.1

Organizational Chart

[to be inserted]

Schedule 4.1.1 - 1

PROMISSORY NOTE
\$2,225,593.30

August 26, 2020

FOR VALUE RECEIVED, the undersigned, jointly and severally (individually and collectively, "**Borrower**"), as maker, having its principal place of business at 16 Berryhill Road, Suite 200 Columbia, SC 29210, hereby unconditionally promises to pay to the order of DLP LENDING FUND LLC, a Delaware limited liability company, as lender, having an address at 95 Highland Avenue, St. Augustine, FL 32095 (together with its successors and assigns, collectively, "**Lender**"), or at such other place as the holder hereof may from time to time designate in writing, the principal sum of TWO MILLION TWO HUNDRED TWENTY FIVE THOUSAND FIVE HUNDRED NINETY THREE and 30/100 Dollars (\$2,225,593.30), or so much thereof as is advanced pursuant to that certain Loan Agreement, dated the date hereof, between Borrower and Lender (as the same may be amended, modified, restated, replaced, supplemented or otherwise modified from time to time, the "**Loan Agreement**"), in lawful money of the United States of America, with interest thereon to be computed from the date of this Promissory Note (as the same may be amended, supplemented, restated, replaced or otherwise modified from time to time, this "**Note**") at the Interest Rate (as defined in the Loan Agreement), and to be paid in accordance with the terms of this Note and the Loan Agreement. All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement.

ARTICLE 1 – PAYMENT TERMS

Borrower agrees to pay the principal sum of this Note and interest on the unpaid principal sum of this Note and all other amounts due under the Loan Agreement and other Loan Documents from time to time outstanding without relief from valuation and appraisal laws at the rates and at the times specified in the Loan Agreement and the outstanding balance of the principal sum of this Note and all accrued and unpaid interest thereon and all other amounts due under the Loan Agreement and other Loan Documents shall be due and payable, in all events, on the Maturity Date. The obligations of each Borrower or party under this Note shall be joint and several.

ARTICLE 2 – DEFAULT AND ACCELERATION

The Debt shall without notice become immediately due and payable at the option of Lender, if any payment required in this Note is not paid (a) on or prior to the date when due, (b) on the Maturity Date or (c) on the happening of any other Event of Default.

ARTICLE 3 – LOAN DOCUMENTS

This Note is secured by the Security Instrument and the other Loan Documents. All of the terms, covenants and conditions contained in the Loan Agreement, the Security Instrument and the other Loan Documents are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. In the event of a conflict or inconsistency between the terms of this Note and the Loan Agreement, the terms and provisions of the Loan Agreement shall govern.

ARTICLE 4 – SAVINGS CLAUSE

Notwithstanding anything to the contrary contained herein, (a) all agreements and communications between Borrower and Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed interest, the interest contracted for, charged or received by Lender shall never exceed the Maximum Legal Rate or amount, (b) in calculating whether any interest exceeds the Maximum Legal Rate, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Borrower to Lender, and (c) if through any contingency or event Lender receives or is deemed to receive interest in excess of the Maximum Legal Rate, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Borrower to Lender.

ARTICLE 5 – NO ORAL CHANGE

This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

ARTICLE 6 – WAIVERS

Borrower and all others who may become liable for the payment of all or any part of the Debt do hereby jointly and severally waive presentment and demand for payment, notice of dishonor, notice of intention to accelerate, notice of acceleration, protest and notice of protest and non-payment and all other notices of any kind. No release of any security for the Debt or extension of time for payment, of this Note or any installment hereof, and no alteration, amendment or waiver of any provision of this Note, the Loan Agreement or the other Loan Documents made by agreement between Lender or any other Person shall release, modify, amend, waive, extend, change, discharge, terminate or affect the liability of Borrower, and any other Person who may become liable for the payment of all or any part of the Debt, under this Note, the Loan Agreement or the other Loan Documents. No notice to or demand on Borrower shall be deemed to be a waiver of the obligation of Borrower or of the right of Lender to take further action without further notice or demand as provided for in this Note, the Loan Agreement or the other Loan Documents. If Borrower is a partnership or limited liability company, the agreements herein contained shall remain in force and be applicable, notwithstanding any changes in the individuals or entities comprising the partnership or limited liability company, and the term "Borrower," as used herein, shall include any alternate or successor partnership or limited liability company, but any predecessor partnership or limited liability company and their partners or members shall not thereby be released from any liability. If Borrower is a corporation, the agreements contained herein shall remain in full force and be applicable notwithstanding any changes in the shareholders comprising, or the officers and directors relating to, the corporation, and the term "Borrower" as used herein, shall include any alternative or successor corporation, but any predecessor corporation shall not be relieved of liability hereunder. Nothing in the foregoing two sentences shall be construed as a consent to, or a waiver of, any prohibition or restriction on transfers of interests in such partnership, limited liability company or corporation, as applicable, which may be set forth in the Loan Agreement, the Security Instrument or any other Loan Document.

ARTICLE 7 – TRANSFER

Upon the transfer of this Note in whole or in part, Borrower hereby waiving notice of or consent to any such transfer, Lender may deliver all the collateral mortgaged, granted, pledged or assigned pursuant to the Loan Documents, or any part thereof, to the transferee who shall thereupon become vested with all the rights (and liabilities arising thereafter) herein or under Legal Requirements of and given to Lender with respect thereto, and Lender shall thereafter forever be relieved and fully discharged from any liability or responsibility in the matter; but Lender shall retain all rights hereby given to it with respect to any liabilities and the collateral not so transferred.

ARTICLE 8 – GOVERNING LAW AND WAIVER OF TRIAL BY JURY

This Note shall be governed in accordance with the terms and provisions of Section 10.3 and Section 10.7 of the Loan Agreement.

ARTICLE 9 – NOTICES

All notices or other written communications hereunder shall be delivered in accordance with Section 10.6 of the Loan Agreement.

ARTICLE 10 TRANSACTION ASSIGNMENT AND REGISTRAR

I. ASSIGNMENTS, PARTICIPATIONS

A. Assignments by Lender, etc. Subject to compliance with this Article 10, any Lender may on or after the date hereof sell and assign, or pledge, hypothecate or encumber, all or any portion of its Loans and all other Obligations with respect thereto, to or with Persons as may be selected by such Lender in its sole and absolute discretion (each an “*Assignee*”) and on terms and conditions satisfactory to in its sole and absolute discretion (which shall include the execution and delivery by the Assignee of assignment documentation in form and substance satisfactory to such assigning Lender). Borrower shall cooperate in all reasonable respects with such Lender in connection with the sale and assignment, or pledge, hypothecation or encumbrance, of all or any portion of such Lender’s interest in the Loan, and shall, in connection therewith, promptly execute and deliver such documents as may be reasonably requested by such Lender; provided, that such cooperation shall not include reimbursement of any Lender or any Assignee for any costs incurred in connection with such assignment or related documents.

A. Effect of Assignment. Pursuant to any assignment or participation of all or any portion of a Lender’s Loan as contemplated in this Article 10 to any Assignee, such Lender (a) may, subject to compliance with this Article 10, transfer its obligations hereunder and under the other Loan Documents (or may transfer the portion thereof corresponding to the transferred portion of the Obligations) and, except as otherwise specified herein, any Assignee shall succeed to the rights and obligations of Lender hereunder in respect of the transferred portion, and (b) shall relinquish its rights and be released from its obligations hereunder and under this Agreement and the other Loan Documents as to the transferred portion of its interest in the Loan.

B. Assignments by Borrower. No Borrower shall have any right to assign its rights or obligations hereunder or under the other Loan Documents or any interest herein or therein without the prior written consent of Lender and each of its successors and assigns, which consent may be withheld by in their sole and absolute discretion. Any attempted or purported assignment in contravention of this Article 10 shall be null and void ab initio.

C. Participations. Subject to compliance with this Article 10, any Lender may at any time, without the consent of, or notice to, Borrower, sell to one or more Persons as may be selected by such Lender in its sole and absolute discretion a participation (each a “*Participant*”) in all or a portion of such Lender’s rights and/or obligations under this Agreement (including all or a portion of the interest in the Loan owing to it); provided that (a) such Lender’s obligations under this Agreement shall remain unchanged, (b) such Lender shall remain solely responsible to the other Parties hereto for the performance of such obligations, (c) Borrower shall continue to deal solely and directly with Lender in connection with such Lender’s rights and obligations under this Agreement and the other Loan Documents, and (d) no Participant shall have any right to approve any amendment or waiver of any provision of any Loan Document, or any consent to any departure by Borrower or any other party therefrom, except to the extent that such amendment, waiver or consent would reduce the principal of, or interest on, the Loan or any fees or other amounts payable hereunder, in each case to the extent subject to such participation, or postpone any date fixed for any payment of any amount hereunder, to the extent subject to such participation.

II. REGISTRATION

A. Registered Obligation. Borrower hereby acknowledges and makes this Note (if any) a registered obligation for United States withholding tax purposes. DLP Lending Fund LLC, as Borrower's non-fiduciary agent for this purpose, shall be the registrar for this Note (if any) (the "**Registrar**") with full power of substitution. In the event the Registrar becomes unable or unwilling to act as registrar under this Agreement, Borrower shall reasonably designate a successor Registrar.

B. Register. The Registrar shall maintain, or cause to be maintained, a register (the "**Register**") for the recordation of the names and addresses of each Lender and any Assignee of all or any portion of such Lender's interest in the Loan and the principal amount outstanding of the Loan (and stated interest accrued but unpaid thereon) (the "**Registered Loan**") held by Lender and each Assignee from time to time. Borrower, each Lender and each Assignee shall treat each Person whose name is recorded in the Register as a "Lender" hereunder for all purposes of this Agreement. The Register shall be available for inspection by Borrower at any reasonable time and from time to time upon reasonable prior notice.

C. Registration of Assignment. A Registered Loan (and the registered Note evidencing the same, if any) may be assigned or sold in whole or in part only by registration of such assignment or sale on the Register (and each registered Note, if any, shall expressly so provide), which registration the Registrar shall effect immediately upon receipt of assignment documentation. Any assignment or sale of all or part of such Registered Loan (and the registered Note evidencing the same, if any) may be effected only by registration of such assignment or sale on the Register, together with the surrender of the registered Note evidencing the same, if any, duly endorsed by (or accompanied by a written instrument of assignment or sale duly executed by) the holder of such registered Note, if any, whereupon, at the request of the designated assignee(s) or transferee(s), one or more new registered Notes in the same aggregate principal amount shall be issued to the designated assignee(s) or transferee(s). Prior to the registration of assignment or sale of any Registered Loan (and the registered Note evidencing the same, if any), Borrower shall treat the Person in whose name such Registered Loan (and the registered Note evidencing the same, if any) is registered as the owner thereof for the purpose of receiving all payments thereon and for all other purposes, notwithstanding notice to the contrary.

D. Participant Register. If any Lender sells a participation or participations in the Loan to a Participant, such Lender shall report such sale of a participation to the Registrar and the Registrar shall, acting solely for this purpose as a non-fiduciary agent of Borrower, maintain a register on which it enters the name and the address of each Participant and the principal amounts of each Participant's participation interest in the Loan (or other rights or obligations) held by it (the "**Participant Register**"). The entries in the Participant Register shall be conclusive, absent manifest error, and each Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation interest as the owner thereof for all purposes notwithstanding any notice to the contrary. In maintaining the Participant Register, the Registrar shall be acting as the agent of Borrower solely for purposes of applicable United States federal income tax law and undertakes no duty, responsibility or obligation to Borrower and, without limitation, in no event shall the Registrar be a fiduciary of Borrower for any purpose, except that the Registrar shall maintain the Participant Register and, upon reasonable prior notice from Borrower, shall make the Participant Register available for inspection by Borrower at any reasonable time and from time to time.

[The Remainder of the Page is Intentionally Blank]

IN WITNESS WHEREOF, Borrower has duly executed this Promissory Note as of the day and year first above written.

BORROWER:

Alan Investments III, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of Alan Investments III, LLC

Signature Page – Promissory Note

LOAN AGREEMENT

Dated as of August 26, 2020

among

THE ENTITIES SET FORTH ON SCHEDULE 1 ATTACHED HERETO,

individually and collectively, as Borrower

and

DLP LENDING FUND LLC,

as Lender

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LOAN AGREEMENT

This LOAN AGREEMENT, dated as of August 26, 2020 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this “*Agreement*”), between DLP LENDING FUND LLC, a Delaware limited liability company (“*Lender*”), having an address at 95 Highland Avenue, St. Augustine, FL 32095, and THE ENTITIES SET FORTH ON SCHEDULE 1 ATTACHED HERETO, jointly and severally (individually and collectively, “*Borrower*”), having its principal place of business at 16 Berryhill Road, Suite 200 Columbia, SC 29210

WITNESSETH:

WHEREAS, Borrower desires to obtain a loan in the original principal amount of TWO MILLION FIVE HUNDRED ONE THOUSAND TWO HUNDRED TWENTY FIVE and 30/100 Dollars (\$2,501,225.00) from Lender pursuant to this Agreement (the “*Loan*”); and

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

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

ARTICLE I

DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1 Definitions. For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

“*Accrued Interest*” shall mean all accrued and unpaid interest on the outstanding principal balance of the Loan from time to time.

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

“*Agreement*” shall mean this Loan Agreement, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“*Allocated Loan Amount*” shall mean, with respect to each Individual Property, the amount set forth on Schedule 1.1(a) hereof.

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

“*Approved Plans*” means complete plans, drawings, specifications and scope of work, that comply with applicable Legal Requirements and have been approved in writing by Lender, for the Project.

“*Assignment of Management Agreement*” shall mean individually and collectively as applicable, an Assignment of Management Agreement and Subordination of Management Fees, dated as of the date hereof or thereafter, as applicable, among Lender, Borrower and Manager, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

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

“Bankruptcy Action” shall mean with respect to any Person (a) such Person filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (b) the filing of an involuntary petition against such Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition against such Person; (c) such Person filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition from any Person; (d) such Person consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, assignee, sequestrator (or similar official), liquidator, or examiner for such Person or any portion of the Property; (e) the filing of a petition against a Person seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code or any other applicable law, (f) under the provisions of any other law for the relief or aid of debtors, an action taken by any court of competent jurisdiction that allows such court to assume custody or Control of a Person or of the whole or any substantial part of its property or assets or (g) such Person making an assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due.

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

“Basic Carrying Costs” shall mean, for any period, the sum of the following costs: (a) Taxes, (b) Other Charges and (c) Insurance Premiums.

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

“Business Day” shall mean any day other than a Saturday, Sunday or any other day on which any of the following institutions is not open for business: (i) banks and savings and loan institutions in New York or Pennsylvania, (ii) the financial institution that maintains any collection account for or on behalf of any Reserve Funds, (iii) the New York Stock Exchange or (iv) the Federal Reserve Bank of New York.

“Casualty” shall have the meaning set forth in Section 6.2 hereof.

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

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

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

“Collateral” shall have the meaning ascribed to such term in the Security Instrument.

“Completion” or **“Complete”** shall mean one hundred percent (100%) completion of construction, renovation, rehabilitation of a Project, as applicable, subject to usual and customary punch list items, in a good and workmanlike manner and in compliance with all Legal Requirements, and in a manner consistent and compliant in all material respects with the applicable Project Documents as approved by Lender, and free and clear of all liens, claims, encumbrances and rights of others, other than Permitted Encumbrances, as evidenced by the issuance of certificates of completion by Lender’s consultant or inspecting architect or engineer, if any, in each case in form and substance acceptable to Lender and, if available or required under applicable Legal Requirements, a final or partial certificate of occupancy and, as applicable, acceptance of completion by the applicable tenant.

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

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

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

“**Debt**” shall mean the Outstanding Principal Balance together with all interest accrued and unpaid thereon and all other sums due to Lender in respect of the Loan under the Note, this Agreement, the Security Instrument or any other Loan Document.

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

“**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 twenty-four percent (24%) per annum.

“**Distribution**” means (i) any dividend, distribution or other payment of any kind on any shares of capital stock or other securities or partnership, membership, economic or other interests, or (ii) any fee, payment, bonus or other remuneration of any kind, or (iii) any repayment of or debt service on loans or other indebtedness other than the Loan.

“**Dollars**” and the sign “\$” shall mean lawful money of the United States of America.

“**Embargoed Person**” shall mean any person, entity or government subject to trade restrictions under U.S. law, including, but not limited to, The USA Patriot Act (including the anti-terrorism provisions thereof), the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701, et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder including those related to Specially Designated Nationals and Specially Designated Global Terrorists, with the result that the investment in Borrower or any Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan made by Lender is in violation of law.

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

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

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

“**ERISA Affiliate**” shall mean each person (as defined in section 3(9) of ERISA) that together with Borrower would be deemed to be a “single employer” within the meaning of Section 414(b), (c), (m) or (o) of the Code.

“**Event of Default**” shall have the meaning set forth in Section 8.1.1(a) hereof.

“**Exchange Act**” shall mean the Securities Exchange Act of 1934, as the same may be amended, modified or replaced, from time to time.

“**Exchange Act Filing**” shall have the meaning set forth in Section 5.1.11(f) hereof.

“**Extended Maturity Date**” shall have the meaning set forth in Section 2.6.1 hereof.

“**Extension Notice**” shall have the meaning set forth in Section 2.6.1 hereof.

“**First Extension Option**” shall have the meaning set forth in Section 2.6.1 hereof.

“**First Payment Date**” shall have the meaning set forth in Section 2.3.2 hereof.

“**Fiscal Year**” shall mean each twelve (12) month period commencing on January 1 and ending on December 31 during each year of the term of the Loan.

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

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

“**Guarantor**” shall mean, jointly and severally, and, as the context requires, individually and collectively, Alexander Szkaradek, Antoni Szkaradek, Michael P. Beys each an individual; US Home Rentals, LLC, a Delaware limited liability company and FTE Networks, Inc., a Delaware corporation.

“**Guaranty**” shall mean that certain Guaranty dated as of the date hereof, from Guarantor in favor of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

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

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

“**In Balance**” means, with respect to each Project, no Deficiency then exists with respect to such Project.

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

“**Indemnified Parties**” shall mean Lender and any of its Affiliates and any of their officers, directors, members, partners, employees, representatives and consultants.

“**Indemnifying Person**” shall mean Borrower and each Guarantor, on a joint and several basis.

“**Individual Property**” shall mean all parcels of land, the Improvements thereon and all personal property owned by the Borrower and encumbered by a Security Instrument, together with all rights pertaining to such property and Improvements, as more particularly described in the granting clauses of each such Security Instrument and referred to therein as the “Property”.

“**Interest Period**” shall mean (i) initially, the period commencing on and including the date of the funding of the Loan and ending on and including the last day of the calendar month of the Closing Date, and (ii) thereafter, for any specified Payment Date including the Maturity Date, the period commencing on and including the first (1st) day of the calendar month prior to such Payment Date and ending on the last day of the calendar month in which such Payment Date occurs.

“**Interest Rate**” shall mean a fixed rate of Eleven and Ninety-Nine Hundredths percent (11.99%) per annum.

“**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 Property by or on behalf of Borrower, and (a) every modification, amendment or other agreement relating to such lease, sublease, subsublease, or other agreement entered into in connection with such lease, sublease, subsublease, or other agreement, and (b) every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto.

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

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

“**Lien**” shall mean any mortgage, deed of trust, deed to secure debt, indemnity deed of trust, lien (statutory or otherwise), pledge, hypothecation, easement, restrictive covenant, preference, assignment, security interest, or any other encumbrance, charge or transfer of, or any agreement to enter into or create any of the foregoing, on or affecting Borrower, the Property, or any portion thereof or any interest therein, or any direct or indirect 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 have the meaning set forth in the recitals hereof.

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

“**Management Agreement**” shall mean any property management agreement or similar agreement entered into by and between Borrower and Manager, pursuant to which Manager is to provide management and other services with respect to the Property, and any successor property management approved by Lender, in writing, in Lender’s sole discretion.

“**Manager**” shall mean, the individual or entity who provides management and other services with respect to the Property pursuant to a Management Agreement.

“**Material Adverse Change**” or “**Materially Adverse Effect**” shall mean that the business, operations, property, assets, liabilities or financial condition of any applicable Person and each of their subsidiaries, taken as a whole, or the ability of any such Person to perform its obligations under the Loan Documents, has changed in a manner which could materially impair the value of Lender’s security for the Loan or prevent timely repayment of the Loan or otherwise prevent the applicable person or entity from timely performing any of its material obligations under the Loan Documents or any Lease, as the case may be, as determined by Lender.

“**Material Agreements**” shall have the meaning set forth in Section 15.20 hereof.

“**Maturity Date**” shall mean the Stated Maturity Date, provided that (a) in the event of the exercise by Borrower of the First Extension Option pursuant to Section 2.6, the Maturity Date shall be the First Extended Maturity Date, and (b) in the event of the exercise by Borrower of the Second Extension Option pursuant to Section 2.6, the Maturity Date shall be the Second Extended Maturity Date, or such earlier date on which the final payment of principal of the Note becomes due and payable as herein or therein provided, whether at the Stated Maturity Date, by declaration of acceleration, or otherwise.

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

“**Multiemployer Plan**” shall mean a multiemployer plan, as defined in Section 4001(a)(3) of ERISA to which Borrower or any ERISA Affiliate is making or accruing an obligation to make contributions or has within any of the preceding three plan years made or accrued an obligation to make contributions.

“**Multiple Employer Plan**” shall mean an employee benefit plan, other than a Multiemployer Plan, to which Borrower or any ERISA Affiliate, and one or more employers other than Borrower or an ERISA Affiliate, is making or accruing an obligation to make contributions or, in the event that any such plan has been terminated, to which Borrower or an ERISA Affiliate made or accrued an obligation to make contributions during any of the five plan years preceding the date of termination of such plan.

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

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

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

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

“**Obligations**” shall mean, collectively, Borrower’s obligations for the payment of the Debt and the performance of the Other Obligations.

“**OFAC**” shall mean the Office of Foreign Asset Control of the Department of the Treasury of the United States of America.

“**Officer’s Certificate**” shall mean a certificate delivered to Lender by Borrower which is signed by an authorized officer of (i) Borrower, or (ii) any direct or indirect general partner or member of Borrower with authority to act on behalf of and bind Borrower.

“**Operations Agreements**” shall mean any covenants, restrictions, easements, declarations or agreements of record relating to the construction, operation or use of the Property, together with all amendments, modifications or supplements thereto.

“**Other Charges**” shall mean all ground rents, maintenance charges, impositions other than Taxes, any “common expenses” or expenses allocated to and required to be paid by Borrower under any Operations Agreements and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property, now or hereafter levied or assessed or imposed against the Property or any part thereof.

“**Other Obligations**” shall mean (a) the performance of all obligations of Borrower contained herein; (b) the performance of each obligation of Borrower or any Guarantor contained in any other Loan Document; (c) the payment of all costs, expenses, legal fees and liabilities incurred by Lender in connection with the enforcement of any of Lender’s rights or remedies under the Loan Documents, or any other instrument, agreement or document which evidences or secures any other Obligations or collateral therefor, whether now in effect or hereafter executed; and (d) the payment, performance, discharge and satisfaction of all other liabilities and obligations of Borrower and/or Guarantor to Lender, whether now existing or hereafter arising, direct or indirect, absolute or contingent, and including, without limitation, each liability and obligation of Borrower and each Guarantor under any one or more of the Loan Documents and any amendment, extension, modification, replacement or recasting of any one or more of the instruments, agreements and documents referred to herein or therein or executed in connection with the transactions contemplated hereby or thereby.

“**Outstanding Principal Balance**” shall mean, as of any date, the outstanding principal balance of the Loan. For the avoidance of doubt, the outstanding principal balance of the Loan shall include Project Reserve Funds and all other funds held by lender or escrow agent.

“**Payment Date**” shall mean, commencing with the First Payment Date, the first (1st) day of each calendar month during the term of the Loan until and including the Maturity Date or, for purposes of making payments hereunder, but not for purposes of calculating Interest Periods, if such day is not a Business Day, the immediately preceding Business Day.

“**Permitted Encumbrances**” shall mean, collectively (a) the Liens and security interests created by the Loan Documents, (b) all Liens, encumbrances and other matters disclosed in “Schedule B-I” of the Title Insurance Policy, (c) Liens, if any, for Taxes imposed by any Governmental Authority which are not yet due or delinquent, and (d) such other title and survey exceptions as Lender has approved or may approve in writing in Lender’s sole discretion, which Permitted Encumbrances in the aggregate do not materially adversely affect the value or use of the Property or Borrower’s ability to repay the Loan.

“**Permitted Transfer**” means any of the following: (a) any Transfer, directly as a result of the death of a natural person, of stock, membership interests, partnership interests or other ownership interests previously held by the decedent in question to the Person or Persons lawfully entitled thereto; (b) any Transfer, directly as a result of the legal incapacity of a natural person, of stock, membership interests, partnership interests or other ownership interests previously held by such natural person to the Person or Persons lawfully entitled thereto; and (c) any Transfer expressly permitted by and completed strictly in accordance with [Section 5.2.10](#).

“**Person**” shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any Governmental Authority, and any fiduciary acting in such capacity on behalf of any of the foregoing.

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

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

“**Prohibited Transaction**” shall mean any action or 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.

“**Project**” shall mean and refer to, individually and collectively as applicable, the rehabilitation improvements to each Individual Property more particularly described on Schedule 1.1(b) hereto, that will be funded, in whole or in part, with disbursements of Project Reserve Funds.

“**Project Budget**” shall mean a budget for construction of each Project approved by Lender in its sole discretion and any modifications thereof approved by Lender in writing in its sole and absolute discretion.

“**Project Contracts**” shall mean each contract or agreement to which Borrower or any agent of Borrower is a party, providing for the provision of construction services (including architect’s or engineering services), labor or material in connection with a Project.

“**Project Costs**” shall mean all costs and expenses of every kind and nature whatsoever to be incurred by Borrower in connection with the Completion of a Project, including such reserves and contingencies as Lender shall reasonably require.

“**Project Documents**” shall mean each of the following as approved by Lender with respect to each Project: the Approved Plans and the applicable Project Contracts.

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

“**Project Reserve Funds**” shall have the meaning set forth in Section 7.4.1 hereof.

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

“**Release Amount**” shall mean, for an Individual Property, the lesser of:

(a) the Debt; or

(b) an amount equal to the Allocated Loan Amount for such Individual Property set forth on Schedule 1.1(a) (as adjusted pursuant to Sections 2.4.1(c) and 2.4.2(a) if applicable) multiplied by one hundred and ten percent (110%).

“**Release Property**” shall have the meaning set forth in Section 2.7 hereof.

“**Rents**” shall mean all rents (including additional rents of any kind and percentage rents), rent equivalents, moneys payable as damages (including payments by reason of the rejection of a Lease in a Bankruptcy Action) or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other payments and consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower or any of their agents or employees from any and all sources arising from or attributable to the Property, and the Improvements, including charges for oil, gas, water, steam, heat, ventilation, air-conditioning, electricity, license fees, maintenance fees, charges for Taxes, operating expenses or other amounts payable to Borrower (or for the account of Borrower), revenues from telephone services, vending and all receivables, customer obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of the Property or rendering of services by Borrower, or any of its agents or employees and proceeds, if any, from business interruption or other loss of income insurance.

“**Reserve Accounts**” shall mean, collectively, the Project Reserve Account, the Net Proceeds Account, and any other escrow or reserve account established pursuant to the Loan Documents

“**Reserve Funds**” shall mean, collectively, the Project Reserve Funds and any other escrow or reserve funds established pursuant to the Loan Documents.

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

“**Retention Amount**” shall have the meaning set forth in Section 6.4(b)(iv) hereof.

“**Second Extension Option**” shall have the meaning set forth in Section 2.6.1 hereof.

“**Securities**” shall have the meaning set forth in Section 9.1 hereof.

“**Security Instrument**” shall mean those certain first priority Deeds of Trust, Security Agreements, Assignment of Leases and Fixture Filings of even date herewith, made by Borrower for the benefit of Lender as security for the Obligations and encumbering the Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Servicer**” shall have the meaning set forth in Section 9.3 hereof.

“**Servicing Agreement**” shall have the meaning set forth in Section 9.3 hereof.

“**Severed Loan Documents**” shall have the meaning set forth in Section 9.2 hereof.

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

“**Stated Maturity Date**” shall mean August 31, 2021.

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

“**Taxes**” shall mean all taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against (a) the Property or part thereof, together with all interest and penalties thereon and (b) against the rents, issues, income or profits thereof or upon the lien or estate hereby created, whether any or all of said taxes, assessments or charges be levied directly or indirectly or as excise taxes or ad valorem real estate or personal property taxes or as income taxes.

“**Tenant**” shall mean the lessee of all or any portion of the Property under a Lease.

“**Title Company**” shall mean the title insurance company which issued the Title Insurance Policy.

“**Title Insurance Policy**” shall mean an ALTA mortgagee title insurance policy in a form acceptable to Lender (or, if the State does not permit the issuance of such ALTA policy, such form as shall be permitted in the State and acceptable to Lender) with respect to the Property and insuring the Lien of any of the Security Instrument encumbering the Property.

“**Transfer**” shall mean means the sale, transfer, hypothecation, pledge, encumbrance, mortgage, conveyance, lease, alienation, assignment, disposition, divestment, or leasing with option to purchase, or assignment of the Property, or any portion thereof or interest therein or in Borrower (whether direct or indirect, legal or equitable including the issuance, sale, assignment, alienation, conveyance, divestment, transfer, disposition, hypothecation, pledge, mortgage or encumbrance of any ownership interest in Borrower or in any entity having an ownership interest in Borrower, whether direct or indirect); or entering into any agreement or contract to do any of the foregoing which is not conditioned on compliance with the terms of the Loan Documents with respect to Transfers, or undertaking, suffering or causing any of the foregoing to occur voluntarily, involuntarily or by operation of law.

“**UCC**” shall mean the Uniform Commercial Code as in effect in the State in which the Property is located, as the same may be amended from time to time *provided, however*, that if by reason of mandatory provisions of law, the perfection or the effect of perfection or non-perfection or priority of the security interest in any item or portion of the collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State in which the Property is located (“**Other UCC State**”), “**UCC**” means the Uniform Commercial Code as in effect in such Other UCC State, as the same may be amended from time to time, for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection or priority.

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

Section 1.2 Principles of Construction. All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All uses of the word “including” shall mean “including, without limitation” unless the context shall indicate otherwise. Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined.

ARTICLE II

GENERAL TERMS

Section 2.1 Loan Commitment; Disbursement to Borrower.

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

2.1.2 Single Disbursement to Borrower. Borrower may request and receive only one disbursement hereunder in respect of the Loan and any amount borrowed and repaid in respect of the Loan may not be re-borrowed. Borrower acknowledges and agrees that the Loan has been fully funded as of the Closing Date.

2.1.3 The Note, Security Instrument and Loan Documents. The Loan shall be evidenced by the Note and secured by the Security Instrument, and the other Loan Documents.

2.1.4 Use of Proceeds. Borrower shall use the proceeds of the Loan to (a) refinance the Property, (b) make deposits of Reserve Funds into the Reserve Accounts on the Closing Date in the amounts provided herein (Borrower hereby authorizing Lender to reserve a portion of the proceeds of the Loan in the amount of the Reserve Funds from disbursement of the proceeds of the Loan on the date hereof), (c) pay costs and expenses incurred in connection with the closing of the Loan, as approved by Lender, and (d) pay for Project Costs.

2.1.5 Upfront Payment. At Closing, Borrower shall pay to Lender an upfront fee (the "*Upfront Payment*") in an amount equal to Seventy-Five Thousand and No/100 Dollars (\$75,000.00), less any portion of the Upfront Fee paid to Lender prior to the Closing. The Upfront Payment is fully earned and non-refundable.

Section 2.2 Interest Rate.

2.2.1 Interest Rate. Subject to Section 2.2.4 hereof, interest on the Outstanding Principal Balance shall accrue from the date of the funding of the Loan to but excluding the Maturity Date at the Interest Rate.

2.2.2 Interest Calculation. With respect to any applicable period, interest on the Outstanding Principal Balance 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 the Interest Rate and a three hundred sixty (360) day year by (c) the average Outstanding Principal Balance in effect for the applicable period as calculated by Lender.

2.2.3 Default Rate. In the event that, and for so long as, any Event of Default shall have occurred and be continuing, the Outstanding Principal Balance and, to the extent permitted by law, all accrued and unpaid interest in respect thereof and any other amounts due pursuant to the Loan Documents, shall accrue interest at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained herein.

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

Section 2.3 Debt Service Payments.

2.3.1 Payments Generally. For purposes of making payments hereunder, but not for purposes of calculating Interest Periods, if the day on which such payment is due is not a Business Day, then amounts due on such date shall be due on the immediately succeeding Business Day. All amounts due pursuant to this Agreement and the other Loan Documents shall be payable without setoff, counterclaim, defense or any other deduction whatsoever.

2.3.2 Monthly Debt Service Payment. On the Closing Date, Borrower shall make a payment of interest only for the period commencing on and including the date of the funding of the Loan through and including September 30, 2020. Beginning on October 1, 2020 (the "*First Payment Date*") and each subsequent Payment Date up to and including the Maturity Date, Borrower shall make a payment to Lender of principal (if any) and interest in an amount equal to the Monthly Debt Service Payment Amount, which payments shall be applied to accrued and unpaid interest.

2.3.3 Payment on Maturity Date. Borrower shall pay to Lender not later than 3:00 P.M., Philadelphia city time, on the Maturity Date the Outstanding Principal Balance, all accrued and unpaid interest and all other amounts due hereunder and under the Note, the Security Instrument and the other Loan Documents.

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

2.3.5 Method and Place of Payment Except as otherwise specifically provided herein, all payments and prepayments under this Agreement and the Note shall be made to Lender not later than 2:00 P.M., Philadelphia city time, on the date when due and shall be made in Dollars in immediately available funds at Lender's office or as otherwise directed by Lender, 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. Any prepayments required to be made hereunder shall be deemed to have been timely made for purposes of this Section 2.3.5.

2.3.6 ACH Payment All payments due and owing under this Agreement or any other Loan Documents shall be made by wire transfer to an account designated by Lender to Borrower from time to time, or at Lender's election, shall be made through automated clearing house ("**ACH**") transfers from the Borrower directly to Lender. In this regard, if Lender elects to receive payments through ACH, shall execute and deliver to Lender an authorization agreement for direct payments whereby, among other things, Lender shall be irrevocably authorized to initiate ACH transfers from the a payment account designated by Borrower to Lender in the amounts required or permitted under this Agreement and all other Loan Documents. Lender's authorization for direct ACH transfers as hereby provided shall be irrevocable and such ACH transfers shall continue until all Obligations are paid in full. For so long as any Obligations remain outstanding, Borrower shall: (i) not revoke Lender's authority to initiate ACH transfers as hereby contemplated; (ii) not change, modify, close or otherwise affect the designated payment account; (iii) deposit all revenues of any nature or kind whatsoever relating to Borrower or its business only into the designated payment account; and (iv) be responsible for all costs, expenses or other fees and charges incurred by Lender as a result of any failed or returned ACH transfers, whether resulting from insufficient sums being available in the designated payment account, or otherwise. Borrower shall undertake any and all required actions, execute any required documents, instruments or agreements, or to otherwise do any other thing required or requested by Lender in order to effectuate the requirements of this Section 2.3.6.

Section 2.4 Prepayments.

2.4.1 Voluntary Prepayments.

(a) Except as otherwise provided in this Section 2.4, Borrower shall not have the right to prepay the Loan in whole or in part. Provided no Event of Default has occurred and is continuing, Borrower may prepay the Loan in whole upon the satisfaction of the following conditions:

(b) Borrower shall provide a written notice to Lender of such prepayment no less than thirty (30) days, and no more than sixty (60) days, prior to the date of such prepayment, specifying the Business Day on which a prepayment of the Debt (the "**Prepayment Date**") is to be made; and

(c) Borrower shall pay to Lender on the Prepayment Date, together with any portion of the Outstanding Principal Balance being repaid:

(i) all accrued and unpaid interest on the amount of the Outstanding Principal Balance being prepaid, which, for the avoidance of doubt, shall include interest on such amount calculated at the applicable Interest Rate through the end of the Interest Period in which such prepayment occurs; and

(ii) without duplication of any of the foregoing, all other sums, then due under the Note, this Agreement, the Security Instrument, and the other Loan Documents.

(d) If for any reason Borrower fails to prepay the Loan on the Prepayment Date (including if such notice is revoked), Borrower shall pay to Lender any actual out-of-pocket losses, costs, damages or expenses (including reasonable attorneys' fees and expenses) incurred by Lender in connection therewith.

(e) Upon receipt by Lender of a voluntary prepayment permitted pursuant to the terms of this Agreement, except for a prepayment made (i) in connection with a release of any Individual Property from the Lien of any of the Security Instruments or (ii) any Casualty/Condemnation Prepayment up to the Allocated Loan Amount of the applicable Individual Property, the Allocated Loan Amount for each Individual Property that is then subject to the Lien of any of the Security Instruments shall be reduced on a pro rata basis by such amount.

2.4.2 Mandatory Prepayments.

(a) 90-Day Principal Payments. On December 1, 2020, Borrower shall make a payment to Lender (the “**Initial 90-Day Principal Payment**”) in an amount equal to five percent (5%) of the Outstanding Principal Balance. Beginning on March 1, 2021 and on each third (3rd) Payment Date thereafter (i.e., on June 1, September 1, December 1 and March 1 of each calendar year), Borrower shall make a payment to Lender (each such payment, and together with the Initial 90-Day Principal Payment, collectively the “**90-Day Principal Payments**”) in an amount (but not less than zero) equal to (a) ten percent (10%) of the Outstanding Principal Balance, less (b) all Release Amounts paid to Lender pursuant to and in accordance with Section 2.7 hereof and applied to pay down the Outstanding Principal Balance but only to the extent such Release Amounts have not been applied to reduce any prior 90-Day Principal Payments. Provided no Event of Default exists, Lender shall apply the 90-Day Principal Payments to the Outstanding Principal Balance.

(b) Net Proceeds Payments. On the Payment Date immediately succeeding the date on which Lender actually receives any Net Proceeds, and if Lender is not required to make such Net Proceeds available to Borrower for a Restoration in accordance with the terms of this Agreement, Borrower shall prepay or authorize Lender to apply the Net Proceeds as a prepayment of the Outstanding Principal Balance in an amount equal to one hundred percent (100%) of such Net Proceeds provided that Borrower shall simultaneously therewith pay to Lender all accrued and unpaid interest on the principal amount being repaid (which, for the avoidance of doubt, shall include interest accruing on such amounts through the last day of the Interest Period in which such repayment occurs). Notwithstanding anything herein to the contrary, so long as no Event of Default has then occurred and is continuing, no or any other prepayment premium, penalty or fee shall be due in connection with any prepayment made pursuant to this Section 2.4.2.

2.4.3 Prepayments After Default. If, during the continuance of an Event of Default, payment of all or any part of the Debt is tendered by Borrower and accepted by Lender or is otherwise recovered by Lender (including through application of any Reserve Funds), such tender or recovery shall be deemed to be a voluntary prepayment by Borrower in violation of the prohibition against prepayment set forth in Section 2.4.1 hereof, and Borrower shall pay, as part of the Debt, all of the interest calculated at the Interest Rate on the amount of principal being prepaid through and including the end of the Interest Period in which such prepayment occurs.

Section 2.5 Release of Property. Except as set forth in Section 2.7 below, no repayment, prepayment 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 of the Security Instruments. Lender shall, upon the written request and at the expense of Borrower, upon payment in full of the Debt in accordance with the terms of this Agreement and the other Loan Documents, release the Lien of the Security Instruments.

Section 2.6 Extension Option(s).

2.6.1 Extension Option(s). Subject to the provisions of this Section 2.6.1, Borrower shall have the option (the “**First Extension Option**”), by irrevocable written notice (the “**First Extension Notice**”) delivered to Lender no later than thirty (30) days prior to the Stated Maturity Date, to extend the Maturity Date to August 31, 2022 (the “**First Extended Maturity Date**”). Borrower’s right to so extend the Maturity Date shall be subject to the satisfaction of the following conditions precedent prior to the effectiveness of any such extension:

(a) (i) no Event of Default shall have occurred and be continuing on the date Borrower delivers the First Extension Notice or the Second Extension Notice, as applicable, and (ii) no Default or Event of Default shall have occurred and be continuing on the Stated Maturity Date and the First Extended Maturity Date, as applicable;

(b) All amounts due and payable by Borrower and any other Person pursuant to this Agreement or the other Loan Documents as of the Stated Maturity Date or the First Maturity Date, as applicable, and all costs and expenses of Lender, including fees and expenses of Lender’s counsel, in connection with the Loan and/or the extension shall have been paid in full;

(c) Borrower shall deliver an Officer's Certificate to Lender (i) certifying that all representations and warranties set forth in this Agreement remain true, correct and complete in all material respects as of the commencement of the applicable Extension Option, and (ii) waiving any claims, counterclaims, rights of rescission, set-offs or defenses, known or unknown, against Lender as of the commencement of the applicable Extension Option.

If Borrower is unable to satisfy all of the foregoing conditions within the applicable time frames for each, Lender shall have no obligation to extend the Stated Maturity Date hereunder.

2.6.2 Extension Documentation. If requested by Lender, Borrower shall execute and deliver an agreement in form and substance reasonably acceptable to Lender commemorating the extension of the Maturity Date upon the exercise of an Extension Option and satisfaction of all applicable conditions to such extension as provided in Section 2.6.1; provided that no such agreement shall materially increase or alter the obligations of Borrower pursuant to the Loan Documents (it being acknowledged that a ratification by Borrower or any Guarantor of its respective obligations under the Loan Documents to which it is a party or a certification by Borrower and/or any Guarantor that its respective representations and warranties set forth in the Loan Documents to which it is a party remain true and correct in all material respects as of the first day of any extension term shall not constitute an increase in Borrower's obligations for such purpose).

2.7 Release of Individual Property. At any time Borrower may obtain the release of an Individual Property from the Lien of the applicable Security Instrument thereon and related Loan Documents (each such Individual Property, a "**Release Property**") and the release of Borrower's obligations under the Loan Documents with respect to such Release Property (other than those expressly stated to survive), upon the satisfaction of each of the following conditions:

(a) Not more than ninety (90) calendar days and not less than ten (10) calendar days prior to the date of the release, Borrower delivers a notice to Lender setting forth (i) the date of the proposed release and (ii) a description of the Release Property that will be subject to the release;

(b) no Event of Default shall be continuing on the date that the Release Property is released from the Lien of the Security Instrument thereon other than as expressly permitted below;

(c) Borrower shall have paid to Lender the applicable Release Amount;

(d) Borrower shall submit to Lender, not less than ten (10) days prior to the date of such release, a release of Lien (and related Loan Documents) for such Release Property for execution by Lender. Such release shall be in a form appropriate in each jurisdiction in which such Release Property is located and that would be reasonably satisfactory to a prudent lender. In addition, Borrower shall provide all documentation Lender reasonably requires to be delivered by Borrower in connection with such release, together with an Officer's Certificate certifying that such documentation (A) will effect such release in accordance with the terms of this Agreement, and (B) will not impair or otherwise adversely affect the Liens, security interests and other rights of Lender under the Loan Documents not being released (or as to the parties to the Loan Documents and Individual Properties subject to the Loan Documents not being released);

(e) Borrower shall have paid or reimbursed Lender for all reasonable out of pocket costs and expenses incurred by Lender (including, without limitation, reasonable attorneys' fees and disbursements) in connection with any release effectuated pursuant to this Section 2.7, and Borrower shall have paid all third-party fees, costs and expenses incurred in connection with any such release, including but not limited to, the payment of all recording charges, filing fees, taxes or other similar expenses incurred in the reasonable judgment of Lender in order to effectuate the release;

(f) [Intentionally omitted]

(g) At Lender's request, Borrower shall deliver to Lender (i) an endorsement to the Title Insurance Policy for the remaining Property (to the extent reasonably available in the State in which the remaining Property is located) insuring the Security Instrument, which endorsement (A) extends the effective date of such Title Insurance Policy for the remaining Property to the effective date of the release, (B) confirms no change in the priority of the Security Instrument on the balance of the Property (exclusive of the Release Parcel); and (C) lists any Permitted Encumbrances; and (ii) at Lender's request, a survey in form and substance reasonably acceptable to Lender of the remaining portion of the Property; and

(h) Notwithstanding the foregoing provisions of this Section 2.7, if the Loan is included in a REMIC Trust, as a condition to such release, Borrower shall have established to Lender's reasonable satisfaction that the loan-to-value ratio of the Loan (expressed as a percentage) based upon valuations obtained by Borrower at its sole cost and expense using (i) an existing appraisal (if such release occurs within twenty-four (24) months of the Closing Date), (ii) a new appraisal or (iii) a broker's price opinion or other written determination of value using a commercially reasonable valuation method (provided, in each case, that such appraisal, opinion or other determination constitutes a commercially reasonable method permitted to a REMIC Trust, and provided, further, that such valuation shall be based solely on the value of real property and shall exclude personal property and going-concern value) does not exceed 125% immediately after the release of the Release Property, no such release will be permitted unless the Borrower pays down the principal balance of the Loan by an amount not less than the greater of (A) the Release Amount or (B) the least of one of the following amounts: (i) if the Individual Property is sold, the net proceeds of an arm's-length sale of the Release Property to an unrelated Person, (ii) the fair market value of the Release Property at the time of the release, or (iii) an amount such that the loan-to-value ratio of the Loan as so determined by Lender after the release is not greater than the loan-to-value ratio of the Loan immediately prior to the release, unless the Lender receives an opinion of counsel that, if (B) is not followed, the Securitization will not fail to maintain its status as a REMIC Trust as a result of the release.

ARTICLE III

[**Intentionally Omitted**]

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

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

4.1.1 Organization. Borrower has been duly organized and is validly existing and in good standing with requisite power and authority to own its properties and to transact the business in which it is now engaged and as contemplated by this Agreement, including, without limitation, the power and authority to do business in the State. Borrower is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations. Borrower possesses all rights, licenses, permits and authorizations, governmental or otherwise, necessary to entitle it to own its properties and to transact the businesses in which it is now engaged. The sole business of Borrower is the ownership, management and operation of the Property. The ownership interests of Borrower are as set forth on the organizational chart attached hereto as Schedule 4.1.1. Borrower (a) has complied in all respects with its articles of organization or limited liability company agreement; (b) has maintained complete books and records and bank accounts separate from those of its Affiliates; and (c) has obeyed all formalities required to maintain its status as, and at all times has held itself out to the public as, a legal entity separate and distinct from any other entity (including, but not limited to, any Affiliate thereof). The signatory hereto has all necessary power, authority and legal right to execute this Agreement, the Note and the other Loan Documents on Borrower's behalf to which Borrower is a party. Guarantor has the necessary power, authority and legal right to execute, deliver and perform its obligations under the Guaranty.

4.1.2 Proceedings. Borrower has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents. This Agreement and the other Loan Documents to which it is a party have been duly executed and delivered by or on behalf of Borrower and constitute the legal, valid and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

4.1.3 No Conflicts. The execution, delivery and performance of this Agreement and the other Loan Documents by Borrower and/or Guarantor, as applicable, will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any Lien, charge or encumbrance (other than pursuant to the Loan Documents) upon any of the property or assets of Borrower pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, partnership agreement, management agreement or other agreement or instrument to which Borrower is a party or by which any of Borrower's property or assets is subject, nor will such action result in any violation of the provisions of any Legal Requirements of any Governmental Authority having jurisdiction over Borrower or any of Borrower's properties or assets, and any consent, approval, authorization, order, registration or qualification of or with any court or any such Governmental Authority required for the execution, delivery and performance by Borrower and/or any Guarantor, as applicable, of this Agreement or any other Loan Documents has been obtained and is in full force and effect.

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

4.1.5 Agreements. Borrower is not a party to any agreement or instrument or subject to any restriction which might materially and adversely affect Borrower or the Property, or Borrower's business, properties or assets, operations or condition, financial or otherwise. Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party or by which Borrower or the Property are bound. Borrower has no material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower is a party or by which Borrower or the Property is otherwise bound, other than as permitted by this Agreement.

4.1.6 Title. Borrower has good, marketable and insurable fee simple title to the real property comprising part of the Property and good title to the balance of the Property, free and clear of all Liens whatsoever except the Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. The Security Instrument, when properly recorded in the appropriate records, together with any UCC-1 financing statements required to be filed in connection therewith, will create (a) a valid, perfected first priority lien on the Property, subject only to Permitted Encumbrances and the Liens created by the Loan Documents, and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty, solely to the extent such security interests can be perfected by the filing of a UCC-1 financing statement, all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. There are no claims for payment for work, labor or materials affecting the Property which are or may become a Lien prior to, or of equal priority with, the Liens created by the Loan Documents.

4.1.7 Solvency. Borrower has (a) not entered into the transaction contemplated by this Agreement or executed the Note, this Agreement or any other Loan Documents with the actual intent to hinder, delay or defraud any creditor and (b) received reasonably equivalent value in exchange for its obligations under such Loan Documents. After 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 liabilities (including contingent liabilities, if any), 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 incur debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debts 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 the obligations of Borrower). No Bankruptcy Action exists against Borrower and Borrower has never been a debtor party in a Bankruptcy Action. No Bankruptcy Action exists against any Guarantor, and neither Borrower nor has any Guarantor has ever been a debtor party in a Bankruptcy Action. Neither Borrower nor any Guarantor is contemplating either a Bankruptcy Action or the liquidation of all or a major portion of Borrower's or Guarantor's respective assets or properties, and Borrower has no knowledge of any Person contemplating the filing of any petition against Borrower or any Guarantor.

4.1.8 Full and Accurate Disclosure. No statement of fact made by or on behalf of Borrower in this Agreement or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no material information that has not been disclosed to Lender which adversely affects, nor as far as Borrower can reasonably foresee, might materially adversely affect, the Property or the business, operations or condition (financial or otherwise) of Borrower or any Guarantor.

4.1.9 No Plan Assets. Borrower is not an “employee benefit plan,” as defined in Section 3(3) of ERISA, subject to Title I of ERISA or Section 4975 of the Code, and none of the assets of Borrower constitutes or will constitute “plan assets” of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101. Compliance by Borrower and each Guarantor with the provisions hereof will not involve any Prohibited Transaction. Neither Guarantor nor Borrower has any pension, profit sharing, stock option, insurance or other arrangement or plan for employees covered by Title IV of ERISA, and no “Reportable Event” as defined in ERISA has occurred and is now continuing with respect to any such plan. The performance by Borrower of its obligations under the Loan Documents and Borrower’s conducting of its operations do not violate any provisions of ERISA. In addition, (a) Borrower is not a “governmental plan” within the meaning of Section 3(32) of ERISA, (b) transactions by or with Borrower are not subject to any state statute or regulation regulating investments of, or fiduciary obligations with respect to, governmental plans within the meaning of Section 2(32) of ERISA which is similar to the provisions of Section 406 of ERISA or Section 4975 of the Code currently in effect, which prohibit or otherwise restrict the transactions contemplated by this Agreement, and (c) none of Borrower, Guarantor or ERISA Affiliate is at the date hereof, or has been at any time within the two years preceding the date hereof, an employer required to contribute to any Multiemployer Plan or Multiple Employer Plan, or a “contributing sponsor” (as such term is defined in Section 4001 of ERISA) in any Multiemployer Plan or Multiple Employer Plan; and none of Borrower, Guarantor or any ERISA Affiliate has any contingent liability with respect to any post-retirement “welfare benefit plan” (as such term is defined in ERISA) except as disclosed to Lender in writing.

4.1.10 Compliance. Borrower and the Property (including the use thereof) comply in all material respects with all applicable Legal Requirements, including, without limitation, building and zoning ordinances and codes. Borrower is not in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority, including, without limitation, any order of a bankruptcy court or plan approved thereby. There has not been committed by Borrower (or any other Person), any act or omission affording any Governmental Authority the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower’s obligations under any of the Loan Documents. Neither the Improvements, if any, as constructed, nor the use of the Property or any contemplated accessory uses, will violate (a) any Legal Requirements (including subdivision, zoning, building, environmental protection and wetland protection Legal Requirements), or (b) any building permits, restrictions or records, or agreements affecting the Property or any part thereof. Neither the zoning authorizations, approvals or variances nor any other right to construct or to use the Property is to any extent dependent upon or related to any real estate other than the Property.

4.1.11 Financial Information. All financial data with respect to the Property and Guarantor, including, without limitation, the statements of cash flow and income and operating expense, that have been delivered to Lender in connection with the Loan (a) are true, complete and correct in all material respects, (b) fairly and accurately represent the financial condition of the Property and each Guarantor as of the date of such reports, and (c) to the extent prepared or audited by an independent certified public accounting firm, have been prepared in accordance with GAAP (or such other accounting basis acceptable to Lender) throughout the periods covered, except as disclosed therein. Except for Permitted Encumbrances, Borrower does not have any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and reasonably likely to have a Materially Adverse Effect on the Property or the Project. Since the date of such financial statements, there has been no Material Adverse Change (or any other material change) in the financial condition, operation or business of Borrower or any Guarantor from that set forth in said financial statements.

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

4.1.13 Federal Reserve Regulations. No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulation U or any other Regulations of such Board of Governors, or for any purposes prohibited by any Legal Requirements or by the terms and conditions of this Agreement or the other Loan Documents.

4.1.14 Public Access. The Property has rights of access to public ways and, upon construction thereon, will be served by water, sewer, sanitary sewer and storm drain facilities adequate to service the Property for its intended uses. All public utilities necessary or convenient to the full use and enjoyment of the Property are located either in the public right-of-way abutting the Property (which will be connected so as to serve the Property without passing over other property) or in recorded easements serving the Property and such easements are set forth in and insured by the Title Insurance Policy. All roads necessary for the use of the Property for its current purpose have been completed and dedicated to public use and accepted by all Governmental Authorities. There is no on-site sewage disposal system and, upon construction thereon, the Property will be served by a sewer system maintained by a Governmental Authority or property owners association.

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

4.1.16 Separate Lots. The Property is comprised of multiple parcels more particularly described on Schedule 1.1(a) which each constitute(s) a separate tax lot or lots and does not constitute a portion of any other tax lot not a part of the Property.

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

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

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

4.1.20 Insurance. Borrower has obtained and has delivered to Lender evidence of all Policies, with all premiums paid thereunder, reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. No claims have been made or are currently pending, outstanding or otherwise remain unsatisfied under any such Policies, and neither Borrower nor any other Person, has done, by act or omission, anything which would impair the coverage of any such Policies.

4.1.21 Flood Zone. None of the Improvements on the Property are located in an area as identified by the Federal Emergency Management Agency as an area having special flood hazards or, if so located, the flood insurance required pursuant to Section 6.1(a)(i) hereof is in full force and effect with respect to the Property.

4.1.22 Leases. Any and all Leases at the Property (a) provide for rental rates comparable to existing local market rates, contain reasonable market rate terms and do not contain any terms which would materially adversely affect Lender's rights under the Loan Documents, (b) are for a lease term not exceeding one year, including all extensions, (c) are with individual, residential, non-commercial tenants, and (d) have been entered into by Borrower in its ordinary course of business. No Person has any possessory interest in the Property or right to occupy the same other than tenants pursuant to the express terms of the Leases.

4.1.23 Survey. Each Survey for the Property delivered to Lender is accurate.

4.1.24 Principal Place of Business; State of Organization. Borrower's principal place of business as of the date hereof is the address set forth in the introductory paragraph of this Agreement. Borrower is organized under the laws of the State of Delaware and is qualified to do business in the all states in which Borrower is required to be qualified.

4.1.25 Filing and Recording Taxes. All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the transfer of the Property to Borrower have been paid. All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Security Instrument, have been paid or are being paid simultaneously with the disbursement of the proceeds of the Loan to Borrower.

4.1.26 [Intentionally omitted].

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

4.1.28 No Change in Facts or Circumstances; Disclosure. All information submitted by Borrower and any Guarantor to Lender including, but not limited to, all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan or in satisfaction of the terms thereof and all statements of fact made by Borrower and each Guarantor in this Agreement or in any other Loan Document, are accurate, complete and correct in all material respects. There has been no Material Adverse Change in any condition, fact, circumstance or event that would make any such information inaccurate, incomplete or otherwise misleading in any material respect or that otherwise materially and adversely affects or might materially and adversely affect the use, operation or value of the Property or the business operations and/or the financial condition of Borrower or any Guarantor. Borrower and each Guarantor have disclosed to Lender all material facts and have not failed to disclose any material fact that could cause any information provided to Lender or representation or warranty made herein to be materially misleading.

4.1.29 Investment Company Act. Borrower is not (a) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; (b) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 2005, as amended; or (c) subject to any other Federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

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

4.1.31 Filing of Returns. Borrower and each Guarantor have filed all Federal income tax returns and all other material tax returns, domestic and foreign, or extensions, as the case may be, required to be filed by it and have paid all material taxes and assessments payable by it that have become due, other than those not yet delinquent and except for those being contested in good faith. Borrower and each Guarantor have each established on its books such charges, accruals and reserves in respect of taxes, assessments, fees and other governmental charges for all fiscal periods as are required by sound accounting principles consistently applied. Neither Borrower, nor any Guarantor knows of any proposed assessment for additional Federal, foreign or state taxes for any period, or of any basis therefor, that, individually or in the aggregate, taking into account such charges, accruals and reserves in respect thereof as such Person has made, could reasonably be expected to cause a Material Adverse Change with respect to Borrower, Guarantor or the Property.

4.1.32 Operations Agreements. Each Operations Agreement is in full force and effect and neither Borrower nor, to the best of Borrower's knowledge, any other party to any such Operations Agreement, 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.

Section 4.2 Survival of Representations. Borrower agrees that all of the representations and warranties of Borrower set forth in Section 4.1 and elsewhere in this Agreement and in the other Loan Documents shall survive for so long as any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

ARTICLE V

BORROWER COVENANTS

Section 5.1 Affirmative Covenants. From the date hereof and until payment and performance in full of all Obligations, Borrower hereby covenants and agrees with Lender that:

5.1.1 Existence; Compliance with Legal Requirements. Borrower shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, licenses, permits and franchises and comply with all Legal Requirements applicable to Borrower and the Property. There shall never be committed by Borrower, and Borrower shall not permit any other Person in occupancy of or involved with the operation or use of the Property to commit, any act or omission affording any Governmental Authority the right of forfeiture against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. Borrower shall not commit, permit or suffer to exist any act or omission affording such right of forfeiture. Borrower shall at all times maintain, preserve and protect all franchises and trade names, preserve all the remainder of its property used or useful in the conduct of its business, and shall keep the Property in good working order and repair, and from time to time make, or cause to be made, all reasonably necessary repairs, renewals, replacements, betterments and improvements thereto, all as more fully provided in the Security Instrument. Borrower shall keep the Property insured at all times by financially sound and reputable insurers, to such extent and against such risks, and maintain liability and such other insurance, as is more fully provided in this Agreement. After prior notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding promptly initiated and conducted in good faith and with due diligence, the validity of any Legal Requirement, the applicability of any Legal Requirement to Borrower or the Property or any alleged violation of any Legal Requirement, provided, that: (a) no Default or Event of Default has occurred and is continuing; (b) such proceeding shall be permitted under, and be conducted in accordance with, the provisions of any instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances; (c) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (d) Borrower shall, upon final determination thereof, promptly comply with any such Legal Requirement determined to be valid or applicable or cure any violation of any Legal Requirement; (e) such proceeding shall suspend the enforcement of the contested Legal Requirement against Borrower and the Property; and (f) Borrower shall furnish such security as may be required in the proceeding, or as may be requested by Lender, to insure compliance with such Legal Requirement, together with all interest and penalties payable in connection therewith. Lender may apply any such security, as necessary to cause compliance with such Legal Requirement at any time when, in the judgment of Lender, the validity, applicability or violation of such Legal Requirement is finally established or the Property (or any part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost.

5.1.2 Taxes and Other Charges. Borrower shall pay, all Taxes and Other Charges now or hereafter levied or assessed or imposed against the Property, or any part thereof, as the same become due and payable. Borrower will deliver or cause to be delivered to Lender receipts for payment or other evidence satisfactory to Lender that the Taxes and Other Charges have been so paid or are not then delinquent no later than ten (10) days prior to the date on which the Taxes and/or Other Charges would otherwise be delinquent if not paid. Borrower shall not suffer and shall promptly pay or cause to be paid and discharged any Lien or charge whatsoever which may be or become a Lien or charge against the Property, and shall promptly pay or cause to be paid all utility services provided to the Property. After prior notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Taxes or Other Charges, provided that (a) no Default or Event of Default has occurred and remains uncured; (b) such proceeding shall be permitted under, and be conducted in accordance with, the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances; (c) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (d) Borrower shall promptly upon final determination thereof pay or cause to be paid the amount of any such Taxes or Other Charges, together with all costs, interest and penalties which may be payable in connection therewith; (e) such proceeding shall suspend the collection of such contested Taxes or Other Charges from the Property (except that if such Taxes or Other Charges must be paid sooner in order to avoid being delinquent, then Borrower shall pay or cause the same to be paid prior to delinquency, and upon making such payment or causing such payment to be made prior to delinquency Borrower may continue such contest); and (f) Borrower shall furnish such security as may be required in the proceeding, or as may be requested by Lender, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon. Lender may pay over any such cash deposit or part thereof held by Lender to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established or the Property (or part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost or there shall be any danger of the Lien of the Security Instrument being primed by any related Lien.

5.1.3 Litigation. Borrower shall give prompt notice to Lender of any litigation or proceedings by any Governmental Authority pending or threatened against Borrower and/or any Guarantor which might have a Materially Adverse Effect on Borrower's or any Guarantor's condition (financial or otherwise) or business or the Property.

5.1.4 Access to Property. Borrower shall permit agents, representatives and employees of Lender to inspect the Property or any part thereof at reasonable hours upon reasonable advance notice (which may be given verbally).

5.1.5 Notice of Default. Borrower shall promptly advise Lender of any Material Adverse Change in Borrower's or any Guarantor's condition, financial or otherwise, or of the occurrence of any Default or Event of Default of which Borrower has knowledge.

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

5.1.7 Perform Loan Documents. Borrower shall observe, perform and satisfy all the terms, provisions, covenants and conditions of, and shall pay when due all costs, fees and expenses to the extent required under the Loan Documents. Payment of the costs and expenses associated with any of the foregoing shall be in accordance with the terms and provisions of this Agreement, including, without limitation, the provisions of Section 10.13 hereof.

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

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

(a) furnish to Lender all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements, and each and every other document, certificate, agreement and instrument required to be furnished by Borrower pursuant to the terms of the Loan Documents or which are reasonably requested by Lender in connection therewith;

(b) authorize the filing or recording of or execute and deliver to Lender such documents, instruments, certificates, assignments, financing statements 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 under the Loan Documents, as Lender may reasonably require; and

(c) 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. In furtherance hereof, Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of protecting, perfecting, preserving and realizing upon the interests granted pursuant to this Agreement and to effect the intent hereof, all as fully and effectually as Borrower might or could do; and Borrower hereby ratifies all that Lender shall lawfully do or cause to be done by virtue hereof. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other applicable Loan Document, and in the case of the Note, receipt of an indemnity from Lender, Borrower will issue, in lieu thereof, a replacement Note or other applicable Loan Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Loan Document in the same principal amount thereof and otherwise of like tenor. Borrower hereby authorizes Lender to file an "all assets" financing statement with respect to the Collateral.

5.1.10 Mortgage Taxes. Borrower shall simultaneously with the disbursement of the proceeds of the Loan pay all state, county and municipal recording and all other taxes imposed upon the execution and recordation of the Security Instrument.

5.1.11 Financial Reporting.

(a) Borrower will keep and maintain or will cause to be kept and maintained on a Fiscal Year basis in accordance with GAAP (or such other accounting basis selected by Borrower and reasonably acceptable to Lender), proper and accurate books, records and accounts reflecting all of the financial affairs of Borrower and all items of income and expense in connection with the operation of the Property. Lender shall have the right from time to time at all times during normal business hours upon reasonable notice (which may be verbal) to examine such books, records and accounts at the office of Borrower or any other Person maintaining such books, records and accounts and to make such copies or extracts thereof as Lender shall desire. After the occurrence of an Event of Default, Borrower shall pay any costs and expenses incurred by Lender to examine Borrower's accounting records with respect to the Property, as Lender shall reasonably determine to be necessary or appropriate in the protection of Lender's interest. Upon Lender's request, Borrower shall furnish to Lender such other information reasonably necessary and sufficient to fairly represent the financial condition of Borrower and the Property.

(b) Borrower will furnish to Lender annually, within one hundred twenty (120) days following the end of each Fiscal Year of Borrower, and within thirty (30) days of the end of each calendar quarter, a complete copy of Borrower's and each Guarantor's annual (or quarterly, as applicable) financial statements certified as true and correct by the party providing such statements (and, for the annual of statements of Borrower prepared by an independent certified public accountant acceptable to Lender) in accordance with GAAP (or such other accounting basis acceptable to Lender, consistently applied) covering the Property for such Fiscal Year (or calendar quarter) and containing statements of profit and loss for Borrower, Guarantor and the Property and a balance sheet for Borrower and each Guarantor. Such statements of Borrower shall set forth the financial condition and the results of operations for the Property for such Fiscal Year (or calendar quarter), and an Officer's Certificate certifying that each annual financial statement of Borrower fairly presents the financial condition and the results of operations of Borrower and the Property subject to such reporting, and that such financial statements have been prepared in accordance with GAAP and as of the date thereof whether 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. Guarantor's annual financial statements shall be accompanied by a certificate executed and delivered by Guarantor (if such Guarantor is a natural person) or an officer or other duly authorized representative of Guarantor (if such Guarantor is an entity) certifying that each annual financial statement presents fairly the financial condition and the results of operations of Guarantor being reported upon and that such financial statements have been prepared in accordance with GAAP (or such other accounting basis acceptable to Lender, and, for Guarantors, Lender hereby approves sound and prudent cash based financial statements consistently applied) and as of the date thereof whether there exists an event or circumstance which constitutes a Default or Event of Default by Guarantor under the Loan Documents, and if such Default or an 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 shall also provide such monthly reports and statements as are reasonably required by Lender within twenty (20) days after the end of each calendar month.

(d) Borrower shall furnish to Lender, within twenty (20) days after request (or as soon thereafter as may be reasonably possible), such further detailed information with respect to the operation of the Property and the financial affairs of Borrower as may be reasonably requested by Lender.

(e) Any reports, statements or other information required to be delivered under this Agreement shall be delivered in electronic form (or such other form as required by Lender) and Borrower agrees that Lender may disclose information regarding the Property and Borrower that is provided to Lender pursuant to this Section 5.1.11 in connection with any Lender Assignment to such parties requesting such information in connection with such Lender Assignment.

(f) Without limitation on other requirements of this Agreement, Lender may require, at Borrower's cost and expense, quarterly valuations of the Loan and Borrower shall cooperate in connection therewith; provided, however, so long as no Event of Default exists, Borrower shall not be required to reimburse Lender more than \$2,500 for the cost of any such quarterly valuation.

5.1.12 Business and Operations. Borrower will continue to engage in the businesses presently conducted by it as and to the extent the same are necessary for the ownership, maintenance, management and operation of the 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, maintenance, management and operation of the Property or ownership and management of an interest in Borrower (as applicable).

5.1.13 Title to the Property. Borrower will warrant and defend (a) the title to the Property and every part thereof, subject only to Permitted Encumbrances, and (b) the validity and priority of the Lien of each of the Security Instruments, subject only to Permitted Encumbrances, in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any losses, costs, damages or expenses (including attorneys' fees and expenses, and court costs) incurred by Lender if an interest in the Property, other than as permitted hereunder, is claimed by another Person.

5.1.14 Costs of Enforcement. In the event (a) that the Security Instrument is foreclosed in whole or in part or that the Security Instrument is put into the hands of an attorney for collection, suit, action or foreclosure, (b) of the foreclosure of any mortgage prior to or subsequent to the Security Instrument in which proceeding Lender is made a party, or (c) of a Bankruptcy Action related to Borrower or an assignment by Borrower for the benefit of its creditors, Borrower, on behalf of itself and its successors and assigns, agrees that it/they shall be chargeable with and shall pay all costs of collection and defense, including attorneys' fees and expenses, and court costs, incurred by Lender or Borrower in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, together with all required service or use taxes.

5.1.15 Estoppel Statement.

(a) After request by Lender, Borrower shall within ten (10) days furnish Lender with a statement, duly acknowledged and certified, setting forth (i) the original principal amount of the Loan, (ii) the Outstanding Principal Balance, (iii) the Interest Rate of the Loan, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the performance of the Obligations, if any, and (vi) that the Note, this Agreement, the Security Instrument and the other Loan Documents are valid, legal and binding obligations of Borrower and have not been modified or if modified, giving particulars of such modification.

(b) Borrower shall use commercially reasonable efforts to deliver to Lender upon request, tenant estoppel certificates from each commercial Tenant, if any, in form and substance reasonably satisfactory to Lender provided that Borrower shall not be required to deliver such certificates more frequently than once in any calendar year.

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

5.1.17 Performance by Borrower. Borrower shall in a timely manner observe, perform and fulfill each and every covenant, term and provision of each Loan Document executed and delivered by, or applicable to, Borrower and shall not enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Loan Document without the prior written consent of Lender.

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

5.1.19 Leasing Matters. Any Lease executed after the date hereof (and any amendment or termination thereof) shall require the prior written consent of Lender, which consent shall be in Lender's sole and absolute discretion. Borrower shall furnish Lender with true, correct and complete executed copies of all Leases, amendments thereof and any related agreements. Without limitation, and as applicable, Lender shall be deemed to have approved all renewals of Leases and all proposed Leases so long as the same (a) provide for rental rates comparable to existing local market rates, contain reasonable market rate terms and do not contain any terms which would materially adversely affect Lender's rights under the Loan Documents, (b) are for a lease term not exceeding one year, including all extensions, (c) are with individual, residential, non-commercial tenants, and (d) have been entered into by Borrower in its ordinary course of business. All Leases executed after the date hereof shall provide that they are subordinate to the Security Instrument and the Liens created thereby and that the Tenant thereunder agrees to attorn to Lender or any other purchaser of the Property at a sale by foreclosure (or deed in lieu thereof) or power of sale. Borrower (a) shall observe and perform the obligations imposed upon the lessor under the Leases in a commercially reasonable manner; (b) shall enforce the terms, covenants and conditions contained in the Leases upon the part of the Tenant thereunder to be observed or performed in a commercially reasonable manner and in a manner which does not impair the value of the Property involved, provided that in no event shall Borrower terminate or accept the surrender of any Lease by a Tenant unless by reason of a Tenant default and then only in a commercially reasonable manner to preserve and protect the Property; *provided, however*, that no such termination or surrender of any Lease will be permitted without the prior written consent of Lender or unless such termination or surrender is specifically provided for in the Lease; (c) shall not collect any of the Rents more than one (1) month in advance (other than security deposits required pursuant to such Lease); (d) shall not execute any other assignment of the lessor's interest in the Leases or the Rents (except to Lender pursuant to the Loan Documents); (e) shall not alter, modify or change the terms of the Leases; and (f) shall execute and deliver at the request of Lender all such further assurances, confirmations and assignments in connection with the Leases as Lender shall from time to time reasonably require. Lender shall have the right to require each new Tenant to execute and deliver to Lender a subordination, non-disturbance of possession and attornment agreement in form, content and manner of execution reasonably acceptable to Lender.

5.1.20 Operation of Property.

(a) Borrower shall: (i) promptly perform and/or observe in all material respects all of the covenants and agreements required to be performed and observed by it under any of the Operations Agreements and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Lender of any material default under any Operations Agreement of which it is aware; and (iii) enforce the performance and observance of all of the covenants and agreements required to be performed and/or observed by any party (other than Borrower) under the Operations Agreements, in a commercially reasonable manner.

(b) All Material Agreements shall be subject to the prior review and approval, not to be unreasonably withheld, of Lender. As used herein, “**Material Agreements**” shall mean each contract and agreement relating to the ownership, management, development, use, operation, leasing, maintenance, repair or improvement of the Property, as to which either (a) there is an obligation of Borrower to pay more than \$50,000 in the aggregate, or (b) the term thereof extends beyond one year (unless cancelable on thirty (30) days or less notice without requiring the payment of termination fees or payments of any kind).

5.1.21 Changes in the Legal Requirements Regarding Taxation. If any Legal Requirement or other law, order, requirement or regulation of any Governmental Authority is enacted or adopted or amended after the date the Loan is funded which imposes a tax, either directly or indirectly, on the Obligations or Lender’s interest in the Property, Borrower must pay or cause to be paid such tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of such tax or interest and penalties by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then in any such event, Lender may, by written notice to Borrower of not less than ninety (90) days, declare the Obligations immediately due and payable.

5.1.22 No Credits on Account of the Obligations. Borrower will not claim or demand or be entitled to any credit or credits on account of the Obligations for any payment of Taxes assessed against the Property and no deduction shall otherwise be made or claimed from the assessed value of the Property for real estate tax purposes because of the Loan Documents or the Obligations. If Legal Requirements or other laws, orders, requirements or regulations require such claim, credit or deduction, Lender may, by written notice to Borrower of not less than ninety (90) days, declare the Obligations immediately due and payable.

5.1.23 Personal Property. Borrower shall cause all of its personal property, fixtures, attachments and equipment delivered upon, attached to or used in connection with the operation of the Property to always be located at the Property and shall be kept free and clear of all Liens, encumbrances and security interests, except Permitted Encumbrances.

5.1.24 Rehabilitation Project.

(a) Project Documents. Borrower shall diligently and continuously undertake to Complete each Project in conformance with the applicable Project Documents. Borrower will perform its obligations under the Project Documents and will enforce the terms of the Project Documents.

(b) Permits. Borrower shall pay for and obtain or cause to be paid for and obtained all permits, licenses and approvals required by applicable Legal Requirements with regard to each Project.

(c) Lender Consultants. At Borrower’s expense, Lender shall have the right to employ an inspecting architect, engineer or consultant with respect to a Project. Borrower shall pay immediately upon demand the fees and expenses of any architect, engineer or consultant employed by Lender for the purpose of reviewing plans or otherwise engaged by Lender with respect to any Project.

(d) Performance by Lender. Upon the occurrence of an Event of Default, Lender shall have the right, without limitation of Lender’s other remedies under the Loan Documents, upon written notice to Borrower, either before or after accelerating the Debt or commencing foreclosure, either directly or through Lender’s agents and contractors to (i) enter onto the Property, (ii) complete the Project, (iii) modify the Project as Lender deems necessary, (iv) hire or replace any contractor or vendor retained by Borrower in connection with the Project as Lender deems necessary, (v) expend such sums as Lender determines necessary to Complete such Project and (vi) purchase any insurance coverage deemed appropriate by Lender in its sole discretion relating to the Project or Lender’s exercise of its rights under this Section 5.1.24(d). Borrower hereby waives any right to contest any such costs or expenses incurred by Lender in the exercise of Lender’s rights under this Section 5.1.24(d), and such costs and expenses (a) shall be added to the Debt, (b) shall be secured by the Security Instrument, (c) shall accrue interest at the Default Rate, and (d) shall be payable to Lender upon demand. Borrower hereby agrees to indemnify and hold harmless Lender for any such costs or expenses. Borrower hereby grants Lender an irrevocable power of attorney, coupled with an interest, to exercise Lender’s rights under this Section 5.1.24(d). Lender does not have and shall not have any obligation to complete any Project.

Section 5.2 Negative Covenants. From the date hereof until payment and performance in full of the Obligations, Borrower covenants and agrees with Lender that it will not do, directly or indirectly, any of the following:

5.2.1 Operation of Property. Borrower shall not, without Lender's prior consent (which consent shall be in Lender's sole and absolute discretion): enter into, amend, surrender, terminate, waive any rights under or cancel any Management Agreement.

5.2.3 Liens. Borrower shall not create, incur, assume, permit or suffer to exist any Lien on any portion of the Property or permit any such action to be taken, except for Permitted Encumbrances.

5.2.4 Dissolution. Borrower shall not (a) engage in any dissolution, liquidation, consolidation or merger with or into any other business entity, (b) engage in any business activity not related to the ownership and operation of the Property, (c) transfer, lease or sell, in one transaction or any combination of transactions, the assets or all or substantially all of the properties or assets of Borrower except to the extent permitted by the Loan Documents, or (d) modify, amend, waive or terminate its organizational documents or its qualification and good standing in any jurisdiction.

5.2.5 Change in Business. Borrower shall not enter into any line of business other than the ownership and operation of the Property, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business.

5.2.6 Debt Cancellation. Borrower shall not cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to Borrower by any Person, except for adequate consideration and in the ordinary course of Borrower's business.

5.2.7 Zoning. Borrower shall not initiate or consent to any zoning reclassification of any portion of the Property or seek any variance under any existing zoning ordinance, or use or permit the use of any portion of the 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, in each case, without the prior written consent of Lender.

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

5.2.9 Principal Place of Business and Organization. Borrower shall not change its principal place of business set forth in the introductory paragraph of this Agreement without first giving Lender at least thirty (30) days prior notice. Borrower shall not change the place of its organization as set forth in Section 4.1.24 without the consent of Lender, which consent shall not be unreasonably withheld. Upon Lender's request, Borrower shall execute and deliver additional financing statements, security agreements and other instruments which may be necessary to effectively evidence or perfect Lender's security interest in the Property as a result of such change of principal place of business or place of organization.

5.2.10 ERISA.

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

(b) Borrower further covenants and agrees to 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 (1) Borrower is not an “employee benefit plan” as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a “governmental plan” within the meaning of Section 3(32) of ERISA; (2) Borrower is not subject to any state statute regulating investments of, or fiduciary obligations with respect to, governmental plans; and (3) one or more of the following circumstances is true: (i) Equity interests in Borrower are publicly offered securities, within the meaning of 29 C.F.R. §2510.3-101(b)(2); (ii) Less than twenty-five percent (25%) of each outstanding class of equity interests in Borrower is held by “benefit plan investors” within the meaning of 29 C.F.R. §2510.3-101(f)(2); (iii) Borrower qualifies as an “operating company” or a “real estate operating company” within the meaning of 29 C.F.R. §2510.3-101(c) or (e); or (iv) The Loan meets the requirements of PTE 95-60, 90-1, 84-14 or similar exemption.

5.2.11 Transfers; Assumptions.

(a) Without the prior written consent of Lender and except to the extent otherwise set forth in this Section 5.2.10, no Transfer may occur without the prior written consent of Lender in its sole and absolute discretion.

(b) Notwithstanding the provisions of this Section 5.2.10, Lender’s consent shall not be required in connection with a Permitted Transfer; *provided, however*, that all of the following conditions are satisfied with respect to any such Transfers: (1) Borrower shall provide Lender thirty (30) days’ prior written notice thereof (other than a Permitted Transfer for which notice shall occur within thirty (30) days’ after such Transfer), (2) such Transfer shall not result in a change in the day-to-day management and operations of the Property, (3) [intentionally omitted], and (4) such Transfer shall not result in a breach of Section 5.2.9 or 5.2.13. Notwithstanding anything set forth herein, and without limiting any restrictions on any Transfer set forth herein, if any proposed transfer of any direct or indirect interests in Borrower would otherwise be a Permitted Transfer or not require Lender’s consent but shall result in any Person owning more than twenty percent (20%) of the direct or indirect legal, beneficial or economic interest in Borrower (other than Persons currently owning more than twenty percent (20%) of the direct or indirect legal, beneficial or economic interest in Borrower), approval of such transferee is required so that Lender can confirm the transfer and transferee complies with all legal and regulatory requirements and Lender policies relating to such transfer and transferee, including, without limitation, the Patriot Act and federal regulations issued with respect thereto and to ensure compliance with the representations in Section 4.1.30 hereof.

(c) Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon a Transfer without Lender’s consent. This provision shall apply to every Transfer regardless of whether voluntary or not, or whether or not Lender has consented to any previous Transfer.

5.2.12 Operations Agreements. Borrower shall not, without the prior written consent of Lender, modify any of the Operations Agreements.

5.2.13 [Intentionally omitted].

5.2.14 Embargoed Person; OFAC. As of the date hereof and at all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower and any Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person; (b) no Embargoed Person has any interest of any nature whatsoever in Borrower or any Guarantor, as applicable, with the result that the investment in Borrower or any Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of Borrower or any Guarantor, as applicable, have been derived from any unlawful activity with the result that the investment in Borrower or any Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law. Neither Borrower nor any Guarantor is (or will be) a Person with whom Lender is restricted from doing business under OFAC regulations (including those persons named on OFAC’s Specially Designated and Blocked Persons list) or under any statute, executive order (including the September 24, 2001 #13224 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and shall not engage in any dealings or transactions or otherwise be associated with such Persons. In addition, to help the US Government fight the funding of terrorism and money laundering activities, The USA Patriot Act (and the regulations thereunder) requires Lender to obtain, verify and record information that identifies its customers. Borrower shall provide Lender with any additional information that Lender deems necessary from time to time in order to ensure compliance with The USA Patriot Act and any other applicable Legal Requirements concerning money laundering and similar activities.

5.2.15 Distributions. Borrower shall not make or permit any Distribution.

5.2.16 Affiliate Agreements. Borrower shall not enter into any agreement with an Affiliate without Lender's prior written consent, in its sole and absolute discretion.

ARTICLE VI

INSURANCE; CASUALTY; CONDEMNATION

Section 6.1 Insurance.

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

(i) comprehensive "All Risk" or "Special Form" insurance on the Improvements and the Personal Property (A) in an amount equal to one hundred percent (100%) of the "**Full Replacement Cost**," which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations) with no depreciation; (B) containing an agreed amount endorsement with respect to the Improvements and Personal Property waiving all co-insurance provisions, or confirmation that co-insurance does not apply; and (C) providing for no deductible in excess of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) for all such insurance coverage. In addition, Borrower shall obtain: (x) if any portion of the Improvements is currently, or at any time in the future, located in a Federally designated "special flood hazard area", flood hazard insurance in an amount equal to the Outstanding Principal Balance or such other amount as Lender shall require; (y) earthquake insurance in amounts and in form and substance satisfactory to Lender in the event the Property is located in an area with a high degree of seismic activity; and (z) windstorm insurance in amounts and in form and substance satisfactory to Lender in the event such windstorm coverage is excluded under the Special Form Coverage, provided that the insurance pursuant to clauses (x), (y) and (z) hereof shall be on terms consistent with the comprehensive "All Risk" or "Special Form" insurance policy required under this subsection (i);

(ii) commercial general liability insurance, including a broad form comprehensive general liability endorsement and coverage against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, such insurance (A) to be on the so-called "occurrence" form with a combined limit of not less than Two Million and No/100 Dollars (\$2,000,000.00) in the aggregate and One Million and No/100 Dollars (\$1,000,000.00) per occurrence (and, if on a blanket policy, containing an "Aggregate Per Location" endorsement); (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 insured contracts; and (5) contractual liability covering the indemnities contained in Article VIII of the Security Instrument to the extent the same is available;

(iii) if there are tenants of the Property, rental loss insurance (A) with loss payable to Lender; (B) covering all risks required to be covered by the insurance provided for in subsection (i) above; and (C) for loss of Rents in an amount equal to one hundred percent (100%) of the projected rents from ` for a period of twelve (12) months from the date of such Casualty (assuming such Casualty had not occurred) and notwithstanding that the policy may expire prior to or at the end of such period. The amount of such loss of Rents or business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on Borrower's reasonable estimate of income to be derived from the Property for the succeeding twelve (12) month period. Notwithstanding anything to the contrary set forth herein, all proceeds payable to Lender pursuant to this subsection shall be held by Lender and shall be applied at Lender's sole discretion to (I) the Debt, or (II) operating expenses for the Property approved by Lender in its sole discretion; *provided, however*, that nothing herein contained shall be deemed to relieve Borrower of its obligations to pay the Debt, 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 forms do not otherwise apply, (A) owner's and contractor's 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 Property, and (4) with an agreed amount endorsement waiving co-insurance provision, or confirmation that co-insurance does not apply;

(v) if Borrower ever has any direct employees, worker's compensation insurance with respect to any employees of Borrower, as required by any Governmental Authority or Legal Requirement;

(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) if Borrower ever has any direct employees or owns any motor vehicles, motor vehicle liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence of not less than One Million and No/100 Dollars (\$1,000,000.00);

(viii) umbrella or excess liability insurance in an amount not less than Five Million and No/100 Dollars (\$5,000,000.00) per occurrence on terms consistent with the commercial general liability insurance policy required under subsection (ii) above;

(ix) if the Property is or becomes a legal "non-conforming" use or structure, ordinance or law coverage to compensate for the value of the undamaged portion of the Property, the cost of demolition and increased cost of construction in amounts as requested by Lender;

(x) if applicable, the commercial property, business income, general liability and umbrella or excess liability insurance required under Sections 6.1(a)(i), (ii), (iii) and (viii) above shall cover perils of terrorism and acts of terrorism and Borrower shall maintain commercial property and business income insurance for loss resulting from perils and acts of terrorism on terms (including amounts) consistent with those required under Sections 6.1(a)(i), (ii), (iii) and (viii) above at all times during the term of the Loan so long as Lender determines that either (I) prudent owners of real estate comparable to the Property are maintaining same or (II) prudent institutional lenders (including, without limitation, investment banks) to such owners are requiring that such owners maintain such insurance; and

(xi) upon sixty (60) days' notice, such other insurance and in such amounts as Lender from time to time may request against such other insurable hazards which at the time are commonly insured against for properties similar to the Property located in or around the region in which the Property is located.

(b) All insurance provided for in Section 6.1(a) shall be obtained under valid and enforceable policies (collectively, the "**Policies**" or in the singular, the "**Policy**"), and shall be subject to the approval of Lender as to insurance companies, amounts, deductibles, loss payees and insureds. The Policies shall be issued by financially sound and responsible insurance companies authorized to do business in the State and having a claims paying ability rating of "A-" or better by S&P or "A-X" or better by AM Best or "A3" or better by Moody's Investor Service, Inc.. Prior to the expiration dates of the Policies theretofore furnished to Lender, certificates of insurance evidencing the renewal or successor Policies accompanied by evidence satisfactory to Lender of payment of the premiums due thereunder (the "**Insurance Premiums**"), shall be delivered by Borrower to Lender. Borrower shall supply an original or certified copy of the original policy within ten (10) days of request by Lender, provided that the policy is available.

(c) Any blanket insurance Policy shall specifically allocate to the 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 Property in compliance with the provisions of Section 6.1(a).

(d) All Policies provided for or contemplated by Section 6.1(a), except for the Policy referenced in Section 6.1(a)(v), shall name Borrower as the insured and Lender (and its successors and assigns) as Mortgagee, Loss Payee and Additional Insured, as its interests may appear, and in the case of property damage, boiler and machinery, flood and earthquake insurance, shall contain a standard non-contributing mortgagee clause in favor of Lender providing that the loss thereunder shall be payable to Lender.

(e) All Policies provided for in this Section 6.1 shall contain clauses or endorsements to the effect that: (i) no act or negligence of Borrower, or anyone acting for Borrower, or of any tenant or other occupant, or failure to comply with the provisions of any Policy, which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Lender is concerned; (ii) the Policies on which Lender is listed as a Mortgagee shall not be canceled without at least thirty (30) days' notice to Lender; (iii) Lender shall not be liable for any Insurance Premiums thereon or subject to any assessments thereunder; and (iv) shall contain a waiver of subrogation in favor of Lender.

(f) If at any time Lender is not in receipt of written evidence that all Policies are in full force and effect, Lender shall have the right, without notice to Borrower, to take such action as Lender deems necessary to protect its interest in the Property, including, without limitation, the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate. 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 Security Instrument and shall bear interest at the Default Rate. Provided no Event of Default exists, Lender shall promptly provide Borrower with notice of any such premiums incurred.

(g) Without limitation, Borrower shall continue to maintain all insurance that is in effect as of the date hereof.

Section 6.2 Casualty. If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (a "**Casualty**"), Borrower shall (a) give prompt notice of such damage to Lender, and (b) promptly commence and diligently prosecute the completion of Restoration so that the Property resembles, as nearly as possible, the condition the Property was in immediately prior to such Casualty, with such alterations as may be reasonably approved by Lender and otherwise in accordance with Section 6.4. Borrower shall pay all costs of such Restoration whether or not such costs are covered by insurance. Lender may, but shall not be obligated to make proof of loss if not made promptly by Borrower. In addition, Lender may participate in (and have approval rights over) any settlement discussions with any insurance companies with respect to any Casualty in which the Net Proceeds or the costs of completing Restoration are equal to or greater than five percent (5%) of the applicable Allocated Loan Amount for the affected Individual Property and Borrower shall deliver to Lender all instruments required by Lender to permit such participation.

Section 6.3 Condemnation. Borrower shall promptly give Lender notice of the actual or threatened commencement of any proceeding in respect of Condemnation, and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings, and Borrower shall from time to time deliver to Lender all instruments requested by 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 taking by any public or quasi-public authority through Condemnation or otherwise (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to perform the Obligations at the time and in the manner provided in this Agreement and the other Loan Documents and the Outstanding Principal Balance shall not be reduced until any Award shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Obligations. Lender shall not be limited to the interest paid on the Award by the applicable 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 Property or any portion thereof is taken by a Governmental Authority, Borrower shall promptly commence and diligently prosecute Restoration and otherwise comply with the provisions of Section 6.4. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the Award, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the Award, or a portion thereof sufficient to pay the Debt.

Section 6.4 Restoration. If there are any Improvements on the Property, the following provisions shall apply:

(a) If the Net Proceeds and the costs of completing Restoration shall each be less than five percent (5%) of the applicable Allocated Loan Amount for the affected Individual Property, then the Net Proceeds will be disbursed by Lender to Borrower upon receipt, provided that all of the conditions set forth in Section 6.4(b)(i) are met and Borrower delivers to Lender a written undertaking to expeditiously commence and to satisfactorily complete with due diligence Restoration in accordance with the terms of this Agreement.

(b) If the Net Proceeds are equal to or greater than five percent (5%) of the applicable Allocated Loan Amount for the affected Individual Property, but less than twenty percent (20%) of the applicable Allocated Loan Amount for the affected Individual Property, or the costs of completing Restoration are equal to or greater than five percent (5%) of the applicable Allocated Loan Amount for the affected Individual Property, but less than twenty percent (20%) of the applicable Allocated Loan Amount for the affected Individual Property, then, in either case, the Net Proceeds will be held by Lender and Lender shall make the Net Proceeds available for Restoration in accordance with the provisions of this Section 6.4. The term "**Net Proceeds**" for purposes of this Section 6.4 shall mean: (i) the net amount of all insurance proceeds received by Lender pursuant to Section 6.1 (a)(i), (iv), (vi), (ix) and (x) as a result of such damage or destruction, after deduction of Lender's reasonable costs and expenses (including, but not limited to, reasonable counsel costs and fees), if any, in collecting same ("**Insurance Proceeds**"), or (ii) the net amount of the Award, after deduction of Lender's reasonable costs and expenses (including, but not limited to, reasonable counsel costs and fees), if any, in collecting same ("**Condemnation Proceeds**"), whichever the case may be.

(i) The Net Proceeds shall be made available to Borrower for Restoration upon the determination of Lender in its sole discretion that the following conditions are met:

(A) no Event of Default shall have occurred and be continuing;

(B) in the event the Net Proceeds are Condemnation Proceeds, 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 Property, and no portion of the Improvements is located on such land;

(C) if applicable, Leases demising in the aggregate a percentage amount equal to or greater than ninety percent (90%) of the total rentable space in the affected Individual Property which has been demised under executed and delivered Leases in effect as of the date of the occurrence of such Casualty or Condemnation, whichever the case may be, shall remain in full force and effect during and after the completion of Restoration, notwithstanding the occurrence of any such Casualty or Condemnation, whichever the case may be, and will make all necessary repairs and restorations thereto at their sole cost and expense;

(D) Borrower shall commence Restoration as soon as reasonably practicable (but in no event later than sixty (60) days after such Casualty or Condemnation, whichever the case may be, occurs) and shall diligently pursue the same to satisfactory completion;

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

(F) Lender shall be satisfied that Restoration will be completed on or before the earliest to occur of (1) four (4) months prior to the Maturity Date, (2) the earliest date required for such completion under the terms of any Leases, (3) such time as may be required under all applicable Legal Requirements in order to repair and restore the affected Individual Property to the condition it was in immediately prior to such Casualty or to as nearly as possible the condition it was in immediately prior to such Condemnation, as applicable, or (4) the expiration of the insurance coverage referred to in Section 6.1(a)(iii);

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

(H) Restoration shall be done and completed by Borrower in an expeditious and diligent fashion and in compliance with all applicable Legal Requirements;

(I) such Casualty or Condemnation, as applicable, does not result in the loss of access to the affected Individual Property or the related Improvements;

(J) Borrower shall deliver, or cause to be delivered, to Lender a signed detailed budget approved in writing by Borrower's architect or engineer stating the entire cost of completing Restoration, which budget shall be acceptable to Lender; and

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

(ii) The Net Proceeds shall be paid directly to Lender for deposit in an interest-bearing account (the "**Net Proceeds Account**") and, until disbursed in accordance with the provisions of this Section 6.4(b), shall constitute additional security for the Debt and the Other Obligations. The Net Proceeds shall be disbursed by Lender to, or as directed by, Borrower from time to time during the course of Restoration, upon receipt of evidence satisfactory to Lender that (A) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with Restoration have been paid for in full, and (B) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Property which have not either been fully bonded to the satisfaction of Lender and discharged of record or in the alternative fully insured to the satisfaction of Lender by the Title Company.

(iii) All plans and specifications required in connection with Restoration shall be subject to prior review and acceptance in all respects by Lender in its discretion and by an independent consulting engineer selected by Lender (the "**Casualty Consultant**"). Lender shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with Restoration. The identity of the contractor engaged in Restoration, as well as the contracts under which it has been engaged, shall be subject to prior review and acceptance by Lender in its discretion and the Casualty Consultant. All costs and expenses incurred by Lender in connection with making the Net Proceeds available for Restoration including, without limitation, reasonable counsel fees and disbursements and the Casualty Consultant's fees, shall be paid by Borrower.

(iv) In no event shall 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 Restoration, as certified by the Casualty Consultant, minus the Retention Amount. The term "**Retention Amount**" shall mean, as to each contractor, subcontractor or materialman engaged in Restoration, an amount equal to ten percent (10%) of the costs actually incurred for work in place as part of Restoration, as certified by the Casualty Consultant, until Restoration has been completed. The Retention Amount shall in no event, and notwithstanding anything to the contrary set forth above in this Section 6.4(b), be less than the amount actually held back by Borrower from contractors, subcontractors and materialmen engaged in Restoration. The Retention Amount shall not be released until the Casualty Consultant certifies to Lender that Restoration has been completed in accordance with the provisions of this Section 6.4(b) and that all approvals necessary for the re-occupancy and use of the Property have been obtained from all appropriate Governmental Authorities, and Lender receives evidence satisfactory to Lender that the costs of Restoration have been paid in full or will be paid in full out of the Retention Amount; *provided, however*, that Lender will release the portion of the Retention Amount being held with respect to any contractor, subcontractor or materialman engaged in 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 Security Instrument and evidence of payment of any premium payable for such endorsement. If required by Lender, the release of any such portion of the Retention Amount shall be approved by the surety company, if any, which has issued a payment or performance bond with respect to the contractor, subcontractor or materialman.

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

(vi) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the 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 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 Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this Section 6.4(b) shall constitute additional security for the Debt and the Other Obligations.

(vii) The excess, if any, of the Net Proceeds and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Lender after the Casualty Consultant certifies to Lender that Restoration has been completed in accordance with the provisions of this Section 6.4(b), and the receipt by Lender of evidence satisfactory to Lender that all costs incurred in connection with Restoration have been paid in full, shall be remitted by Lender to Borrower, provided no Event of Default shall have occurred and shall be continuing.

(c) If Net Proceeds are (i) equal to or greater than twenty percent (20%) of the applicable Allocated Loan Amount for the affected Individual Property, (ii) not required to be made available for Restoration (due to Borrower's inability to satisfy the conditions set forth in Section 6.4(b)(i) or otherwise), or (iii) not to be returned to Borrower as excess Net Proceeds pursuant to Section 6.4(b)(vii), then in any such event all Net Proceeds may be retained and applied by Lender in accordance with Section 2.4.2 hereof toward reduction of the Outstanding Principal Balance whether or not then due and payable in such order, priority and proportions as Lender in its sole discretion shall deem proper, or, in the sole discretion of Lender, the same may be paid, either in whole or in part, to Borrower for such purposes as Lender shall approve, in its sole discretion. No prepayment charge shall be payable by Borrower by reason of a Casualty or Condemnation.

(d) In the event of foreclosure of the Security Instrument, or other transfer of title to the Property in extinguishment in whole or in part of the Debt all right, title and interest of Borrower in and to the Policies that are not blanket Policies then in force concerning the Property and all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure or Lender or other transferee in the event of such other transfer of title.

ARTICLE VII

RESERVE FUNDS

Section 7.1 [Intentionally Omitted]

Section 7.2 [Intentionally Omitted]

Section 7.3 Reserve Funds, Generally.

(a) Borrower (i) hereby grants to Lender a first priority security interest in all of the Reserve Funds and any and all monies now or hereafter deposited in each Reserve Account as additional security for payment and performance of the Obligations and (ii) will take all actions necessary to maintain in favor of Lender a perfected first priority security interest in the Reserve Funds, including, without limitation, filing or authorizing Lender to file UCC-1 financing statements and continuations thereof. Until expended or applied in accordance herewith, the Reserve Funds shall constitute additional security for the Obligations.

(b) Upon the occurrence of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in any or all of the Reserve Funds to the reduction of the Outstanding Principal Balance or the payment of any other amounts then due and owing under this Agreement or any of the other Loan Documents in any order in its sole discretion.

(c) Borrower shall not further pledge, assign or grant any security interest in any Reserve Fund or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 financing statements, except those naming Lender as the secured party, to be filed with respect thereto.

(d) The Reserve Funds shall not constitute trust funds and may be commingled with other monies held by Lender. No earnings or interest on the Reserve Funds shall be payable to Borrower. Lender shall not have any obligation to keep or maintain such Reserve Funds or any funds deposited therein in interest bearing accounts.

(e) Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys' fees and expenses) (collectively, "**Claims**") arising from or in any way connected with the Reserve Funds or the performance of the obligations for which the Reserve Funds were established; provided, however, Borrower shall not be obligated to indemnify Lender for any such Claims to the extent arising from Lender's gross negligence or willful misconduct. Borrower shall assign to Lender all rights and claims Borrower may have against all Persons supplying labor, materials or other services which are to be paid from or secured by the Reserve Funds; *provided, however*, that Lender may not pursue any such right or claim unless an Event of Default has occurred and remains uncured.

(f) Upon payment in full of the Debt in accordance with the terms of this Agreement and the other Loan Documents, Lender shall return any remaining Reserve Funds to Borrower.

Section 7.4 Project Reserve Funds.

7.4.1 Deposits of Project Reserve Funds. Borrower shall deposit with Lender (which amount may be net funded by Lender but deemed disbursed) an amount equal to \$210,000.00 on the Closing Date for the purpose of funding Project Costs, which amounts shall be deposited into a Reserve Account (the "**Project Reserve Account**"). Amounts deposited from time to time into the Project Reserve Account pursuant to this Section 7.4.1 are referred to herein as the "**Project Reserve Funds**". The allocated amount of Project Reserve Funds with respect to each Individual Property, are set forth on Schedule 1.1(a) hereof.

7.4.2 Disbursement of Project Reserve Funds.

(a) Disbursements Upon Completion of Project at Individual Property. Each disbursement of Project Reserve Funds shall be released subject to satisfaction of the following conditions, any of which may be waived by Lender in Lender's sole discretion:

(i) Any request for a disbursement of Project Reserve Funds shall be submitted to Lender on Lender's form of request, not less than ten (10) Business Days prior to the anticipated date for the disbursement of Project Reserve Funds, and shall be accompanied by all evidence required to be approved by Lender as a condition to such disbursement, including an Officer's Certificate stating that said conditions are then satisfied;

(ii) Disbursement of Project Reserve Funds shall only be used for the portion of the Project at the Individual Property to which the request for disbursement of Project Reserve Funds relates shall not exceed the amount of the Project Reserve Funds allocated to the applicable Individual Property;

(iii) Borrower shall be in compliance with the terms and conditions of Section 5.1.24;

(iv) The relevant portion of the Project at an Individual Property to which the requested disbursement of Project Reserve Funds relates shall be Complete;

(v) At Lender's election, Lender shall have received certificates of Lender's consultant, any Architect and the General Contractor that the such portion of the Project is Complete;

(vi) Evidence reasonably acceptable to Lender, together with all other appropriate certificates and other documentation that Lender may require from, and as are customarily issued by, applicable Governmental Authorities, evidencing (i) compliance with all applicable Legal Requirements, including final certificates of occupancy and all consents or approvals required from third parties or any Governmental Authority have been obtained, and (ii) that no petitions, actions or proceedings are pending or threatened which could reasonably be expected to materially alter or declare invalid any approvals, consents, permits or certificates for or relating to the Project, or any part thereof;

(vii) Final unconditional waivers of lien (and evidence of payment) from all other contractors, subcontractors and materialmen as required by Lender or the Title Company; and

(viii) Lender shall have received notices of title continuation showing that since the date of the last disbursement of Project Reserve Funds there has been no adverse change in the state of title to the applicable Individual Property not approved by Lender, and, to the extent that any new improvements have been constructed at the applicable Individual Property outside their footprint on the date of the most recent survey, no adverse survey exceptions with respect to the Property not theretofore approved by Lender, and Lender may, in its discretion, require an endorsement to the Title Insurance Policy, in form and content satisfactory to Lender, insuring, in effect, that such disbursement has the same priority as the initial disbursement of the Loan and that there has been no Material Adverse Change in the condition of title to the Property since the issuance of the Title Insurance Policy;

(ix) No actions, suits or proceedings shall then be pending nor have any been threatened against or which affect Borrower, any Guarantor or the Property which could have a Material Adverse Change on Borrower, Guarantor or the Property;

(x) No Default or Event of Default shall have occurred and be continuing and all representations and warranties set forth in this Agreement and in any other Loan Document shall be materially true and correct as of the date of Borrower's request for the disbursement, the date the disbursement is made, and immediately following the making of the disbursement;

(xi) No substantial unrepaired damage to any portion of the Property by fire or other casualty which is not in Lender's judgment adequately covered by collectible proceeds of insurance; and

(xii) Borrower shall have paid all of the costs and expenses incurred by Lender, including reasonable attorneys' fees and expenses, all title premiums and other title and survey charges in connection with the proposed disbursement and a nonrefundable rehabilitation management in the amount of Two Hundred Ninety-Five and No/100 Dollars (\$295.00) payable to Lender with respect to each disbursement of Project Reserve Funds.

(b) Disbursement by Wire Transfer. Disbursement of Project Reserve Funds shall be made at Lender's election by wire transfer, at Borrower's cost and expense, or by check. Lender may, in its election, make payments of the Project Reserve Funds directly to the contractor, subcontractor, or material supplier. Lender may also require, at Lender's election, in its sole discretion, at Borrower's sole cost and expense, that disbursements of Project Reserve Funds be made through (a) the Title Company pursuant to a construction loan disbursement escrow agreement or (b) a vending control company. Any such arrangement with the Title Company or a vending control company shall be in Lender's sole discretion

(c) Waiver of Conditions. Lender may from time to time, in its sole discretion, waive any condition or conditions to any disbursement of Project Reserve Funds without such waiver or series of waivers constituting a course of dealing or any amendment to this Agreement or a prohibition against subsequent imposition of such condition or conditions or a waiver of a default.

ARTICLE VIII

DEFAULTS

Section 8.1 Event of Default

8.1.1 Generally

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

(i) if any portion of the Debt is not paid when due (including, without limitation, the failure of Borrower to repay the entire outstanding principal balance of the Note in full on the Maturity Date);

(ii) if any of the Taxes or Other Charges are not paid when the same are due and payable without payment of a penalty;

(iii) if the Policies are not kept in full force and effect, or if copies of the certificates evidencing the Policies (or certified copies of the Policies if requested by Lender) are not delivered to Lender within thirty (30) days after written request therefor;

(iv) the occurrence of any Transfer (except a Permitted Transfer) or other encumbrance with respect to any portion of the Property or the Collateral in violation of the provisions of this Agreement or Article 6 of the Security Instrument, or the occurrence of any Transfer in violation of the provisions of Section 5.2.10 hereof;

(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 or deemed remade;

(vi) if Borrower or any Guarantor shall (i) make an assignment for the benefit of creditors or (ii) generally not be paying its debts as they become due;

(vii) if a receiver, liquidator or trustee shall be appointed for Borrower, or if Borrower shall be adjudicated bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to Federal bankruptcy law, or any similar Federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower, or if any proceeding for the dissolution or liquidation of Borrower shall be instituted; *provided, however*, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, upon the same not being discharged, stayed or dismissed within ninety (90) days;

(viii) if a receiver, liquidator or trustee shall be appointed for any Guarantor or if any 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 Guarantor, or if any proceeding for the dissolution or liquidation of any Guarantor shall be instituted; *provided, however*, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by the applicable Guarantor, upon the same not being discharged, stayed or dismissed within ninety (90) days; provided, further, however, it shall be at Lender’s option to determine whether any of the foregoing shall be an Event of Default;

(ix) 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;

(x) if Borrower breaches any representation, warranty or covenant contained in Section 4.1.26 or any of its respective negative covenants contained in Section 5.2;

(xi) with respect to any term, covenant or provision set forth herein which specifically contains a notice requirement or grace period, if Borrower shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

(xii) Borrower breaches any covenant contained in Section 5.1.11 and such breach continues for ten (10) days after notice from Lender;

(xiii) 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 (xi) 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 thirty (30) day period and provided further that Borrower shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed ninety (90) days; or

(xiv) if there shall be a Default under any of the other Loan Documents beyond any applicable cure periods contained in such documents, whether as to Borrower, Guarantor or the Property.

(b) Upon the occurrence of an Event of Default (other than an Event of Default described in clauses (vi), (vii) or (viii) above) and at any time thereafter, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, Lender may take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, without limitation, declaring the Obligations to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents against Borrower and the Property, including, without limitation, all rights or remedies available at law or in equity; 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.

8.1.2 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 (including, without limitation, Lender may accelerate the Loan and declare the Outstanding Principal Balance and all other amounts under the Loan Documents due and payable and institute foreclosure proceedings), 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. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by 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. To the fullest extent permitted by law or equity, without limiting the generality of the foregoing, Borrower agrees that if an Event of Default is continuing (i) Lender shall not be 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 Property and the Security Instrument has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Debt or the Obligations have been paid in full.

(b) With respect to Borrower and the Property, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to the Property for the satisfaction of any of the Debt in any preference or priority, and Lender may seek satisfaction out of the 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 Security Instrument in any manner and for any amounts secured by the Security Instrument then due and payable as determined by Lender in its sole discretion, including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose the Security Instrument to recover such delinquent payments or (ii) in the event Lender elects to accelerate less than the entire Outstanding Principal Balance, Lender may foreclose the Security Instrument to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by the Security Instrument as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to the Security Instrument to secure payment of sums secured by the Security Instrument and not previously recovered.

(c) Lender shall have the right from time to time to partially foreclose the Security Instrument in any manner and for any amounts secured by the Security Instrument then due and payable as determined by Lender in its sole discretion, including the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and/or interest, Lender may foreclose the Security Instrument to recover such delinquent payments, or (ii) in the event Lender elects to accelerate less than the entire Outstanding Principal Balance, Lender may foreclose the Security Instrument to recover so much of the Debt as Lender may accelerate and such other sums secured by the Security Instrument as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to the Security Instrument to secure payment of sums secured by the Security Instrument and not previously recovered.

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

(e) If an Event of Default exists, Lender may (directly or by its agents, employees, contractors, engineers, architects, nominees, attorneys or other representatives), but without any obligation to do so and without notice to Borrower and without releasing Borrower from any obligation hereunder, cure the Event of Default in such manner and to such extent as Lender may deem necessary to protect the security hereof. Subject to Tenants' rights under the Leases, Lender (and its agents, employees, contractors, engineers, architects, nominees, attorneys or other representatives) are authorized to enter upon the Property to cure such Event of Default, and Lender is authorized to appear in, defend, or bring any action or proceeding reasonably necessary to maintain, secure or otherwise protect the Property or the priority of the Lien granted by the Security Instrument.

(f) Lender may appear in and defend any action or proceeding brought with respect to the Property and may bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its sole discretion, decides should be brought to protect its interest in the Property. Lender shall, at its option, be subrogated to the Lien of any mortgage or other security instrument discharged in whole or in part by the Obligations, and any such subrogation rights shall constitute additional security for the payment of the Obligations.

(g) As used in this Section 8.1.2, a "foreclosure" shall include, without limitation, a power of sale.

8.1.3 Remedies Cumulative; Waivers. The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or to impair any remedy, right or power consequent thereon.

8.1.4 **CONFESSION OF JUDGMENT.** THE FOLLOWING PARAGRAPH SETS FORTH A WARRANT OF AUTHORITY FOR ANY ATTORNEY TO CONFESS JUDGMENT AGAINST THE BORROWER. IN GRANTING THIS WARRANT OF ATTORNEY TO CONFESS JUDGMENT AGAINST THE BORROWER, BORROWER, FOLLOWING CONSULTATION WITH (OR DECISION NOT TO CONSULT) COUNSEL FOR BORROWER AND WITH KNOWLEDGE OF THE LEGAL EFFECT HEREOF, HEREBY KNOWINGLY, INTENTIONALLY, VOLUNTARILY AND UNCONDITIONALLY WAIVES ANY AND ALL RIGHTS BORROWER HAS OR MAY HAVE TO PRIOR NOTICE AND AN OPPORTUNITY OF REHEARING UNDER THE RESPECTIVE CONSTITUTIONS AND LAWS OF THE UNITED STATES OF AMERICA, THE COMMONWEALTH OF PENNSYLVANIA, OR ELSEWHERE. IT IS SPECIFICALLY ACKNOWLEDGED BY BORROWER THAT LENDER HAS RELIED ON THIS WARRANT OF ATTORNEY AS AN INDUCEMENT TO GRANT FINANCIAL ACCOMMODATIONS TO BORROWER. UPON AND FOLLOWING THE OCCURRENCE OF AN UNCURED EVENT OF DEFAULT, BORROWER HEREBY AUTHORIZES AND EMPOWERS ANY ATTORNEY OF ANY COURT OF RECORD OR THE PROTHONOTARY OR CLERK OF ANY COUNTY IN THE COMMONWEALTH OF PENNSYLVANIA, OR IN ANY JURISDICTION WHERE PERMITTED BY LAW OR THE CLERK OF ANY UNITED STATES DISTRICT COURT, TO APPEAR FOR BORROWER IN ANY AND ALL ACTIONS WHICH MAY BE BROUGHT HEREUNDER AND ENTER AND CONFESS JUDGMENT AGAINST BORROWER OR ANY OF THEM IN FAVOR OF LENDER FOR SUCH SUMS AS ARE DUE OR MAY BECOME DUE HEREUNDER OR UNDER ANY OTHER LOAN DOCUMENT, TOGETHER WITH COSTS OF SUIT AND ACTUAL COLLECTION COSTS INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES EQUAL TO FIVE PERCENT (5%) OF THE LIABILITIES THEN DUE AND OWING BUT IN NO EVENT LESS THAN \$5,000, WITH OR WITHOUT DECLARATION, WITHOUT PRIOR NOTICE, WITHOUT STAY OF EXECUTION AND WITH RELEASE OF ALL PROCEDURAL ERRORS AND THE RIGHT TO ISSUE EXECUTIONS FORTHWITH. IF A COPY OF THIS NOTE VERIFIED BY AFFIDAVIT OF ANY OFFICER OF LENDER SHALL HAVE BEEN FILED IN SUCH ACTION, IT SHALL NOT BE NECESSARY TO FILE THE ORIGINAL THEREOF AS A WARRANT OF ATTORNEY, ANY PRACTICE OR USAGE TO THE CONTRARY NOTWITHSTANDING. THE AUTHORITY HEREIN GRANTED TO CONFESS JUDGMENT SHALL NOT BE EXHAUSTED BY ANY SINGLE EXERCISE THEREOF, BUT SHALL CONTINUE AND MAY BE EXERCISED FROM TIME TO TIME AS OFTEN AS LENDER SHALL FIND IT NECESSARY AND DESIRABLE AND AT ALL TIMES UNTIL FULL PAYMENT OF ALL AMOUNTS DUE HEREUNDER AND UNDER THE OTHER LOAN DOCUMENTS. LENDER MAY CONFESS ONE OR MORE JUDGMENTS IN THE SAME OR DIFFERENT JURISDICTIONS FOR ALL OR ANY PART OF BORROWER'S OBLIGATIONS ARISING HEREUNDER OR UNDER ANY OTHER LOAN DOCUMENT TO WHICH BORROWER IS A PARTY, WITHOUT REGARD TO WHETHER JUDGMENT HAS THERETOFORE BEEN CONFESSED ON MORE THAN ONE OCCASION FOR THE SAME OBLIGATIONS. IN THE EVENT THAT ANY JUDGMENT CONFESSED AGAINST BORROWER IS STRICKEN OR OPENED UPON APPLICATION BY OR ON BEHALF OF BORROWER FOR ANY REASONS, LENDER IS HEREBY AUTHORIZED AND EMPOWERED TO AGAIN APPEAR FOR AND CONFESS JUDGMENT AGAINST BORROWER FOR ANY PART OR ALL OF THE LIABILITIES DUE AND OWING UNDER THIS NOTE AND THE OTHER LOAN DOCUMENTS, AS HEREIN PROVIDED.

ARTICLE IX

SPECIAL PROVISIONS

Section 9.1 Transfer of Loan. Lender may, at any time, sell, transfer or assign this Agreement, the Note, the Security Instrument and the other Loan Documents, and any or all servicing rights with respect thereto, or grant participations therein or issue mortgage pass-through certificates or other securities (the "*Securities*") evidencing a beneficial interest in a rated or unrated public offering or private placement (such sales, participation, offering and/or placement, collectively, a "*Lender Assignment*"). Lender may forward to each purchaser, transferee, assignee, servicer, participant or investor in such participations or Securities (collectively, the "*Investor*"), each prospective Investor, and any organization maintaining databases on the underwriting and performance of commercial mortgage loans, all documents and information which Lender now has or may hereafter acquire relating to the Loan or to Borrower, any Guarantor or the Property, whether furnished by Borrower, any Guarantor or otherwise, as Lender determines necessary or desirable, including, without limitation, financial statements relating to Borrower, Guarantor, the Property and any Tenant at the Property. Borrower irrevocably waives any and all rights it may have under law or in equity to prohibit such disclosure, including but not limited to any right of privacy.

Section 9.2 Severed Loan Documents. 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 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 (and cause other parties who executed any of the Loan Documents to execute and deliver) to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender may reasonably request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender and Borrower. 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 the parties thereto only as of the Closing Date.

Section 9.3 Servicer. At the option of Lender, the Loan may be serviced by a master servicer, primary servicer, special servicer and/or trustee (any such master servicer, primary servicer, special servicer, and trustee, together with its agents, nominees or designees, are collectively referred to as “**Servicer**”) selected by Lender and Lender may delegate all or any portion of its responsibilities under this Agreement and the other Loan Documents to Servicer pursuant to a pooling and servicing agreement, servicing agreement, special servicing agreement or other agreement providing for the servicing of one or more mortgage loans (collectively, the “**Servicing Agreement**”) between Lender and Servicer. Without limitation, Borrower shall promptly reimburse Lender on demand for (a) interest payable on advances made by Servicer with respect to delinquent debt service payments (to the extent interest at the Default Rate actually paid by Borrower in respect of such payments are insufficient to pay the same) or expenses paid by Servicer or trustee in respect of the protection and preservation of the Property (including, without limitation, on account of Basic Carrying Costs), (b) all costs and expenses, liquidation fees, workout fees, special servicing fees, operating advisor fees or any other similar fees payable by Lender to Servicer which may be due and payable under the Servicing Agreement (whether on a periodic or a continuing basis) as a result of an Event of Default under the Loan, the Loan becoming specially serviced, the commencement or continuance of any enforcement action of any kind with respect to the Loan or any of the Loan Documents, a refinancing or a restructuring of the credit arrangements provided under this Agreement in the nature of a “work-out” of the Loan Documents, or any Bankruptcy Action involving Borrower, Principal, Guarantor or any of their respective principals or Affiliates, (c) all costs and expenses of any Property inspections and/or appraisals (or any updates to any existing inspection or appraisal) that Servicer or the trustee may be required to obtain (but not more than one appraisal in any twelve months unless an Event of Default exists), and (d) all costs and expenses relating to or arising from any special requests made by Borrower or Guarantor during the term of the Loan including, without limitation, in connection with a prepayment, defeasance, assumption or modification of the Loan.

Section 9.4 Cooperation. Borrower and Guarantor agree to reasonably cooperate with Lender (and agree to cause their respective officers and representatives to cooperate) in connection with any Lender Assignment or potential Lender Assignment.

ARTICLE X

MISCELLANEOUS

Section 10.1 Survival. This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Obligations are outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the legal representatives, successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Lender.

Section 10.2 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 and absolute discretion of Lender and shall be final and conclusive.

Section 10.3 Governing Law. THIS AGREEMENT WAS NEGOTIATED IN THE COMMONWEALTH OF PENNSYLVANIA, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE COMMONWEALTH OF PENNSYLVANIA, AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE COMMONWEALTH OF PENNSYLVANIA, 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 COMMONWEALTH OF PENNSYLVANIA APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT TO THE SECURITY INSTRUMENT AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE COMMONWEALTH OF PENNSYLVANIA SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND/OR THE OTHER LOAN DOCUMENTS, AND THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA.

(a) EXCEPTIONS, NOTWITHSTANDING THE FOREGOING CHOICE OF LAW:

(i) THE PROCEDURES GOVERNING THE ENFORCEMENT BY LENDER OF ITS FORECLOSURE AND OTHER REMEDIES AGAINST BORROWER AND GUARANTOR UNDER THE SECURITY INSTRUMENT AND UNDER THE OTHER LOAN DOCUMENTS WITH RESPECT TO THE REAL PROPERTY ASSETS OF BORROWER, INCLUDING BY WAY OF ILLUSTRATION, BUT NOT IN LIMITATION, ACTIONS FOR FORECLOSURE, FOR INJUNCTIVE RELIEF OR FOR THE APPOINTMENT OF A RECEIVER SHALL BE GOVERNED BY THE LAWS OF THE STATE WHERE SUCH PROPERTY OR OTHER ASSETS ARE LOCATED;

(ii) LENDER SHALL COMPLY WITH APPLICABLE LAW IN THE STATE WHERE THE PROPERTY OR OTHER ASSETS ARE LOCATED TO THE EXTENT REQUIRED BY THE LAW OF SUCH JURISDICTION IN CONNECTION WITH THE FORECLOSURE OF THE SECURITY INTERESTS AND LIENS CREATED UNDER THE SECURITY INSTRUMENT;

(iii) PROVISIONS OF FEDERAL LAW AND THE LAW OF THE STATE WHERE THE PROPERTY IS LOCATED SHALL APPLY IN DEFINING THE TERMS HAZARDOUS SUBSTANCES, ENVIRONMENTAL STATUTES, AND LEGAL REQUIREMENTS AS SUCH TERMS ARE USED IN THIS LOAN AGREEMENT, AND THE OTHER LOAN DOCUMENTS, WITH RESPECT TO THE PROPERTY, BORROWER AND GUARANTOR; AND

(iv) MATTERS OF REAL ESTATE, LANDLORD-TENANT AND PROPERTY LAW SHALL BE GOVERNED BY THE LAWS OF THE STATE WHERE THE PROPERTY IS SITUATED.

(b) AGENT FOR SERVICE OF PROCESS. ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY AT LENDER'S SOLE OPTION BE INSTITUTED IN ANY FEDERAL DISTRICT COURT OR STATE COURT IN THE COMMONWEALTH OF PENNSYLVANIA, COUNTY OF NORTHAMPTON, PURSUANT TO PENNSYLVANIA LAW, AND BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY OBJECTIONS WHICH BORROWER MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

FTE Networks, Inc.
237 West 35th Street, Suite 806
New York, NY 10001
Attn: CEO
Phone: 646-755-3605
Email: mbeys@blmlp.com

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON BORROWER'S 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 THE COMMONWEALTH OF PENNSYLVANIA, AND BORROWER 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 CONCLUSIVELY BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE COMMONWEALTH OF PENNSYLVANIA. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN THE COMMONWEALTH OF PENNSYLVANIA (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN THE COMMONWEALTH OF PENNSYLVANIA OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR. NOTHING CONTAINED HEREIN SHALL AFFECT THE RIGHT OF AGENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST BORROWER IN ANY OTHER JURISDICTION.

Section 10.4 Modification, Waiver in Writing. No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Note, or of any other Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances.

Section 10.5 Delay Not a Waiver. Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

Section 10.6 Notices. All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested, (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, or (c) facsimile (with answer back acknowledged) or as a PDF or similar attachment to an e-mail, provided that such facsimile or email attachment shall be followed within one (1) business day by delivery of such notice pursuant to clause (a) or (b) above, in each case addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a notice to the other parties hereto in the manner provided for in this Section 10.6):

If to Lender: DLP Lending Fund LLC
95 Highland Avenue, Suite 300
Bethlehem, PA 28017
Attention: Barry W. DeGroot, Esq.
E-Mail: barry@dlpre.com

with a copy to: Pircher, Nichols & Meeks LLP
1901 Avenue of the Stars, Suite 1200
Los Angeles, California 90067
Attention: Real Estate Notices (WBT: 6004.2)
Facsimile No.: (310) 201-8922
E-Mail: realestatenotices@pircher.com

If to Borrower: FTE Legal
237 West 35th Street, Suite 806
New York, NY 10001
Attn: Corporate Counsel
Phone: (239) 315-3161
Email: legal@ftenet.com

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; in the case of expedited prepaid delivery, upon the first attempted delivery on a Business Day; or in the case of facsimile or PDF or similar attachment to an e-mail, upon sender's receipt of a machine-generated confirmation of successful transmission after advice by telephone to recipient that a facsimile or e-mail notice is forthcoming. Any failure to deliver a notice by reason of a change of address not given in accordance with this Section 10.6, or any refusal to accept a notice, shall be deemed to have been given when delivery was attempted. Any notice required or permitted to be given by any party hereunder or under any other Loan Document may be given by its respective counsel.

Section 10.7 Waiver of Trial by Jury. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER.

Section 10.8 Headings. The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 10.9 Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Section 10.10 Preferences. 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 Debt. 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 10.11 Waiver of Notice. Borrower hereby expressly waives, and 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.

Section 10.12 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, Borrower agrees that neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment. The parties hereto agree that any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment. Further, it is agreed Lender shall not be in default under this Agreement, or under any other Loan Document, unless a written notice specifically setting forth the claim of Borrower shall have been given to Lender within thirty (30) days after Borrower first had knowledge of the occurrence of the event which Borrower alleges gave rise to such claim and Lender does not remedy or cure the default, if any there be, promptly thereafter. Failure to give such notice shall constitute a waiver of such claim.

Section 10.13 Expenses; Indemnity.

(a) Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender upon receipt of notice from Lender for all costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Lender in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including without limitation any opinions requested by Lender as to any legal matters arising under this Agreement or the other Loan Documents with respect to the Property); (ii) Borrower's ongoing performance of and compliance with Borrower's respective agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date, including, without limitation, confirming compliance with environmental and insurance requirements; (iii) Lender's ongoing performance and compliance with all agreements and conditions contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date; (iv) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters requested by Lender; (v) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement; (vi) the filing and recording fees and expenses, title insurance and 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; (vii) enforcing or preserving any rights, either in response to third party claims or in prosecuting or defending any action or proceeding or other litigation, in each case against, under or affecting Borrower, this Agreement, the other Loan Documents, the Property, or any other security given for the Loan; and (viii) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the 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 or any other amounts required under Section 9.3; *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 cost and expenses due and payable to Lender may be paid by Lender from any Reserve Account.

(b) Borrower shall indemnify, defend and hold harmless the Indemnified Parties from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for Lender in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not Lender shall be designated a party thereto), that may be imposed on, incurred by, or asserted against any Indemnified Party in any manner relating to or arising out of (i) any breach by Borrower of its Obligations under, or any 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 (the liabilities, losses, costs, expenses and other matters described in this subparagraph (b), collectively, the “**Indemnified Liabilities**”); *provided, however*, that Borrower shall not have any obligation to an Indemnified Party hereunder to the extent that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of such Indemnified Party. To the extent that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall pay the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by the Indemnified Parties.

Section 10.14 Exhibits and Schedules Incorporated. Any Exhibits and Schedules annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

Section 10.15 Offsets, Counterclaims and Defenses. Any assignee of Lender’s interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses solely to the extent such offsets, counterclaims or defenses are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

Section 10.16 No Joint Venture or Partnership; No Third Party Beneficiaries.

(a) Borrower 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 Property other than that of mortgagee, beneficiary or lender.

(b) This Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the Obligations contained herein or therein. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender’s sole discretion, Lender deems it advisable or desirable to do so.

Section 10.17 Publicity. All news releases, publicity or advertising by Borrower or its Affiliates through any media intended to reach the general public which refers to the Loan Documents or the financing evidenced by the Loan Documents, to Lender or any of its Affiliates shall be subject to the prior approval of Lender.

Section 10.18 Waiver of Marshalling of Assets; Homestead Waiver. 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 Property, or to a sale in inverse order of alienation in the event of foreclosure of the Security Instrument, 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 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 Property in preference to every other claimant whatsoever. To the extent permitted by applicable law, Borrower hereby waives any Homestead protections that may be available to Borrower under the law of the state in which the Property is located.

Section 10.19 Waiver of Counterclaim. Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents.

Section 10.20 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 its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any 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 10.21 Brokers and Financial Advisors. Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement other than Direct Lending Partners LLC, which arranged the Loan. Borrower hereby agrees to 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 10.21 shall survive the expiration and termination of this Agreement and the payment of the Debt.

Section 10.22 Prior Agreements. This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, including, without limitation, the Term Sheet dated April 13, 2020 between Borrower (or an agent or representative of Borrower) and Lender, are superseded by the terms of this Agreement and the other Loan Documents.

Section 10.23 Cumulative Rights. All of the rights of Lender under this Agreement hereunder and under each of the other Loan Documents and any other agreement now or hereafter executed in connection herewith or therewith, shall be cumulative and may be exercised singly, together, or in such combination as Lender may determine in its sole judgment.

Section 10.24 Counterparts; Electronic Delivery. This Agreement and all of the other Loan Documents may be executed in several counterparts, each of which when executed and delivered is an original, but all of which together shall constitute one instrument. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart which is executed by the party against whom enforcement of this Agreement is sought. The delivery of an executed counterpart of this Agreement or any other Loan Document (other than Note) by facsimile or as a PDF or similar attachment to an email shall constitute effective delivery of such counterpart for all purposes with the same force and effect as the delivery of an original, executed counterpart.

Section 10.25 Time is of the Essence. Time is of the essence of each provision of this Agreement and the other Loan Documents.

Section 10.26 Consent of Holder. Wherever this Agreement refers to Lender's consent or discretion or other rights, such references to Lender shall be deemed to refer to any holder of the Loan. The holder of the Loan may from time to time appoint a trustee or servicer, and Borrower shall be entitled to rely upon written instructions executed by a purported officer of the holder of the Loan as to the extent of authority delegated to any such trustee or from time to time and determinations made by such trustee or servicer to the extent identified as within the delegated authority of such trustee or servicer, unless and until such instructions are superseded by further written instructions from the holder of the Loan.

Section 10.27 Successor Laws. Any reference in this Agreement to any statute or regulation shall be deemed to include any successor statute or regulation.

Section 10.28 Reliance on Third Parties. Lender may perform any of its responsibilities hereunder through one or more agents, attorneys or independent contractors. In addition, Lender may conclusively rely upon the advice or determinations of any such agents, attorneys or independent contractors in performing any discretionary function under the terms of this Agreement.

Section 10.29 Joint Borrower. The representations, covenants, warranties and obligations of Borrower shall be joint and several. Each entity that constitutes Borrower acknowledges and agrees that it shall be jointly and severally liable for the Loan and all other Obligations arising under this Agreement and/or any of the other Loan Documents. In furtherance thereof, each Borrower acknowledges and agrees as follows:

(a) For the purpose of implementing the joint borrower provisions of the Loan Documents, each Borrower hereby irrevocably appoints each other Borrower as its agent and attorney-in-fact for all purposes of the Loan Documents, including the giving and receiving of notices and other communications.

(b) To induce Lender to make the Loan, and in consideration thereof, each Borrower hereby agrees to indemnify Lender against, and hold Lender harmless from, any and all liabilities, expenses, losses, damages and/or claims of damage or injury asserted against Lender by any Borrower or by any other Person arising from or incurred by reason of (i) reliance by Lender on any requests or instructions from any Borrower, or (ii) any other action taken by Lender in good faith with respect to this Agreement or the other Loan Documents.

(c) Each Borrower acknowledges that the liens and security interests created or granted herein and by the other Loan Documents will secure the Obligations of all Borrowers under the Loan Documents and, in full recognition of that fact, each Borrower consents and agrees that Lender may, at any time and from time to time, without notice or demand, and without affecting the enforceability or security hereof or of any other Loan Document:

(i) agree with any Borrower to supplement, modify, amend, extend, renew, accelerate, or otherwise change the time for payment or the terms of the Obligations or any part thereof, including any increase or decrease of the rate(s) of interest thereon;

(ii) agree with any Borrower to supplement, modify, amend or waive, or enter into or give any agreement, approval or consent with respect to, the Obligations or any part thereof or any of the Loan Documents or any additional security or guaranties, or any condition, covenant, default, remedy, right, representation or term thereof or thereunder;

(iii) accept new or additional instruments, documents or agreements in exchange for or relative to any of the Loan Documents or the Obligations or any part thereof;

(iv) accept partial payments on the Obligations;

(v) receive and hold additional security or guaranties for the Obligations or any part thereof;

(vi) release, reconvey, terminate, waive, abandon, subordinate, exchange, substitute, transfer and enforce any security for or guaranties of the Obligations, and apply any security and direct the order or manner of sale thereof as Lender, in its sole and absolute discretion may determine;

(vii) release any Person or any guarantor from any personal liability with respect to the Obligations or any part thereof; or

(viii) settle, release on terms satisfactory to Lender or by operation of applicable laws or otherwise liquidate or enforce any Obligations and any security therefor or guaranty thereof in any manner, consent to the transfer of any such security and bid and purchase at any sale; and consent to the merger, change or any other restructuring or termination of the corporate existence of any Borrower or any other Person, and correspondingly restructure the obligations of such Borrower or other Person, and any such merger, change, restructuring or termination shall not affect the liability of any Borrower or the continuing existence of any lien or security interest hereunder, under any other Loan Document to which any Borrower is a party or the enforceability hereof or thereof with respect to all or any part of the Obligations.

(d) Upon the occurrence of and during the continuance of any Event of Default, Lender may enforce this Agreement and the other Loan Documents independently as to each Borrower and independently of any other remedy or security Lender at any time may have or hold in connection with the Obligations, and in collecting on the Loan it shall not be necessary for Lender to marshal assets in favor of any Borrower or any other Person or to proceed upon or against and/or exhaust any other security or remedy before proceeding to enforce this Agreement and the other Loan Documents. Each Borrower expressly waives any right to require Lender, in connection with Lender's efforts to obtain repayment of the Loan and Other Obligations, to marshal assets in favor of any Borrower or any other Person or to proceed against any other Person or any collateral provided by any other Person, and agrees that Lender may proceed against any Persons and/or collateral in such order as it shall determine in its sole and absolute discretion in connection with Lender's efforts to obtain repayment of the Loan and other Obligations. Lender may file a separate action or actions against each Borrower to enforce the Obligations, whether action is brought or prosecuted with respect to any other security or against any other Person, or whether any other Person is joined in any such action or actions. Each Borrower agrees that Lender, each Borrower and/or any other Person may deal with each other in connection with the Obligations or otherwise, or alter any contracts or agreements now or hereafter existing between any of them, in any manner whatsoever, all without in any way altering or affecting the security of this Agreement or the other Loan Documents. The rights of Lender hereunder and under the other Loan Documents shall be reinstated and revived, and the enforceability of this Agreement and the other Loan Documents shall continue, with respect to any amount at any time paid on account of the Obligations which thereafter shall be required to be restored or returned by Lender as a result of the bankruptcy, insolvency or reorganization of any Borrower or any other Person, or otherwise, all as though such amount had not been paid. The enforceability of this Agreement and the other Loan Documents at all times shall remain effective even though any or all Obligations, or any other security or guaranty therefor, may be or hereafter may become invalid or otherwise unenforceable as against any Borrower or any other Person and whether or not any Borrower or any other Person shall have any personal liability with respect thereto. Each Borrower expressly waives any and all defenses to the enforcement of its Obligations under the Loan Documents now or hereafter arising or asserted by reason of (i) any disability or other defense of any Borrower or any other Person with respect to the Obligations, (ii) the unenforceability or invalidity of any security or guaranty for the Obligations or the lack of perfection or continuing perfection or failure of priority of any security for the Obligations, (iii) the cessation for any cause whatsoever of the liability of any Borrower or any other Person (other than by reason of the full and final payment and performance of all Obligations), (iv) any failure of Lender to marshal assets in favor of any of the Borrowers or any other Person, (v) any failure of Lender to give notice of sale or other disposition of any Collateral for the Obligations to any Borrower or to any other Person or any defect in any notice that may be given in connection with any such sale or disposition, (vi) any failure of Lender to comply in any non-material respect with applicable laws in connection with the sale or other disposition of any collateral or other security for any Obligation, (vii) any act or omission of Lender or others that directly or indirectly results in or aids the discharge or release of any Borrower or of any other Person or of any of the Obligations or any other security or guaranty therefor by operation of law or otherwise, (viii) any law which provides that the obligation of a surety or guarantor must neither be larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety's or guarantor's obligation in proportion to the principal obligation, (ix) any failure of Lender to file or enforce a claim in any bankruptcy or similar proceeding with respect to any Person, (x) the election by Lender, in any bankruptcy or similar proceeding of any Person, of the application or non-application of Section 1111(b)(2) of the Bankruptcy Code, (xi) any extension of credit or the grant of any lien under Section 364 of the Bankruptcy Code except to the extent otherwise provided in this Agreement, (xii) any use of cash collateral under Section 363 of the Bankruptcy Code, (xiii) any agreement or stipulation with respect to the provision of adequate protection in any bankruptcy or similar proceeding of any Person, (xiv) the avoidance of any lien or security interest in favor of Lender securing the Obligations for any reason, or (xv) any bankruptcy or similar proceeding commenced by or against any Person, including any discharge of, or bar or stay against collecting, all or any of the Obligations (or any interest thereon) in or as a result of any such proceeding. Without in any way limiting the foregoing, with respect to the Loan Documents and the Obligations, Borrower: (A) waives all rights and defenses arising out of an election of remedies by Lender even though that election of remedies, such as non-judicial foreclosure with respect to security for Borrowers' obligations, has destroyed each of their rights of subrogation and reimbursement against the other; and (B) waives any right to a fair value hearing or similar proceeding following a non-judicial foreclosure of the Obligations.

(e) Borrowers represent and warrant to Lender that they have established adequate means of obtaining from each other, on a continuing basis, financial and other information pertaining to their respective businesses, operations and condition (financial and otherwise) and their respective properties, and each now is and hereafter will be completely familiar with the businesses, operations and condition (financial and otherwise) of the other and their respective properties. Each Borrower hereby expressly waives and relinquishes any duty on the part of Lender to disclose to such Borrower any matter, fact or thing related to the businesses, operations or condition (financial or otherwise) of the other Borrowers or the other Borrowers' properties, whether now known or hereafter known by Lender during the life of this Agreement. With respect to any of the Obligations, Lender need not inquire into the powers of any Borrower or the officers, employees or other Persons acting or purporting to act on such Borrower's behalf.

(f) Without limiting the foregoing, or anything else contained in this Agreement, each Borrower waives all rights and defenses that it may have because the Obligations are secured by real property. This means, among other things:

(i) Lender may collect on the Obligations from any Borrower without first foreclosing on any real or personal property collateral pledged by the other Borrowers; and

(ii) If Lender foreclose on any real property collateral pledged by any Borrower for the Obligations: (A) the amount of the indebtedness owed by the other Borrowers may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; and (B) Lender may collect from any Borrower even if Lender, by foreclosing on the real property collateral, has destroyed any right any Borrower may have to collect from the other Borrowers.

(iii) This is an unconditional and irrevocable waiver of any rights and defenses each Borrower may have because the Obligations are secured by real property. Each Borrower expressly waives any right to receive notice of any judicial or nonjudicial foreclosure or sale of any real property collateral provided by the other Borrowers to secure the Obligations and failure to receive any such notice shall not impair or affect such Borrower's obligations hereunder or the enforceability of this Agreement or the other Loan Documents or any liens created or granted hereby or thereby.

(iv) Notwithstanding anything to the contrary elsewhere contained herein or in any other Loan Document to which any Borrower is a party, with respect to the Loan and all other Obligations, each Borrower hereby waives with respect to the other Borrowers and their successors and assigns (including any surety) and any other Person any and all rights at law or in equity, to subrogation, to reimbursement, to exoneration, to contribution, to set-off, to any other rights and defenses available to it or to any other rights that could accrue to a surety against a principal, to a guarantor against a maker or obligor, to an accommodation party against the party accommodated, or to a holder or transferee against a maker and which each of them may have or hereafter acquire against the other or any other Person in connection with or as a result of such Borrower's execution, delivery and/or performance of this Agreement or any other Loan Document to which it is a party until the Obligations are paid and performed in full. Each Borrower agrees that it shall not have or assert any such rights against any other Borrower or any other Borrower's successors and assigns or any other Person (including any surety), either directly or as an attempted set-off to any action commenced against such Borrower by any other Borrower (as borrower or in any other capacity) or any other Person until all the Obligations are paid and performed in full. Each Borrower hereby acknowledges and agrees that this waiver is intended to benefit Lender and shall not limit or otherwise affect any Borrower's liability under this Agreement or any other Loan Document to which it is a party, or the enforceability hereof or thereof.

EACH BORROWER WARRANTS AND AGREES THAT EACH OF THE WAIVERS AND CONSENTS SET FORTH HEREIN IS MADE WITH FULL KNOWLEDGE OF ITS SIGNIFICANCE AND CONSEQUENCES, WITH THE UNDERSTANDING THAT EVENTS GIVING RISE TO ANY DEFENSE WAIVED MAY DIMINISH, DESTROY OR OTHERWISE ADVERSELY AFFECT RIGHTS WHICH EACH OTHERWISE MAY HAVE AGAINST THE OTHER, AGAINST LENDER OR OTHERS, OR AGAINST ANY COLLATERAL. IF ANY OF THE WAIVERS OR CONSENTS HEREIN IS DETERMINED TO BE CONTRARY TO ANY APPLICABLE LAW OR PUBLIC POLICY, SUCH WAIVERS AND CONSENTS SHALL BE EFFECTIVE TO THE MAXIMUM EXTENT PERMITTED BY LAW.

[The Remainder of the Page is Intentionally Blank]

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

BORROWER:

Kaja Holdings 2, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of Kaja Holdings 2, LLC

(Signatures continue on following page)

LENDER:

DLP Lending Fund LLC,
a Delaware limited liability company

By: /s/ Donald Wenner
Donald Wenner
President

SCHEDULE 1

Borrower Entities

[to be inserted]

Schedule 1 - 1

SCHEDULE 1.1(a)

Allocated Loan Amounts

Attached.

Schedule 1.1(a) - 1

SCHEDULE 1.1(b)

List of Projects

[to be inserted]

Schedule 1.1(b) - 1

SCHEDULE 4.1.1

Organizational Chart

[to be inserted]

Schedule 4.1.1 - 1

PROMISSORY NOTE

\$2,501,225.00

August 26, 2020

FOR VALUE RECEIVED, the undersigned, jointly and severally (individually and collectively, "**Borrower**"), as maker, having its principal place of business at 16 Berryhill Road, Suite 200 Columbia, SC 29210, hereby unconditionally promises to pay to the order of DLP LENDING FUND LLC, a Delaware limited liability company, as lender, having an address at 95 Highland Avenue, St. Augustine, FL 32095 (together with its successors and assigns, collectively, "**Lender**"), or at such other place as the holder hereof may from time to time designate in writing, the principal sum of TWO MILLION FIVE HUNDRED ONE THOUSAND TWO HUNDRED TWENTY FIVE and 30/100 Dollars (\$2,501,225.00), or so much thereof as is advanced pursuant to that certain Loan Agreement, dated the date hereof, between Borrower and Lender (as the same may be amended, modified, restated, replaced, supplemented or otherwise modified from time to time, the "**Loan Agreement**"), in lawful money of the United States of America, with interest thereon to be computed from the date of this Promissory Note (as the same may be amended, supplemented, restated, replaced or otherwise modified from time to time, this "**Note**") at the Interest Rate (as defined in the Loan Agreement), and to be paid in accordance with the terms of this Note and the Loan Agreement. All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement.

ARTICLE 1 – PAYMENT TERMS

Borrower agrees to pay the principal sum of this Note and interest on the unpaid principal sum of this Note and all other amounts due under the Loan Agreement and other Loan Documents from time to time outstanding without relief from valuation and appraisal laws at the rates and at the times specified in the Loan Agreement and the outstanding balance of the principal sum of this Note and all accrued and unpaid interest thereon and all other amounts due under the Loan Agreement and other Loan Documents shall be due and payable, in all events, on the Maturity Date. The obligations of each Borrower or party under this Note shall be joint and several.

ARTICLE 2 – DEFAULT AND ACCELERATION

The Debt shall without notice become immediately due and payable at the option of Lender, if any payment required in this Note is not paid (a) on or prior to the date when due, (b) on the Maturity Date or (c) on the happening of any other Event of Default.

ARTICLE 3 – LOAN DOCUMENTS

This Note is secured by the Security Instrument and the other Loan Documents. All of the terms, covenants and conditions contained in the Loan Agreement, the Security Instrument and the other Loan Documents are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. In the event of a conflict or inconsistency between the terms of this Note and the Loan Agreement, the terms and provisions of the Loan Agreement shall govern.

ARTICLE 4 – SAVINGS CLAUSE

Notwithstanding anything to the contrary contained herein, (a) all agreements and communications between Borrower and Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed interest, the interest contracted for, charged or received by Lender shall never exceed the Maximum Legal Rate or amount, (b) in calculating whether any interest exceeds the Maximum Legal Rate, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Borrower to Lender, and (c) if through any contingency or event Lender receives or is deemed to receive interest in excess of the Maximum Legal Rate, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Borrower to Lender.

ARTICLE 5 – NO ORAL CHANGE

This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

ARTICLE 6 – WAIVERS

Borrower and all others who may become liable for the payment of all or any part of the Debt do hereby jointly and severally waive presentment and demand for payment, notice of dishonor, notice of intention to accelerate, notice of acceleration, protest and notice of protest and non-payment and all other notices of any kind. No release of any security for the Debt or extension of time for payment, of this Note or any installment hereof, and no alteration, amendment or waiver of any provision of this Note, the Loan Agreement or the other Loan Documents made by agreement between Lender or any other Person shall release, modify, amend, waive, extend, change, discharge, terminate or affect the liability of Borrower, and any other Person who may become liable for the payment of all or any part of the Debt, under this Note, the Loan Agreement or the other Loan Documents. No notice to or demand on Borrower shall be deemed to be a waiver of the obligation of Borrower or of the right of Lender to take further action without further notice or demand as provided for in this Note, the Loan Agreement or the other Loan Documents. If Borrower is a partnership or limited liability company, the agreements herein contained shall remain in force and be applicable, notwithstanding any changes in the individuals or entities comprising the partnership or limited liability company, and the term "Borrower," as used herein, shall include any alternate or successor partnership or limited liability company, but any predecessor partnership or limited liability company and their partners or members shall not thereby be released from any liability. If Borrower is a corporation, the agreements contained herein shall remain in full force and be applicable notwithstanding any changes in the shareholders comprising, or the officers and directors relating to, the corporation, and the term "Borrower" as used herein, shall include any alternative or successor corporation, but any predecessor corporation shall not be relieved of liability hereunder. Nothing in the foregoing two sentences shall be construed as a consent to, or a waiver of, any prohibition or restriction on transfers of interests in such partnership, limited liability company or corporation, as applicable, which may be set forth in the Loan Agreement, the Security Instrument or any other Loan Document.

ARTICLE 7 – TRANSFER

Upon the transfer of this Note in whole or in part, Borrower hereby waiving notice of or consent to any such transfer, Lender may deliver all the collateral mortgaged, granted, pledged or assigned pursuant to the Loan Documents, or any part thereof, to the transferee who shall thereupon become vested with all the rights (and liabilities arising thereafter) herein or under Legal Requirements of and given to Lender with respect thereto, and Lender shall thereafter forever be relieved and fully discharged from any liability or responsibility in the matter; but Lender shall retain all rights hereby given to it with respect to any liabilities and the collateral not so transferred.

ARTICLE 8 – GOVERNING LAW AND WAIVER OF TRIAL BY JURY

This Note shall be governed in accordance with the terms and provisions of Section 10.3 and Section 10.7 of the Loan Agreement.

ARTICLE 9 – NOTICES

All notices or other written communications hereunder shall be delivered in accordance with Section 10.6 of the Loan Agreement.

ARTICLE 10 TRANSACTION ASSIGNMENT AND REGISTRAR

I. ASSIGNMENTS, PARTICIPATIONS

A. Assignments by Lender, etc. Subject to compliance with this Article 10, any Lender may on or after the date hereof sell and assign, or pledge, hypothecate or encumber, all or any portion of its Loans and all other Obligations with respect thereto, to or with Persons as may be selected by such Lender in its sole and absolute discretion (each an “*Assignee*”) and on terms and conditions satisfactory to in its sole and absolute discretion (which shall include the execution and delivery by the Assignee of assignment documentation in form and substance satisfactory to such assigning Lender). Borrower shall cooperate in all reasonable respects with such Lender in connection with the sale and assignment, or pledge, hypothecation or encumbrance, of all or any portion of such Lender’s interest in the Loan, and shall, in connection therewith, promptly execute and deliver such documents as may be reasonably requested by such Lender; provided, that such cooperation shall not include reimbursement of any Lender or any Assignee for any costs incurred in connection with such assignment or related documents.

A. Effect of Assignment. Pursuant to any assignment or participation of all or any portion of a Lender’s Loan as contemplated in this Article 10 to any Assignee, such Lender (a) may, subject to compliance with this Article 10, transfer its obligations hereunder and under the other Loan Documents (or may transfer the portion thereof corresponding to the transferred portion of the Obligations) and, except as otherwise specified herein, any Assignee shall succeed to the rights and obligations of Lender hereunder in respect of the transferred portion, and (b) shall relinquish its rights and be released from its obligations hereunder and under this Agreement and the other Loan Documents as to the transferred portion of its interest in the Loan.

B. Assignments by Borrower. No Borrower shall have any right to assign its rights or obligations hereunder or under the other Loan Documents or any interest herein or therein without the prior written consent of Lender and each of its successors and assigns, which consent may be withheld by in their sole and absolute discretion. Any attempted or purported assignment in contravention of this Article 10 shall be null and void ab initio.

C. Participations. Subject to compliance with this Article 10, any Lender may at any time, without the consent of, or notice to, Borrower, sell to one or more Persons as may be selected by such Lender in its sole and absolute discretion a participation (each a “*Participant*”) in all or a portion of such Lender’s rights and/or obligations under this Agreement (including all or a portion of the interest in the Loan owing to it); provided that (a) such Lender’s obligations under this Agreement shall remain unchanged, (b) such Lender shall remain solely responsible to the other Parties hereto for the performance of such obligations, (c) Borrower shall continue to deal solely and directly with Lender in connection with such Lender’s rights and obligations under this Agreement and the other Loan Documents, and (d) no Participant shall have any right to approve any amendment or waiver of any provision of any Loan Document, or any consent to any departure by Borrower or any other party therefrom, except to the extent that such amendment, waiver or consent would reduce the principal of, or interest on, the Loan or any fees or other amounts payable hereunder, in each case to the extent subject to such participation, or postpone any date fixed for any payment of any amount hereunder, to the extent subject to such participation.

II. REGISTRATION

A. Registered Obligation. Borrower hereby acknowledges and makes this Note (if any) a registered obligation for United States withholding tax purposes. DLP Lending Fund LLC, as Borrower's non-fiduciary agent for this purpose, shall be the registrar for this Note (if any) (the "**Registrar**") with full power of substitution. In the event the Registrar becomes unable or unwilling to act as registrar under this Agreement, Borrower shall reasonably designate a successor Registrar.

B. Register. The Registrar shall maintain, or cause to be maintained, a register (the "**Register**") for the recordation of the names and addresses of each Lender and any Assignee of all or any portion of such Lender's interest in the Loan and the principal amount outstanding of the Loan (and stated interest accrued but unpaid thereon) (the "**Registered Loan**") held by Lender and each Assignee from time to time. Borrower, each Lender and each Assignee shall treat each Person whose name is recorded in the Register as a "Lender" hereunder for all purposes of this Agreement. The Register shall be available for inspection by Borrower at any reasonable time and from time to time upon reasonable prior notice.

C. Registration of Assignment. A Registered Loan (and the registered Note evidencing the same, if any) may be assigned or sold in whole or in part only by registration of such assignment or sale on the Register (and each registered Note, if any, shall expressly so provide), which registration the Registrar shall effect immediately upon receipt of assignment documentation. Any assignment or sale of all or part of such Registered Loan (and the registered Note evidencing the same, if any) may be effected only by registration of such assignment or sale on the Register, together with the surrender of the registered Note evidencing the same, if any, duly endorsed by (or accompanied by a written instrument of assignment or sale duly executed by) the holder of such registered Note, if any, whereupon, at the request of the designated assignee(s) or transferee(s), one or more new registered Notes in the same aggregate principal amount shall be issued to the designated assignee(s) or transferee(s). Prior to the registration of assignment or sale of any Registered Loan (and the registered Note evidencing the same, if any), Borrower shall treat the Person in whose name such Registered Loan (and the registered Note evidencing the same, if any) is registered as the owner thereof for the purpose of receiving all payments thereon and for all other purposes, notwithstanding notice to the contrary.

D. Participant Register. If any Lender sells a participation or participations in the Loan to a Participant, such Lender shall report such sale of a participation to the Registrar and the Registrar shall, acting solely for this purpose as a non-fiduciary agent of Borrower, maintain a register on which it enters the name and the address of each Participant and the principal amounts of each Participant's participation interest in the Loan (or other rights or obligations) held by it (the "**Participant Register**"). The entries in the Participant Register shall be conclusive, absent manifest error, and each Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation interest as the owner thereof for all purposes notwithstanding any notice to the contrary. In maintaining the Participant Register, the Registrar shall be acting as the agent of Borrower solely for purposes of applicable United States federal income tax law and undertakes no duty, responsibility or obligation to Borrower and, without limitation, in no event shall the Registrar be a fiduciary of Borrower for any purpose, except that the Registrar shall maintain the Participant Register and, upon reasonable prior notice from Borrower, shall make the Participant Register available for inspection by Borrower at any reasonable time and from time to time.

[The Remainder of the Page is Intentionally Blank]

IN WITNESS WHEREOF, Borrower has duly executed this Promissory Note as of the day and year first above written.

BORROWER:

Kaja Holdings 2, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of Kaja Holdings 2, LLC

Signature Page – Promissory Note

LOAN AGREEMENT

Dated as of August 26, 2020

among

THE ENTITIES SET FORTH ON SCHEDULE 1 ATTACHED HERETO,

individually and collectively, as Borrower

and

DLP LENDING FUND LLC,

as Lender

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LOAN AGREEMENT

This LOAN AGREEMENT, dated as of August 26, 2020 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this “*Agreement*”), between DLP LENDING FUND LLC, a Delaware limited liability company (“*Lender*”), having an address at 95 Highland Avenue, St. Augustine, FL 32095, and THE ENTITIES SET FORTH ON SCHEDULE 1 ATTACHED HERETO, jointly and severally (individually and collectively, “*Borrower*”), having its principal place of business at 16 Berryhill Road, Suite 200 Columbia, SC 29210

WITNESSETH:

WHEREAS, Borrower desires to obtain a loan in the original principal amount of TWO MILLION FIVE HUNDRED ONE THOUSAND TWO HUNDRED TWENTY FIVE and 30/100 Dollars (\$2,501,225.00) from Lender pursuant to this Agreement (the “*Loan*”); and

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

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

ARTICLE I

DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1 Definitions. For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

“*Accrued Interest*” shall mean all accrued and unpaid interest on the outstanding principal balance of the Loan from time to time.

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

“*Agreement*” shall mean this Loan Agreement, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“*Allocated Loan Amount*” shall mean, with respect to each Individual Property, the amount set forth on Schedule 1.1(a) hereof.

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

“*Approved Plans*” means complete plans, drawings, specifications and scope of work, that comply with applicable Legal Requirements and have been approved in writing by Lender, for the Project.

“*Assignment of Management Agreement*” shall mean individually and collectively as applicable, an Assignment of Management Agreement and Subordination of Management Fees, dated as of the date hereof or thereafter, as applicable, among Lender, Borrower and Manager, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

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

"Bankruptcy Action" shall mean with respect to any Person (a) such Person filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (b) the filing of an involuntary petition against such Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition against such Person; (c) such Person filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition from any Person; (d) such Person consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, assignee, sequestrator (or similar official), liquidator, or examiner for such Person or any portion of the Property; (e) the filing of a petition against a Person seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code or any other applicable law, (f) under the provisions of any other law for the relief or aid of debtors, an action taken by any court of competent jurisdiction that allows such court to assume custody or Control of a Person or of the whole or any substantial part of its property or assets or (g) such Person making an assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due.

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

"Basic Carrying Costs" shall mean, for any period, the sum of the following costs: (a) Taxes, (b) Other Charges and (c) Insurance Premiums.

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

"Business Day" shall mean any day other than a Saturday, Sunday or any other day on which any of the following institutions is not open for business: (i) banks and savings and loan institutions in New York or Pennsylvania, (ii) the financial institution that maintains any collection account for or on behalf of any Reserve Funds, (iii) the New York Stock Exchange or (iv) the Federal Reserve Bank of New York.

"Casualty" shall have the meaning set forth in Section 6.2 hereof.

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

"Closing Date" shall mean the date of this Agreement.

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

"Collateral" shall have the meaning ascribed to such term in the Security Instrument.

"Completion" or **"Complete"** shall mean one hundred percent (100%) completion of construction, renovation, rehabilitation of a Project, as applicable, subject to usual and customary punch list items, in a good and workmanlike manner and in compliance with all Legal Requirements, and in a manner consistent and compliant in all material respects with the applicable Project Documents as approved by Lender, and free and clear of all liens, claims, encumbrances and rights of others, other than Permitted Encumbrances, as evidenced by the issuance of certificates of completion by Lender's consultant or inspecting architect or engineer, if any, in each case in form and substance acceptable to Lender and, if available or required under applicable Legal Requirements, a final or partial certificate of occupancy and, as applicable, acceptance of completion by the applicable tenant.

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

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

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

“**Debt**” shall mean the Outstanding Principal Balance together with all interest accrued and unpaid thereon and all other sums due to Lender in respect of the Loan under the Note, this Agreement, the Security Instrument or any other Loan Document.

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

“**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 twenty-four percent (24%) per annum.

“**Distribution**” means (i) any dividend, distribution or other payment of any kind on any shares of capital stock or other securities or partnership, membership, economic or other interests, or (ii) any fee, payment, bonus or other remuneration of any kind, or (iii) any repayment of or debt service on loans or other indebtedness other than the Loan.

“**Dollars**” and the sign “\$” shall mean lawful money of the United States of America.

“**Embargoed Person**” shall mean any person, entity or government subject to trade restrictions under U.S. law, including, but not limited to, The USA Patriot Act (including the anti-terrorism provisions thereof), the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701, et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder including those related to Specially Designated Nationals and Specially Designated Global Terrorists, with the result that the investment in Borrower or any Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan made by Lender is in violation of law.

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

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

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

“**ERISA Affiliate**” shall mean each person (as defined in section 3(9) of ERISA) that together with Borrower would be deemed to be a “single employer” within the meaning of Section 414(b), (c), (m) or (o) of the Code.

“**Event of Default**” shall have the meaning set forth in Section 8.1.1(a) hereof.

“**Exchange Act**” shall mean the Securities Exchange Act of 1934, as the same may be amended, modified or replaced, from time to time.

“**Exchange Act Filing**” shall have the meaning set forth in Section 5.1.11(f) hereof.

“**Extended Maturity Date**” shall have the meaning set forth in Section 2.6.1 hereof.

“**Extension Notice**” shall have the meaning set forth in Section 2.6.1 hereof.

“**First Extension Option**” shall have the meaning set forth in Section 2.6.1 hereof.

“**First Payment Date**” shall have the meaning set forth in Section 2.3.2 hereof.

“**Fiscal Year**” shall mean each twelve (12) month period commencing on January 1 and ending on December 31 during each year of the term of the Loan.

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

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

“**Guarantor**” shall mean, jointly and severally, and, as the context requires, individually and collectively, Alexander Szkaradek, Antoni Szkaradek, Michael P. Beys each an individual; US Home Rentals, LLC, a Delaware limited liability company and FTE Networks, Inc., a Delaware corporation.

“**Guaranty**” shall mean that certain Guaranty dated as of the date hereof, from Guarantor in favor of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

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

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

“**In Balance**” means, with respect to each Project, no Deficiency then exists with respect to such Project.

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

“**Indemnified Parties**” shall mean Lender and any of its Affiliates and any of their officers, directors, members, partners, employees, representatives and consultants.

“**Indemnifying Person**” shall mean Borrower and each Guarantor, on a joint and several basis.

“**Individual Property**” shall mean all parcels of land, the Improvements thereon and all personal property owned by the Borrower and encumbered by a Security Instrument, together with all rights pertaining to such property and Improvements, as more particularly described in the granting clauses of each such Security Instrument and referred to therein as the “Property”.

“**Interest Period**” shall mean (i) initially, the period commencing on and including the date of the funding of the Loan and ending on and including the last day of the calendar month of the Closing Date, and (ii) thereafter, for any specified Payment Date including the Maturity Date, the period commencing on and including the first (1st) day of the calendar month prior to such Payment Date and ending on the last day of the calendar month in which such Payment Date occurs.

“**Interest Rate**” shall mean a fixed rate of Eleven and Ninety-Nine Hundredths percent (11.99%) per annum.

“**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 Property by or on behalf of Borrower, and (a) every modification, amendment or other agreement relating to such lease, sublease, subsublease, or other agreement entered into in connection with such lease, sublease, subsublease, or other agreement, and (b) every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto.

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

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

“**Lien**” shall mean any mortgage, deed of trust, deed to secure debt, indemnity deed of trust, lien (statutory or otherwise), pledge, hypothecation, easement, restrictive covenant, preference, assignment, security interest, or any other encumbrance, charge or transfer of, or any agreement to enter into or create any of the foregoing, on or affecting Borrower, the Property, or any portion thereof or any interest therein, or any direct or indirect 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 have the meaning set forth in the recitals hereof.

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

“**Management Agreement**” shall mean any property management agreement or similar agreement entered into by and between Borrower and Manager, pursuant to which Manager is to provide management and other services with respect to the Property, and any successor property management approved by Lender, in writing, in Lender’s sole discretion.

“**Manager**” shall mean, the individual or entity who provides management and other services with respect to the Property pursuant to a Management Agreement.

“**Material Adverse Change**” or “**Materially Adverse Effect**” shall mean that the business, operations, property, assets, liabilities or financial condition of any applicable Person and each of their subsidiaries, taken as a whole, or the ability of any such Person to perform its obligations under the Loan Documents, has changed in a manner which could materially impair the value of Lender’s security for the Loan or prevent timely repayment of the Loan or otherwise prevent the applicable person or entity from timely performing any of its material obligations under the Loan Documents or any Lease, as the case may be, as determined by Lender.

“**Material Agreements**” shall have the meaning set forth in Section 15.20 hereof.

“**Maturity Date**” shall mean the Stated Maturity Date, provided that (a) in the event of the exercise by Borrower of the First Extension Option pursuant to Section 2.6, the Maturity Date shall be the First Extended Maturity Date, and (b) in the event of the exercise by Borrower of the Second Extension Option pursuant to Section 2.6, the Maturity Date shall be the Second Extended Maturity Date, or such earlier date on which the final payment of principal of the Note becomes due and payable as herein or therein provided, whether at the Stated Maturity Date, by declaration of acceleration, or otherwise.

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

“**Multiemployer Plan**” shall mean a multiemployer plan, as defined in Section 4001(a)(3) of ERISA to which Borrower or any ERISA Affiliate is making or accruing an obligation to make contributions or has within any of the preceding three plan years made or accrued an obligation to make contributions.

“**Multiple Employer Plan**” shall mean an employee benefit plan, other than a Multiemployer Plan, to which Borrower or any ERISA Affiliate, and one or more employers other than Borrower or an ERISA Affiliate, is making or accruing an obligation to make contributions or, in the event that any such plan has been terminated, to which Borrower or an ERISA Affiliate made or accrued an obligation to make contributions during any of the five plan years preceding the date of termination of such plan.

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

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

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

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

“**Obligations**” shall mean, collectively, Borrower’s obligations for the payment of the Debt and the performance of the Other Obligations.

“**OFAC**” shall mean the Office of Foreign Asset Control of the Department of the Treasury of the United States of America.

“**Officer’s Certificate**” shall mean a certificate delivered to Lender by Borrower which is signed by an authorized officer of (i) Borrower, or (ii) any direct or indirect general partner or member of Borrower with authority to act on behalf of and bind Borrower.

“**Operations Agreements**” shall mean any covenants, restrictions, easements, declarations or agreements of record relating to the construction, operation or use of the Property, together with all amendments, modifications or supplements thereto.

“**Other Charges**” shall mean all ground rents, maintenance charges, impositions other than Taxes, any “common expenses” or expenses allocated to and required to be paid by Borrower under any Operations Agreements and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property, now or hereafter levied or assessed or imposed against the Property or any part thereof.

“**Other Obligations**” shall mean (a) the performance of all obligations of Borrower contained herein; (b) the performance of each obligation of Borrower or any Guarantor contained in any other Loan Document; (c) the payment of all costs, expenses, legal fees and liabilities incurred by Lender in connection with the enforcement of any of Lender’s rights or remedies under the Loan Documents, or any other instrument, agreement or document which evidences or secures any other Obligations or collateral therefor, whether now in effect or hereafter executed; and (d) the payment, performance, discharge and satisfaction of all other liabilities and obligations of Borrower and/or Guarantor to Lender, whether now existing or hereafter arising, direct or indirect, absolute or contingent, and including, without limitation, each liability and obligation of Borrower and each Guarantor under any one or more of the Loan Documents and any amendment, extension, modification, replacement or recasting of any one or more of the instruments, agreements and documents referred to herein or therein or executed in connection with the transactions contemplated hereby or thereby.

“**Outstanding Principal Balance**” shall mean, as of any date, the outstanding principal balance of the Loan. For the avoidance of doubt, the outstanding principal balance of the Loan shall include Project Reserve Funds and all other funds held by lender or escrow agent.

“**Payment Date**” shall mean, commencing with the First Payment Date, the first (1st) day of each calendar month during the term of the Loan until and including the Maturity Date or, for purposes of making payments hereunder, but not for purposes of calculating Interest Periods, if such day is not a Business Day, the immediately preceding Business Day.

“**Permitted Encumbrances**” shall mean, collectively (a) the Liens and security interests created by the Loan Documents, (b) all Liens, encumbrances and other matters disclosed in “Schedule B-I” of the Title Insurance Policy, (c) Liens, if any, for Taxes imposed by any Governmental Authority which are not yet due or delinquent, and (d) such other title and survey exceptions as Lender has approved or may approve in writing in Lender’s sole discretion, which Permitted Encumbrances in the aggregate do not materially adversely affect the value or use of the Property or Borrower’s ability to repay the Loan.

“**Permitted Transfer**” means any of the following: (a) any Transfer, directly as a result of the death of a natural person, of stock, membership interests, partnership interests or other ownership interests previously held by the decedent in question to the Person or Persons lawfully entitled thereto; (b) any Transfer, directly as a result of the legal incapacity of a natural person, of stock, membership interests, partnership interests or other ownership interests previously held by such natural person to the Person or Persons lawfully entitled thereto; and (c) any Transfer expressly permitted by and completed strictly in accordance with Section 5.2.10.

“**Person**” shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any Governmental Authority, and any fiduciary acting in such capacity on behalf of any of the foregoing.

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

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

“**Prohibited Transaction**” shall mean any action or 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.

“**Project**” shall mean and refer to, individually and collectively as applicable, the rehabilitation improvements to each Individual Property more particularly described on Schedule 1.1(b) hereto, that will be funded, in whole or in part, with disbursements of Project Reserve Funds.

“**Project Budget**” shall mean a budget for construction of each Project approved by Lender in its sole discretion and any modifications thereof approved by Lender in writing in its sole and absolute discretion.

“**Project Contracts**” shall mean each contract or agreement to which Borrower or any agent of Borrower is a party, providing for the provision of construction services (including architect’s or engineering services), labor or material in connection with a Project.

“**Project Costs**” shall mean all costs and expenses of every kind and nature whatsoever to be incurred by Borrower in connection with the Completion of a Project, including such reserves and contingencies as Lender shall reasonably require.

“**Project Documents**” shall mean each of the following as approved by Lender with respect to each Project: the Approved Plans and the applicable Project Contracts.

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

“**Project Reserve Funds**” shall have the meaning set forth in Section 7.4.1 hereof.

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

“**Release Amount**” shall mean, for an Individual Property, the lesser of:

(a) the Debt; or

(b) an amount equal to the Allocated Loan Amount for such Individual Property set forth on Schedule 1.1(a) (as adjusted pursuant to Sections 2.4.1(c) and 2.4.2(a) if applicable) multiplied by one hundred and ten percent (110%).

“**Release Property**” shall have the meaning set forth in Section 2.7 hereof.

“**Rents**” shall mean all rents (including additional rents of any kind and percentage rents), rent equivalents, moneys payable as damages (including payments by reason of the rejection of a Lease in a Bankruptcy Action) or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other payments and consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower or any of their agents or employees from any and all sources arising from or attributable to the Property, and the Improvements, including charges for oil, gas, water, steam, heat, ventilation, air-conditioning, electricity, license fees, maintenance fees, charges for Taxes, operating expenses or other amounts payable to Borrower (or for the account of Borrower), revenues from telephone services, vending and all receivables, customer obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of the Property or rendering of services by Borrower, or any of its agents or employees and proceeds, if any, from business interruption or other loss of income insurance.

“**Reserve Accounts**” shall mean, collectively, the Project Reserve Account, the Net Proceeds Account, and any other escrow or reserve account established pursuant to the Loan Documents

“**Reserve Funds**” shall mean, collectively, the Project Reserve Funds and any other escrow or reserve funds established pursuant to the Loan Documents.

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

“**Retention Amount**” shall have the meaning set forth in Section 6.4(b)(iv) hereof.

“**Second Extension Option**” shall have the meaning set forth in Section 2.6.1 hereof.

“**Securities**” shall have the meaning set forth in Section 9.1 hereof.

“**Security Instrument**” shall mean those certain first priority Deeds of Trust, Security Agreements, Assignment of Leases and Fixture Filings of even date herewith, made by Borrower for the benefit of Lender as security for the Obligations and encumbering the Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Servicer**” shall have the meaning set forth in Section 9.3 hereof.

“**Servicing Agreement**” shall have the meaning set forth in Section 9.3 hereof.

“**Severed Loan Documents**” shall have the meaning set forth in Section 9.2 hereof.

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

“**Stated Maturity Date**” shall mean August 31, 2021.

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

“**Taxes**” shall mean all taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against (a) the Property or part thereof, together with all interest and penalties thereon and (b) against the rents, issues, income or profits thereof or upon the lien or estate hereby created, whether any or all of said taxes, assessments or charges be levied directly or indirectly or as excise taxes or ad valorem real estate or personal property taxes or as income taxes.

“**Tenant**” shall mean the lessee of all or any portion of the Property under a Lease.

“**Title Company**” shall mean the title insurance company which issued the Title Insurance Policy.

“**Title Insurance Policy**” shall mean an ALTA mortgagee title insurance policy in a form acceptable to Lender (or, if the State does not permit the issuance of such ALTA policy, such form as shall be permitted in the State and acceptable to Lender) with respect to the Property and insuring the Lien of any of the Security Instrument encumbering the Property.

“**Transfer**” shall mean means the sale, transfer, hypothecation, pledge, encumbrance, mortgage, conveyance, lease, alienation, assignment, disposition, divestment, or leasing with option to purchase, or assignment of the Property, or any portion thereof or interest therein or in Borrower (whether direct or indirect, legal or equitable including the issuance, sale, assignment, alienation, conveyance, divestment, transfer, disposition, hypothecation, pledge, mortgage or encumbrance of any ownership interest in Borrower or in any entity having an ownership interest in Borrower, whether direct or indirect); or entering into any agreement or contract to do any of the foregoing which is not conditioned on compliance with the terms of the Loan Documents with respect to Transfers, or undertaking, suffering or causing any of the foregoing to occur voluntarily, involuntarily or by operation of law.

“**UCC**” shall mean the Uniform Commercial Code as in effect in the State in which the Property is located, as the same may be amended from time to time *provided, however*, that if by reason of mandatory provisions of law, the perfection or the effect of perfection or non-perfection or priority of the security interest in any item or portion of the collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State in which the Property is located (“**Other UCC State**”), “**UCC**” means the Uniform Commercial Code as in effect in such Other UCC State, as the same may be amended from time to time, for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection or priority.

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

Section 1.2 Principles of Construction. All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All uses of the word “including” shall mean “including, without limitation” unless the context shall indicate otherwise. Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined.

ARTICLE II

GENERAL TERMS

Section 2.1 Loan Commitment; Disbursement to Borrower.

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

2.1.2 Single Disbursement to Borrower. Borrower may request and receive only one disbursement hereunder in respect of the Loan and any amount borrowed and repaid in respect of the Loan may not be re-borrowed. Borrower acknowledges and agrees that the Loan has been fully funded as of the Closing Date.

2.1.3 The Note, Security Instrument and Loan Documents. The Loan shall be evidenced by the Note and secured by the Security Instrument, and the other Loan Documents.

2.1.4 Use of Proceeds. Borrower shall use the proceeds of the Loan to (a) refinance the Property, (b) make deposits of Reserve Funds into the Reserve Accounts on the Closing Date in the amounts provided herein (Borrower hereby authorizing Lender to reserve a portion of the proceeds of the Loan in the amount of the Reserve Funds from disbursement of the proceeds of the Loan on the date hereof), (c) pay costs and expenses incurred in connection with the closing of the Loan, as approved by Lender, and (d) pay for Project Costs.

2.1.5 Upfront Payment. At Closing, Borrower shall pay to Lender an upfront fee (the "*Upfront Payment*") in an amount equal to Seventy-Five Thousand and No/100 Dollars (\$75,000.00), less any portion of the Upfront Fee paid to Lender prior to the Closing. The Upfront Payment is fully earned and non-refundable.

Section 2.2 Interest Rate.

2.2.1 Interest Rate. Subject to Section 2.2.4 hereof, interest on the Outstanding Principal Balance shall accrue from the date of the funding of the Loan to but excluding the Maturity Date at the Interest Rate.

2.2.2 Interest Calculation. With respect to any applicable period, interest on the Outstanding Principal Balance 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 the Interest Rate and a three hundred sixty (360) day year by (c) the average Outstanding Principal Balance in effect for the applicable period as calculated by Lender.

2.2.3 Default Rate. In the event that, and for so long as, any Event of Default shall have occurred and be continuing, the Outstanding Principal Balance and, to the extent permitted by law, all accrued and unpaid interest in respect thereof and any other amounts due pursuant to the Loan Documents, shall accrue interest at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained herein.

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

Section 2.3 Debt Service Payments.

2.3.1 Payments Generally. For purposes of making payments hereunder, but not for purposes of calculating Interest Periods, if the day on which such payment is due is not a Business Day, then amounts due on such date shall be due on the immediately succeeding Business Day. All amounts due pursuant to this Agreement and the other Loan Documents shall be payable without setoff, counterclaim, defense or any other deduction whatsoever.

2.3.2 Monthly Debt Service Payment. On the Closing Date, Borrower shall make a payment of interest only for the period commencing on and including the date of the funding of the Loan through and including September 30, 2020. Beginning on October 1, 2020 (the "*First Payment Date*") and each subsequent Payment Date up to and including the Maturity Date, Borrower shall make a payment to Lender of principal (if any) and interest in an amount equal to the Monthly Debt Service Payment Amount, which payments shall be applied to accrued and unpaid interest.

2.3.3 Payment on Maturity Date. Borrower shall pay to Lender not later than 3:00 P.M., Philadelphia city time, on the Maturity Date the Outstanding Principal Balance, all accrued and unpaid interest and all other amounts due hereunder and under the Note, the Security Instrument and the other Loan Documents.

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

2.3.5 Method and Place of Payment Except as otherwise specifically provided herein, all payments and prepayments under this Agreement and the Note shall be made to Lender not later than 2:00 P.M., Philadelphia city time, on the date when due and shall be made in Dollars in immediately available funds at Lender's office or as otherwise directed by Lender, 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. Any prepayments required to be made hereunder shall be deemed to have been timely made for purposes of this Section 2.3.5.

2.3.6 ACH Payment All payments due and owing under this Agreement or any other Loan Documents shall be made by wire transfer to an account designated by Lender to Borrower from time to time, or at Lender's election, shall be made through automated clearing house ("**ACH**") transfers from the Borrower directly to Lender. In this regard, if Lender elects to receive payments through ACH, shall execute and deliver to Lender an authorization agreement for direct payments whereby, among other things, Lender shall be irrevocably authorized to initiate ACH transfers from the a payment account designated by Borrower to Lender in the amounts required or permitted under this Agreement and all other Loan Documents. Lender's authorization for direct ACH transfers as hereby provided shall be irrevocable and such ACH transfers shall continue until all Obligations are paid in full. For so long as any Obligations remain outstanding, Borrower shall: (i) not revoke Lender's authority to initiate ACH transfers as hereby contemplated; (ii) not change, modify, close or otherwise affect the designated payment account; (iii) deposit all revenues of any nature or kind whatsoever relating to Borrower or its business only into the designated payment account; and (iv) be responsible for all costs, expenses or other fees and charges incurred by Lender as a result of any failed or returned ACH transfers, whether resulting from insufficient sums being available in the designated payment account, or otherwise. Borrower shall undertake any and all required actions, execute any required documents, instruments or agreements, or to otherwise do any other thing required or requested by Lender in order to effectuate the requirements of this Section 2.3.6.

Section 2.4 Prepayments.

2.4.1 Voluntary Prepayments.

(a) Except as otherwise provided in this Section 2.4, Borrower shall not have the right to prepay the Loan in whole or in part. Provided no Event of Default has occurred and is continuing, Borrower may prepay the Loan in whole upon the satisfaction of the following conditions:

(b) Borrower shall provide a written notice to Lender of such prepayment no less than thirty (30) days, and no more than sixty (60) days, prior to the date of such prepayment, specifying the Business Day on which a prepayment of the Debt (the "**Prepayment Date**") is to be made; and

(c) Borrower shall pay to Lender on the Prepayment Date, together with any portion of the Outstanding Principal Balance being repaid:

(i) all accrued and unpaid interest on the amount of the Outstanding Principal Balance being prepaid, which, for the avoidance of doubt, shall include interest on such amount calculated at the applicable Interest Rate through the end of the Interest Period in which such prepayment occurs; and

(ii) without duplication of any of the foregoing, all other sums, then due under the Note, this Agreement, the Security Instrument, and the other Loan Documents.

(d) If for any reason Borrower fails to prepay the Loan on the Prepayment Date (including if such notice is revoked), Borrower shall pay to Lender any actual out-of-pocket losses, costs, damages or expenses (including reasonable attorneys' fees and expenses) incurred by Lender in connection therewith.

(e) Upon receipt by Lender of a voluntary prepayment permitted pursuant to the terms of this Agreement, except for a prepayment made (i) in connection with a release of any Individual Property from the Lien of any of the Security Instruments or (ii) any Casualty/Condemnation Prepayment up to the Allocated Loan Amount of the applicable Individual Property, the Allocated Loan Amount for each Individual Property that is then subject to the Lien of any of the Security Instruments shall be reduced on a pro rata basis by such amount.

2.4.2 Mandatory Prepayments.

(a) 90-Day Principal Payments. On December 1, 2020, Borrower shall make a payment to Lender (the “**Initial 90-Day Principal Payment**”) in an amount equal to five percent (5%) of the Outstanding Principal Balance. Beginning on March 1, 2021 and on each third (3rd) Payment Date thereafter (i.e., on June 1, September 1, December 1 and March 1 of each calendar year), Borrower shall make a payment to Lender (each such payment, and together with the Initial 90-Day Principal Payment, collectively the “**90-Day Principal Payments**”) in an amount (but not less than zero) equal to (a) ten percent (10%) of the Outstanding Principal Balance, less (b) all Release Amounts paid to Lender pursuant to and in accordance with Section 2.7 hereof and applied to pay down the Outstanding Principal Balance but only to the extent such Release Amounts have not been applied to reduce any prior 90-Day Principal Payments. Provided no Event of Default exists, Lender shall apply the 90-Day Principal Payments to the Outstanding Principal Balance.

(b) Net Proceeds Payments. On the Payment Date immediately succeeding the date on which Lender actually receives any Net Proceeds, and if Lender is not required to make such Net Proceeds available to Borrower for a Restoration in accordance with the terms of this Agreement, Borrower shall prepay or authorize Lender to apply the Net Proceeds as a prepayment of the Outstanding Principal Balance in an amount equal to one hundred percent (100%) of such Net Proceeds provided that Borrower shall simultaneously therewith pay to Lender all accrued and unpaid interest on the principal amount being repaid (which, for the avoidance of doubt, shall include interest accruing on such amounts through the last day of the Interest Period in which such repayment occurs). Notwithstanding anything herein to the contrary, so long as no Event of Default has then occurred and is continuing, no or any other prepayment premium, penalty or fee shall be due in connection with any prepayment made pursuant to this Section 2.4.2.

2.4.3 Prepayments After Default. If, during the continuance of an Event of Default, payment of all or any part of the Debt is tendered by Borrower and accepted by Lender or is otherwise recovered by Lender (including through application of any Reserve Funds), such tender or recovery shall be deemed to be a voluntary prepayment by Borrower in violation of the prohibition against prepayment set forth in Section 2.4.1 hereof, and Borrower shall pay, as part of the Debt, all of the interest calculated at the Interest Rate on the amount of principal being prepaid through and including the end of the Interest Period in which such prepayment occurs.

Section 2.5 Release of Property. Except as set forth in Section 2.7 below, no repayment, prepayment 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 of the Security Instruments. Lender shall, upon the written request and at the expense of Borrower, upon payment in full of the Debt in accordance with the terms of this Agreement and the other Loan Documents, release the Lien of the Security Instruments.

Section 2.6 Extension Option(s).

2.6.1 Extension Option(s). Subject to the provisions of this Section 2.6.1, Borrower shall have the option (the “**First Extension Option**”), by irrevocable written notice (the “**First Extension Notice**”) delivered to Lender no later than thirty (30) days prior to the Stated Maturity Date, to extend the Maturity Date to August 31, 2022 (the “**First Extended Maturity Date**”). Borrower’s right to so extend the Maturity Date shall be subject to the satisfaction of the following conditions precedent prior to the effectiveness of any such extension:

(a) (i) no Event of Default shall have occurred and be continuing on the date Borrower delivers the First Extension Notice or the Second Extension Notice, as applicable, and (ii) no Default or Event of Default shall have occurred and be continuing on the Stated Maturity Date and the First Extended Maturity Date, as applicable;

(b) All amounts due and payable by Borrower and any other Person pursuant to this Agreement or the other Loan Documents as of the Stated Maturity Date or the First Maturity Date, as applicable, and all costs and expenses of Lender, including fees and expenses of Lender’s counsel, in connection with the Loan and/or the extension shall have been paid in full;

(c) Borrower shall deliver an Officer's Certificate to Lender (i) certifying that all representations and warranties set forth in this Agreement remain true, correct and complete in all material respects as of the commencement of the applicable Extension Option, and (ii) waiving any claims, counterclaims, rights of rescission, set-offs or defenses, known or unknown, against Lender as of the commencement of the applicable Extension Option.

If Borrower is unable to satisfy all of the foregoing conditions within the applicable time frames for each, Lender shall have no obligation to extend the Stated Maturity Date hereunder.

2.6.2 Extension Documentation. If requested by Lender, Borrower shall execute and deliver an agreement in form and substance reasonably acceptable to Lender commemorating the extension of the Maturity Date upon the exercise of an Extension Option and satisfaction of all applicable conditions to such extension as provided in Section 2.6.1; provided that no such agreement shall materially increase or alter the obligations of Borrower pursuant to the Loan Documents (it being acknowledged that a ratification by Borrower or any Guarantor of its respective obligations under the Loan Documents to which it is a party or a certification by Borrower and/or any Guarantor that its respective representations and warranties set forth in the Loan Documents to which it is a party remain true and correct in all material respects as of the first day of any extension term shall not constitute an increase in Borrower's obligations for such purpose).

2.7 Release of Individual Property. At any time Borrower may obtain the release of an Individual Property from the Lien of the applicable Security Instrument thereon and related Loan Documents (each such Individual Property, a "**Release Property**") and the release of Borrower's obligations under the Loan Documents with respect to such Release Property (other than those expressly stated to survive), upon the satisfaction of each of the following conditions:

(a) Not more than ninety (90) calendar days and not less than ten (10) calendar days prior to the date of the release, Borrower delivers a notice to Lender setting forth (i) the date of the proposed release and (ii) a description of the Release Property that will be subject to the release;

(b) no Event of Default shall be continuing on the date that the Release Property is released from the Lien of the Security Instrument thereon other than as expressly permitted below;

(c) Borrower shall have paid to Lender the applicable Release Amount;

(d) Borrower shall submit to Lender, not less than ten (10) days prior to the date of such release, a release of Lien (and related Loan Documents) for such Release Property for execution by Lender. Such release shall be in a form appropriate in each jurisdiction in which such Release Property is located and that would be reasonably satisfactory to a prudent lender. In addition, Borrower shall provide all documentation Lender reasonably requires to be delivered by Borrower in connection with such release, together with an Officer's Certificate certifying that such documentation (A) will effect such release in accordance with the terms of this Agreement, and (B) will not impair or otherwise adversely affect the Liens, security interests and other rights of Lender under the Loan Documents not being released (or as to the parties to the Loan Documents and Individual Properties subject to the Loan Documents not being released);

(e) Borrower shall have paid or reimbursed Lender for all reasonable out of pocket costs and expenses incurred by Lender (including, without limitation, reasonable attorneys' fees and disbursements) in connection with any release effectuated pursuant to this Section 2.7, and Borrower shall have paid all third-party fees, costs and expenses incurred in connection with any such release, including but not limited to, the payment of all recording charges, filing fees, taxes or other similar expenses incurred in the reasonable judgment of Lender in order to effectuate the release;

(f) [Intentionally omitted]

(g) At Lender's request, Borrower shall deliver to Lender (i) an endorsement to the Title Insurance Policy for the remaining Property (to the extent reasonably available in the State in which the remaining Property is located) insuring the Security Instrument, which endorsement (A) extends the effective date of such Title Insurance Policy for the remaining Property to the effective date of the release, (B) confirms no change in the priority of the Security Instrument on the balance of the Property (exclusive of the Release Parcel); and (C) lists any Permitted Encumbrances; and (ii) at Lender's request, a survey in form and substance reasonably acceptable to Lender of the remaining portion of the Property; and

(h) Notwithstanding the foregoing provisions of this Section 2.7, if the Loan is included in a REMIC Trust, as a condition to such release, Borrower shall have established to Lender's reasonable satisfaction that the loan-to-value ratio of the Loan (expressed as a percentage) based upon valuations obtained by Borrower at its sole cost and expense using (i) an existing appraisal (if such release occurs within twenty-four (24) months of the Closing Date), (ii) a new appraisal or (iii) a broker's price opinion or other written determination of value using a commercially reasonable valuation method (provided, in each case, that such appraisal, opinion or other determination constitutes a commercially reasonable method permitted to a REMIC Trust, and provided, further, that such valuation shall be based solely on the value of real property and shall exclude personal property and going-concern value) does not exceed 125% immediately after the release of the Release Property, no such release will be permitted unless the Borrower pays down the principal balance of the Loan by an amount not less than the greater of (A) the Release Amount or (B) the least of one of the following amounts: (i) if the Individual Property is sold, the net proceeds of an arm's-length sale of the Release Property to an unrelated Person, (ii) the fair market value of the Release Property at the time of the release, or (iii) an amount such that the loan-to-value ratio of the Loan as so determined by Lender after the release is not greater than the loan-to-value ratio of the Loan immediately prior to the release, unless the Lender receives an opinion of counsel that, if (B) is not followed, the Securitization will not fail to maintain its status as a REMIC Trust as a result of the release.

ARTICLE III

[**Intentionally Omitted**]

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

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

4.1.1 Organization. Borrower has been duly organized and is validly existing and in good standing with requisite power and authority to own its properties and to transact the business in which it is now engaged and as contemplated by this Agreement, including, without limitation, the power and authority to do business in the State. Borrower is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations. Borrower possesses all rights, licenses, permits and authorizations, governmental or otherwise, necessary to entitle it to own its properties and to transact the businesses in which it is now engaged. The sole business of Borrower is the ownership, management and operation of the Property. The ownership interests of Borrower are as set forth on the organizational chart attached hereto as Schedule 4.1.1. Borrower (a) has complied in all respects with its articles of organization or limited liability company agreement; (b) has maintained complete books and records and bank accounts separate from those of its Affiliates; and (c) has obeyed all formalities required to maintain its status as, and at all times has held itself out to the public as, a legal entity separate and distinct from any other entity (including, but not limited to, any Affiliate thereof). The signatory hereto has all necessary power, authority and legal right to execute this Agreement, the Note and the other Loan Documents on Borrower's behalf to which Borrower is a party. Guarantor has the necessary power, authority and legal right to execute, deliver and perform its obligations under the Guaranty.

4.1.2 Proceedings. Borrower has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents. This Agreement and the other Loan Documents to which it is a party have been duly executed and delivered by or on behalf of Borrower and constitute the legal, valid and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

4.1.3 No Conflicts. The execution, delivery and performance of this Agreement and the other Loan Documents by Borrower and/or Guarantor, as applicable, will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any Lien, charge or encumbrance (other than pursuant to the Loan Documents) upon any of the property or assets of Borrower pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, partnership agreement, management agreement or other agreement or instrument to which Borrower is a party or by which any of Borrower's property or assets is subject, nor will such action result in any violation of the provisions of any Legal Requirements of any Governmental Authority having jurisdiction over Borrower or any of Borrower's properties or assets, and any consent, approval, authorization, order, registration or qualification of or with any court or any such Governmental Authority required for the execution, delivery and performance by Borrower and/or any Guarantor, as applicable, of this Agreement or any other Loan Documents has been obtained and is in full force and effect.

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

4.1.5 Agreements. Borrower is not a party to any agreement or instrument or subject to any restriction which might materially and adversely affect Borrower or the Property, or Borrower's business, properties or assets, operations or condition, financial or otherwise. Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party or by which Borrower or the Property are bound. Borrower has no material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower is a party or by which Borrower or the Property is otherwise bound, other than as permitted by this Agreement.

4.1.6 Title. Borrower has good, marketable and insurable fee simple title to the real property comprising part of the Property and good title to the balance of the Property, free and clear of all Liens whatsoever except the Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. The Security Instrument, when properly recorded in the appropriate records, together with any UCC-1 financing statements required to be filed in connection therewith, will create (a) a valid, perfected first priority lien on the Property, subject only to Permitted Encumbrances and the Liens created by the Loan Documents, and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty, solely to the extent such security interests can be perfected by the filing of a UCC-1 financing statement, all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. There are no claims for payment for work, labor or materials affecting the Property which are or may become a Lien prior to, or of equal priority with, the Liens created by the Loan Documents.

4.1.7 Solvency. Borrower has (a) not entered into the transaction contemplated by this Agreement or executed the Note, this Agreement or any other Loan Documents with the actual intent to hinder, delay or defraud any creditor and (b) received reasonably equivalent value in exchange for its obligations under such Loan Documents. After 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 liabilities (including contingent liabilities, if any), 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 incur debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debts 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 the obligations of Borrower). No Bankruptcy Action exists against Borrower and Borrower has never been a debtor party in a Bankruptcy Action. No Bankruptcy Action exists against any Guarantor, and neither Borrower nor has any Guarantor has ever been a debtor party in a Bankruptcy Action. Neither Borrower nor any Guarantor is contemplating either a Bankruptcy Action or the liquidation of all or a major portion of Borrower's or Guarantor's respective assets or properties, and Borrower has no knowledge of any Person contemplating the filing of any petition against Borrower or any Guarantor.

4.1.8 Full and Accurate Disclosure. No statement of fact made by or on behalf of Borrower in this Agreement or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no material information that has not been disclosed to Lender which adversely affects, nor as far as Borrower can reasonably foresee, might materially adversely affect, the Property or the business, operations or condition (financial or otherwise) of Borrower or any Guarantor.

4.1.9 No Plan Assets. Borrower is not an “employee benefit plan,” as defined in Section 3(3) of ERISA, subject to Title I of ERISA or Section 4975 of the Code, and none of the assets of Borrower constitutes or will constitute “plan assets” of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101. Compliance by Borrower and each Guarantor with the provisions hereof will not involve any Prohibited Transaction. Neither Guarantor nor Borrower has any pension, profit sharing, stock option, insurance or other arrangement or plan for employees covered by Title IV of ERISA, and no “Reportable Event” as defined in ERISA has occurred and is now continuing with respect to any such plan. The performance by Borrower of its obligations under the Loan Documents and Borrower’s conducting of its operations do not violate any provisions of ERISA. In addition, (a) Borrower is not a “governmental plan” within the meaning of Section 3(32) of ERISA, (b) transactions by or with Borrower are not subject to any state statute or regulation regulating investments of, or fiduciary obligations with respect to, governmental plans within the meaning of Section 2(32) of ERISA which is similar to the provisions of Section 406 of ERISA or Section 4975 of the Code currently in effect, which prohibit or otherwise restrict the transactions contemplated by this Agreement, and (c) none of Borrower, Guarantor or ERISA Affiliate is at the date hereof, or has been at any time within the two years preceding the date hereof, an employer required to contribute to any Multiemployer Plan or Multiple Employer Plan, or a “contributing sponsor” (as such term is defined in Section 4001 of ERISA) in any Multiemployer Plan or Multiple Employer Plan; and none of Borrower, Guarantor or any ERISA Affiliate has any contingent liability with respect to any post-retirement “welfare benefit plan” (as such term is defined in ERISA) except as disclosed to Lender in writing.

4.1.10 Compliance. Borrower and the Property (including the use thereof) comply in all material respects with all applicable Legal Requirements, including, without limitation, building and zoning ordinances and codes. Borrower is not in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority, including, without limitation, any order of a bankruptcy court or plan approved thereby. There has not been committed by Borrower (or any other Person), any act or omission affording any Governmental Authority the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower’s obligations under any of the Loan Documents. Neither the Improvements, if any, as constructed, nor the use of the Property or any contemplated accessory uses, will violate (a) any Legal Requirements (including subdivision, zoning, building, environmental protection and wetland protection Legal Requirements), or (b) any building permits, restrictions or records, or agreements affecting the Property or any part thereof. Neither the zoning authorizations, approvals or variances nor any other right to construct or to use the Property is to any extent dependent upon or related to any real estate other than the Property.

4.1.11 Financial Information. All financial data with respect to the Property and Guarantor, including, without limitation, the statements of cash flow and income and operating expense, that have been delivered to Lender in connection with the Loan (a) are true, complete and correct in all material respects, (b) fairly and accurately represent the financial condition of the Property and each Guarantor as of the date of such reports, and (c) to the extent prepared or audited by an independent certified public accounting firm, have been prepared in accordance with GAAP (or such other accounting basis acceptable to Lender) throughout the periods covered, except as disclosed therein. Except for Permitted Encumbrances, Borrower does not have any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and reasonably likely to have a Materially Adverse Effect on the Property or the Project. Since the date of such financial statements, there has been no Material Adverse Change (or any other material change) in the financial condition, operation or business of Borrower or any Guarantor from that set forth in said financial statements.

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

4.1.13 Federal Reserve Regulations. No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulation U or any other Regulations of such Board of Governors, or for any purposes prohibited by any Legal Requirements or by the terms and conditions of this Agreement or the other Loan Documents.

4.1.14 Public Access. The Property has rights of access to public ways and, upon construction thereon, will be served by water, sewer, sanitary sewer and storm drain facilities adequate to service the Property for its intended uses. All public utilities necessary or convenient to the full use and enjoyment of the Property are located either in the public right-of-way abutting the Property (which will be connected so as to serve the Property without passing over other property) or in recorded easements serving the Property and such easements are set forth in and insured by the Title Insurance Policy. All roads necessary for the use of the Property for its current purpose have been completed and dedicated to public use and accepted by all Governmental Authorities. There is no on-site sewage disposal system and, upon construction thereon, the Property will be served by a sewer system maintained by a Governmental Authority or property owners association.

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

4.1.16 Separate Lots. The Property is comprised of multiple parcels more particularly described on Schedule 1.1(a) which each constitute(s) a separate tax lot or lots and does not constitute a portion of any other tax lot not a part of the Property.

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

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

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

4.1.20 Insurance. Borrower has obtained and has delivered to Lender evidence of all Policies, with all premiums paid thereunder, reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. No claims have been made or are currently pending, outstanding or otherwise remain unsatisfied under any such Policies, and neither Borrower nor any other Person, has done, by act or omission, anything which would impair the coverage of any such Policies.

4.1.21 Flood Zone. None of the Improvements on the Property are located in an area as identified by the Federal Emergency Management Agency as an area having special flood hazards or, if so located, the flood insurance required pursuant to Section 6.1(a)(i) hereof is in full force and effect with respect to the Property.

4.1.22 Leases. Any and all Leases at the Property (a) provide for rental rates comparable to existing local market rates, contain reasonable market rate terms and do not contain any terms which would materially adversely affect Lender's rights under the Loan Documents, (b) are for a lease term not exceeding one year, including all extensions, (c) are with individual, residential, non-commercial tenants, and (d) have been entered into by Borrower in its ordinary course of business. No Person has any possessory interest in the Property or right to occupy the same other than tenants pursuant to the express terms of the Leases.

4.1.23 Survey. Each Survey for the Property delivered to Lender is accurate.

4.1.24 Principal Place of Business; State of Organization. Borrower's principal place of business as of the date hereof is the address set forth in the introductory paragraph of this Agreement. Borrower is organized under the laws of the State of Delaware and is qualified to do business in the all states in which Borrower is required to be qualified.

4.1.25 Filing and Recording Taxes. All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the transfer of the Property to Borrower have been paid. All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Security Instrument, have been paid or are being paid simultaneously with the disbursement of the proceeds of the Loan to Borrower.

4.1.26 [Intentionally omitted].

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

4.1.28 No Change in Facts or Circumstances; Disclosure. All information submitted by Borrower and any Guarantor to Lender including, but not limited to, all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan or in satisfaction of the terms thereof and all statements of fact made by Borrower and each Guarantor in this Agreement or in any other Loan Document, are accurate, complete and correct in all material respects. There has been no Material Adverse Change in any condition, fact, circumstance or event that would make any such information inaccurate, incomplete or otherwise misleading in any material respect or that otherwise materially and adversely affects or might materially and adversely affect the use, operation or value of the Property or the business operations and/or the financial condition of Borrower or any Guarantor. Borrower and each Guarantor have disclosed to Lender all material facts and have not failed to disclose any material fact that could cause any information provided to Lender or representation or warranty made herein to be materially misleading.

4.1.29 Investment Company Act. Borrower is not (a) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; (b) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 2005, as amended; or (c) subject to any other Federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

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

4.1.31 Filing of Returns. Borrower and each Guarantor have filed all Federal income tax returns and all other material tax returns, domestic and foreign, or extensions, as the case may be, required to be filed by it and have paid all material taxes and assessments payable by it that have become due, other than those not yet delinquent and except for those being contested in good faith. Borrower and each Guarantor have each established on its books such charges, accruals and reserves in respect of taxes, assessments, fees and other governmental charges for all fiscal periods as are required by sound accounting principles consistently applied. Neither Borrower, nor any Guarantor knows of any proposed assessment for additional Federal, foreign or state taxes for any period, or of any basis therefor, that, individually or in the aggregate, taking into account such charges, accruals and reserves in respect thereof as such Person has made, could reasonably be expected to cause a Material Adverse Change with respect to Borrower, Guarantor or the Property.

4.1.32 Operations Agreements. Each Operations Agreement is in full force and effect and neither Borrower nor, to the best of Borrower's knowledge, any other party to any such Operations Agreement, 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.

Section 4.2 Survival of Representations. Borrower agrees that all of the representations and warranties of Borrower set forth in Section 4.1 and elsewhere in this Agreement and in the other Loan Documents shall survive for so long as any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

ARTICLE V

BORROWER COVENANTS

Section 5.1 Affirmative Covenants. From the date hereof and until payment and performance in full of all Obligations, Borrower hereby covenants and agrees with Lender that:

5.1.1 Existence; Compliance with Legal Requirements. Borrower shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, licenses, permits and franchises and comply with all Legal Requirements applicable to Borrower and the Property. There shall never be committed by Borrower, and Borrower shall not permit any other Person in occupancy of or involved with the operation or use of the Property to commit, any act or omission affording any Governmental Authority the right of forfeiture against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. Borrower shall not commit, permit or suffer to exist any act or omission affording such right of forfeiture. Borrower shall at all times maintain, preserve and protect all franchises and trade names, preserve all the remainder of its property used or useful in the conduct of its business, and shall keep the Property in good working order and repair, and from time to time make, or cause to be made, all reasonably necessary repairs, renewals, replacements, betterments and improvements thereto, all as more fully provided in the Security Instrument. Borrower shall keep the Property insured at all times by financially sound and reputable insurers, to such extent and against such risks, and maintain liability and such other insurance, as is more fully provided in this Agreement. After prior notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding promptly initiated and conducted in good faith and with due diligence, the validity of any Legal Requirement, the applicability of any Legal Requirement to Borrower or the Property or any alleged violation of any Legal Requirement, provided, that: (a) no Default or Event of Default has occurred and is continuing; (b) such proceeding shall be permitted under, and be conducted in accordance with, the provisions of any instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances; (c) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (d) Borrower shall, upon final determination thereof, promptly comply with any such Legal Requirement determined to be valid or applicable or cure any violation of any Legal Requirement; (e) such proceeding shall suspend the enforcement of the contested Legal Requirement against Borrower and the Property; and (f) Borrower shall furnish such security as may be required in the proceeding, or as may be requested by Lender, to insure compliance with such Legal Requirement, together with all interest and penalties payable in connection therewith. Lender may apply any such security, as necessary to cause compliance with such Legal Requirement at any time when, in the judgment of Lender, the validity, applicability or violation of such Legal Requirement is finally established or the Property (or any part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost.

5.1.2 Taxes and Other Charges. Borrower shall pay, all Taxes and Other Charges now or hereafter levied or assessed or imposed against the Property, or any part thereof, as the same become due and payable. Borrower will deliver or cause to be delivered to Lender receipts for payment or other evidence satisfactory to Lender that the Taxes and Other Charges have been so paid or are not then delinquent no later than ten (10) days prior to the date on which the Taxes and/or Other Charges would otherwise be delinquent if not paid. Borrower shall not suffer and shall promptly pay or cause to be paid and discharged any Lien or charge whatsoever which may be or become a Lien or charge against the Property, and shall promptly pay or cause to be paid all utility services provided to the Property. After prior notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Taxes or Other Charges, provided that (a) no Default or Event of Default has occurred and remains uncured; (b) such proceeding shall be permitted under, and be conducted in accordance with, the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances; (c) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (d) Borrower shall promptly upon final determination thereof pay or cause to be paid the amount of any such Taxes or Other Charges, together with all costs, interest and penalties which may be payable in connection therewith; (e) such proceeding shall suspend the collection of such contested Taxes or Other Charges from the Property (except that if such Taxes or Other Charges must be paid sooner in order to avoid being delinquent, then Borrower shall pay or cause the same to be paid prior to delinquency, and upon making such payment or causing such payment to be made prior to delinquency Borrower may continue such contest); and (f) Borrower shall furnish such security as may be required in the proceeding, or as may be requested by Lender, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon. Lender may pay over any such cash deposit or part thereof held by Lender to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established or the Property (or part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost or there shall be any danger of the Lien of the Security Instrument being primed by any related Lien.

5.1.3 Litigation. Borrower shall give prompt notice to Lender of any litigation or proceedings by any Governmental Authority pending or threatened against Borrower and/or any Guarantor which might have a Materially Adverse Effect on Borrower's or any Guarantor's condition (financial or otherwise) or business or the Property.

5.1.4 Access to Property. Borrower shall permit agents, representatives and employees of Lender to inspect the Property or any part thereof at reasonable hours upon reasonable advance notice (which may be given verbally).

5.1.5 Notice of Default. Borrower shall promptly advise Lender of any Material Adverse Change in Borrower's or any Guarantor's condition, financial or otherwise, or of the occurrence of any Default or Event of Default of which Borrower has knowledge.

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

5.1.7 Perform Loan Documents. Borrower shall observe, perform and satisfy all the terms, provisions, covenants and conditions of, and shall pay when due all costs, fees and expenses to the extent required under the Loan Documents. Payment of the costs and expenses associated with any of the foregoing shall be in accordance with the terms and provisions of this Agreement, including, without limitation, the provisions of Section 10.13 hereof.

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

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

(a) furnish to Lender all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements, and each and every other document, certificate, agreement and instrument required to be furnished by Borrower pursuant to the terms of the Loan Documents or which are reasonably requested by Lender in connection therewith;

(b) authorize the filing or recording of or execute and deliver to Lender such documents, instruments, certificates, assignments, financing statements 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 under the Loan Documents, as Lender may reasonably require; and

(c) 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. In furtherance hereof, Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of protecting, perfecting, preserving and realizing upon the interests granted pursuant to this Agreement and to effect the intent hereof, all as fully and effectually as Borrower might or could do; and Borrower hereby ratifies all that Lender shall lawfully do or cause to be done by virtue hereof. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other applicable Loan Document, and in the case of the Note, receipt of an indemnity from Lender, Borrower will issue, in lieu thereof, a replacement Note or other applicable Loan Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Loan Document in the same principal amount thereof and otherwise of like tenor. Borrower hereby authorizes Lender to file an "all assets" financing statement with respect to the Collateral.

5.1.10 Mortgage Taxes. Borrower shall simultaneously with the disbursement of the proceeds of the Loan pay all state, county and municipal recording and all other taxes imposed upon the execution and recordation of the Security Instrument.

5.1.11 Financial Reporting.

(a) Borrower will keep and maintain or will cause to be kept and maintained on a Fiscal Year basis in accordance with GAAP (or such other accounting basis selected by Borrower and reasonably acceptable to Lender), proper and accurate books, records and accounts reflecting all of the financial affairs of Borrower and all items of income and expense in connection with the operation of the Property. Lender shall have the right from time to time at all times during normal business hours upon reasonable notice (which may be verbal) to examine such books, records and accounts at the office of Borrower or any other Person maintaining such books, records and accounts and to make such copies or extracts thereof as Lender shall desire. After the occurrence of an Event of Default, Borrower shall pay any costs and expenses incurred by Lender to examine Borrower's accounting records with respect to the Property, as Lender shall reasonably determine to be necessary or appropriate in the protection of Lender's interest. Upon Lender's request, Borrower shall furnish to Lender such other information reasonably necessary and sufficient to fairly represent the financial condition of Borrower and the Property.

(b) Borrower will furnish to Lender annually, within one hundred twenty (120) days following the end of each Fiscal Year of Borrower, and within thirty (30) days of the end of each calendar quarter, a complete copy of Borrower's and each Guarantor's annual (or quarterly, as applicable) financial statements certified as true and correct by the party providing such statements (and, for the annual of statements of Borrower prepared by an independent certified public accountant acceptable to Lender) in accordance with GAAP (or such other accounting basis acceptable to Lender, consistently applied) covering the Property for such Fiscal Year (or calendar quarter) and containing statements of profit and loss for Borrower, Guarantor and the Property and a balance sheet for Borrower and each Guarantor. Such statements of Borrower shall set forth the financial condition and the results of operations for the Property for such Fiscal Year (or calendar quarter), and an Officer's Certificate certifying that each annual financial statement of Borrower fairly presents the financial condition and the results of operations of Borrower and the Property subject to such reporting, and that such financial statements have been prepared in accordance with GAAP and as of the date thereof whether 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. Guarantor's annual financial statements shall be accompanied by a certificate executed and delivered by Guarantor (if such Guarantor is a natural person) or an officer or other duly authorized representative of Guarantor (if such Guarantor is an entity) certifying that each annual financial statement presents fairly the financial condition and the results of operations of Guarantor being reported upon and that such financial statements have been prepared in accordance with GAAP (or such other accounting basis acceptable to Lender, and, for Guarantors, Lender hereby approves sound and prudent cash based financial statements consistently applied) and as of the date thereof whether there exists an event or circumstance which constitutes a Default or Event of Default by Guarantor under the Loan Documents, and if such Default or an 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 shall also provide such monthly reports and statements as are reasonably required by Lender within twenty (20) days after the end of each calendar month.

(d) Borrower shall furnish to Lender, within twenty (20) days after request (or as soon thereafter as may be reasonably possible), such further detailed information with respect to the operation of the Property and the financial affairs of Borrower as may be reasonably requested by Lender.

(e) Any reports, statements or other information required to be delivered under this Agreement shall be delivered in electronic form (or such other form as required by Lender) and Borrower agrees that Lender may disclose information regarding the Property and Borrower that is provided to Lender pursuant to this Section 5.1.11 in connection with any Lender Assignment to such parties requesting such information in connection with such Lender Assignment.

(f) Without limitation on other requirements of this Agreement, Lender may require, at Borrower's cost and expense, quarterly valuations of the Loan and Borrower shall cooperate in connection therewith; provided, however, so long as no Event of Default exists, Borrower shall not be required to reimburse Lender more than \$2,500 for the cost of any such quarterly valuation.

5.1.12 Business and Operations. Borrower will continue to engage in the businesses presently conducted by it as and to the extent the same are necessary for the ownership, maintenance, management and operation of the 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, maintenance, management and operation of the Property or ownership and management of an interest in Borrower (as applicable).

5.1.13 Title to the Property. Borrower will warrant and defend (a) the title to the Property and every part thereof, subject only to Permitted Encumbrances, and (b) the validity and priority of the Lien of each of the Security Instruments, subject only to Permitted Encumbrances, in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any losses, costs, damages or expenses (including attorneys' fees and expenses, and court costs) incurred by Lender if an interest in the Property, other than as permitted hereunder, is claimed by another Person.

5.1.14 Costs of Enforcement. In the event (a) that the Security Instrument is foreclosed in whole or in part or that the Security Instrument is put into the hands of an attorney for collection, suit, action or foreclosure, (b) of the foreclosure of any mortgage prior to or subsequent to the Security Instrument in which proceeding Lender is made a party, or (c) of a Bankruptcy Action related to Borrower or an assignment by Borrower for the benefit of its creditors, Borrower, on behalf of itself and its successors and assigns, agrees that it/they shall be chargeable with and shall pay all costs of collection and defense, including attorneys' fees and expenses, and court costs, incurred by Lender or Borrower in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, together with all required service or use taxes.

5.1.15 Estoppel Statement.

(a) After request by Lender, Borrower shall within ten (10) days furnish Lender with a statement, duly acknowledged and certified, setting forth (i) the original principal amount of the Loan, (ii) the Outstanding Principal Balance, (iii) the Interest Rate of the Loan, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the performance of the Obligations, if any, and (vi) that the Note, this Agreement, the Security Instrument and the other Loan Documents are valid, legal and binding obligations of Borrower and have not been modified or if modified, giving particulars of such modification.

(b) Borrower shall use commercially reasonable efforts to deliver to Lender upon request, tenant estoppel certificates from each commercial Tenant, if any, in form and substance reasonably satisfactory to Lender provided that Borrower shall not be required to deliver such certificates more frequently than once in any calendar year.

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

5.1.17 Performance by Borrower. Borrower shall in a timely manner observe, perform and fulfill each and every covenant, term and provision of each Loan Document executed and delivered by, or applicable to, Borrower and shall not enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Loan Document without the prior written consent of Lender.

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

5.1.19 Leasing Matters. Any Lease executed after the date hereof (and any amendment or termination thereof) shall require the prior written consent of Lender, which consent shall be in Lender's sole and absolute discretion. Borrower shall furnish Lender with true, correct and complete executed copies of all Leases, amendments thereof and any related agreements. Without limitation, and as applicable, Lender shall be deemed to have approved all renewals of Leases and all proposed Leases so long as the same (a) provide for rental rates comparable to existing local market rates, contain reasonable market rate terms and do not contain any terms which would materially adversely affect Lender's rights under the Loan Documents, (b) are for a lease term not exceeding one year, including all extensions, (c) are with individual, residential, non-commercial tenants, and (d) have been entered into by Borrower in its ordinary course of business. All Leases executed after the date hereof shall provide that they are subordinate to the Security Instrument and the Liens created thereby and that the Tenant thereunder agrees to attorn to Lender or any other purchaser of the Property at a sale by foreclosure (or deed in lieu thereof) or power of sale. Borrower (a) shall observe and perform the obligations imposed upon the lessor under the Leases in a commercially reasonable manner; (b) shall enforce the terms, covenants and conditions contained in the Leases upon the part of the Tenant thereunder to be observed or performed in a commercially reasonable manner and in a manner which does not impair the value of the Property involved, provided that in no event shall Borrower terminate or accept the surrender of any Lease by a Tenant unless by reason of a Tenant default and then only in a commercially reasonable manner to preserve and protect the Property; *provided, however*, that no such termination or surrender of any Lease will be permitted without the prior written consent of Lender or unless such termination or surrender is specifically provided for in the Lease; (c) shall not collect any of the Rents more than one (1) month in advance (other than security deposits required pursuant to such Lease); (d) shall not execute any other assignment of the lessor's interest in the Leases or the Rents (except to Lender pursuant to the Loan Documents); (e) shall not alter, modify or change the terms of the Leases; and (f) shall execute and deliver at the request of Lender all such further assurances, confirmations and assignments in connection with the Leases as Lender shall from time to time reasonably require. Lender shall have the right to require each new Tenant to execute and deliver to Lender a subordination, non-disturbance of possession and attornment agreement in form, content and manner of execution reasonably acceptable to Lender.

5.1.20 Operation of Property.

(a) Borrower shall: (i) promptly perform and/or observe in all material respects all of the covenants and agreements required to be performed and observed by it under any of the Operations Agreements and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Lender of any material default under any Operations Agreement of which it is aware; and (iii) enforce the performance and observance of all of the covenants and agreements required to be performed and/or observed by any party (other than Borrower) under the Operations Agreements, in a commercially reasonable manner.

(b) All Material Agreements shall be subject to the prior review and approval, not to be unreasonably withheld, of Lender. As used herein, “**Material Agreements**” shall mean each contract and agreement relating to the ownership, management, development, use, operation, leasing, maintenance, repair or improvement of the Property, as to which either (a) there is an obligation of Borrower to pay more than \$50,000 in the aggregate, or (b) the term thereof extends beyond one year (unless cancelable on thirty (30) days or less notice without requiring the payment of termination fees or payments of any kind).

5.1.21 Changes in the Legal Requirements Regarding Taxation. If any Legal Requirement or other law, order, requirement or regulation of any Governmental Authority is enacted or adopted or amended after the date the Loan is funded which imposes a tax, either directly or indirectly, on the Obligations or Lender’s interest in the Property, Borrower must pay or cause to be paid such tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of such tax or interest and penalties by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then in any such event, Lender may, by written notice to Borrower of not less than ninety (90) days, declare the Obligations immediately due and payable.

5.1.22 No Credits on Account of the Obligations. Borrower will not claim or demand or be entitled to any credit or credits on account of the Obligations for any payment of Taxes assessed against the Property and no deduction shall otherwise be made or claimed from the assessed value of the Property for real estate tax purposes because of the Loan Documents or the Obligations. If Legal Requirements or other laws, orders, requirements or regulations require such claim, credit or deduction, Lender may, by written notice to Borrower of not less than ninety (90) days, declare the Obligations immediately due and payable.

5.1.23 Personal Property. Borrower shall cause all of its personal property, fixtures, attachments and equipment delivered upon, attached to or used in connection with the operation of the Property to always be located at the Property and shall be kept free and clear of all Liens, encumbrances and security interests, except Permitted Encumbrances.

5.1.24 Rehabilitation Project.

(a) Project Documents. Borrower shall diligently and continuously undertake to Complete each Project in conformance with the applicable Project Documents. Borrower will perform its obligations under the Project Documents and will enforce the terms of the Project Documents.

(b) Permits. Borrower shall pay for and obtain or cause to be paid for and obtained all permits, licenses and approvals required by applicable Legal Requirements with regard to each Project.

(c) Lender Consultants. At Borrower’s expense, Lender shall have the right to employ an inspecting architect, engineer or consultant with respect to a Project. Borrower shall pay immediately upon demand the fees and expenses of any architect, engineer or consultant employed by Lender for the purpose of reviewing plans or otherwise engaged by Lender with respect to any Project.

(d) Performance by Lender. Upon the occurrence of an Event of Default, Lender shall have the right, without limitation of Lender’s other remedies under the Loan Documents, upon written notice to Borrower, either before or after accelerating the Debt or commencing foreclosure, either directly or through Lender’s agents and contractors to (i) enter onto the Property, (ii) complete the Project, (iii) modify the Project as Lender deems necessary, (iv) hire or replace any contractor or vendor retained by Borrower in connection with the Project as Lender deems necessary, (v) expend such sums as Lender determines necessary to Complete such Project and (vi) purchase any insurance coverage deemed appropriate by Lender in its sole discretion relating to the Project or Lender’s exercise of its rights under this Section 5.1.24(d). Borrower hereby waives any right to contest any such costs or expenses incurred by Lender in the exercise of Lender’s rights under this Section 5.1.24(d), and such costs and expenses (a) shall be added to the Debt, (b) shall be secured by the Security Instrument, (c) shall accrue interest at the Default Rate, and (d) shall be payable to Lender upon demand. Borrower hereby agrees to indemnify and hold harmless Lender for any such costs or expenses. Borrower hereby grants Lender an irrevocable power of attorney, coupled with an interest, to exercise Lender’s rights under this Section 5.1.24(d). Lender does not have and shall not have any obligation to complete any Project.

Section 5.2 Negative Covenants. From the date hereof until payment and performance in full of the Obligations, Borrower covenants and agrees with Lender that it will not do, directly or indirectly, any of the following:

5.2.1 Operation of Property.

5.2.2. Borrower shall not, without Lender's prior consent (which consent shall be in Lender's sole and absolute discretion): enter into, amend, surrender, terminate, waive any rights under or cancel any Management Agreement.

5.2.3 Liens. Borrower shall not create, incur, assume, permit or suffer to exist any Lien on any portion of the Property or permit any such action to be taken, except for Permitted Encumbrances.

5.2.4 Dissolution. Borrower shall not (a) engage in any dissolution, liquidation, consolidation or merger with or into any other business entity, (b) engage in any business activity not related to the ownership and operation of the Property, (c) transfer, lease or sell, in one transaction or any combination of transactions, the assets or all or substantially all of the properties or assets of Borrower except to the extent permitted by the Loan Documents, or (d) modify, amend, waive or terminate its organizational documents or its qualification and good standing in any jurisdiction.

5.2.5 Change in Business. Borrower shall not enter into any line of business other than the ownership and operation of the Property, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business.

5.2.6 Debt Cancellation. Borrower shall not cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to Borrower by any Person, except for adequate consideration and in the ordinary course of Borrower's business.

5.2.7 Zoning. Borrower shall not initiate or consent to any zoning reclassification of any portion of the Property or seek any variance under any existing zoning ordinance, or use or permit the use of any portion of the 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, in each case, without the prior written consent of Lender.

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

5.2.9 Principal Place of Business and Organization. Borrower shall not change its principal place of business set forth in the introductory paragraph of this Agreement without first giving Lender at least thirty (30) days prior notice. Borrower shall not change the place of its organization as set forth in Section 4.1.24 without the consent of Lender, which consent shall not be unreasonably withheld. Upon Lender's request, Borrower shall execute and deliver additional financing statements, security agreements and other instruments which may be necessary to effectively evidence or perfect Lender's security interest in the Property as a result of such change of principal place of business or place of organization.

5.2.10 ERISA.

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

(b) Borrower further covenants and agrees to 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 (1) Borrower is not an “employee benefit plan” as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a “governmental plan” within the meaning of Section 3(32) of ERISA; (2) Borrower is not subject to any state statute regulating investments of, or fiduciary obligations with respect to, governmental plans; and (3) one or more of the following circumstances is true: (i) Equity interests in Borrower are publicly offered securities, within the meaning of 29 C.F.R. §2510.3-101(b)(2); (ii) Less than twenty-five percent (25%) of each outstanding class of equity interests in Borrower is held by “benefit plan investors” within the meaning of 29 C.F.R. §2510.3-101(f)(2); (iii) Borrower qualifies as an “operating company” or a “real estate operating company” within the meaning of 29 C.F.R. §2510.3-101(c) or (e); or (iv) The Loan meets the requirements of PTE 95-60, 90-1, 84-14 or similar exemption.

5.2.11 Transfers; Assumptions.

(a) Without the prior written consent of Lender and except to the extent otherwise set forth in this Section 5.2.10, no Transfer may occur without the prior written consent of Lender in its sole and absolute discretion.

(b) Notwithstanding the provisions of this Section 5.2.10, Lender’s consent shall not be required in connection with a Permitted Transfer; *provided, however*, that all of the following conditions are satisfied with respect to any such Transfers: (1) Borrower shall provide Lender thirty (30) days’ prior written notice thereof (other than a Permitted Transfer for which notice shall occur within thirty (30) days’ after such Transfer), (2) such Transfer shall not result in a change in the day-to-day management and operations of the Property, (3) [intentionally omitted], and (4) such Transfer shall not result in a breach of Section 5.2.9 or 5.2.13. Notwithstanding anything set forth herein, and without limiting any restrictions on any Transfer set forth herein, if any proposed transfer of any direct or indirect interests in Borrower would otherwise be a Permitted Transfer or not require Lender’s consent but shall result in any Person owning more than twenty percent (20%) of the direct or indirect legal, beneficial or economic interest in Borrower (other than Persons currently owning more than twenty percent (20%) of the direct or indirect legal, beneficial or economic interest in Borrower), approval of such transferee is required so that Lender can confirm the transfer and transferee complies with all legal and regulatory requirements and Lender policies relating to such transfer and transferee, including, without limitation, the Patriot Act and federal regulations issued with respect thereto and to ensure compliance with the representations in Section 4.1.30 hereof.

(c) Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon a Transfer without Lender’s consent. This provision shall apply to every Transfer regardless of whether voluntary or not, or whether or not Lender has consented to any previous Transfer.

5.2.12 Operations Agreements. Borrower shall not, without the prior written consent of Lender, modify any of the Operations Agreements.

5.2.13 [Intentionally omitted].

5.2.14 Embargoed Person; OFAC. As of the date hereof and at all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower and any Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person; (b) no Embargoed Person has any interest of any nature whatsoever in Borrower or any Guarantor, as applicable, with the result that the investment in Borrower or any Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of Borrower or any Guarantor, as applicable, have been derived from any unlawful activity with the result that the investment in Borrower or any Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law. Neither Borrower nor any Guarantor is (or will be) a Person with whom Lender is restricted from doing business under OFAC regulations (including those persons named on OFAC’s Specially Designated and Blocked Persons list) or under any statute, executive order (including the September 24, 2001 #13224 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and shall not engage in any dealings or transactions or otherwise be associated with such Persons. In addition, to help the US Government fight the funding of terrorism and money laundering activities, The USA Patriot Act (and the regulations thereunder) requires Lender to obtain, verify and record information that identifies its customers. Borrower shall provide Lender with any additional information that Lender deems necessary from time to time in order to ensure compliance with The USA Patriot Act and any other applicable Legal Requirements concerning money laundering and similar activities.

5.2.15 Distributions. Borrower shall not make or permit any Distribution.

5.2.16 Affiliate Agreements. Borrower shall not enter into any agreement with an Affiliate without Lender's prior written consent, in its sole and absolute discretion.

ARTICLE VI

INSURANCE; CASUALTY; CONDEMNATION

Section 6.1 Insurance.

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

(i) comprehensive "All Risk" or "Special Form" insurance on the Improvements and the Personal Property (A) in an amount equal to one hundred percent (100%) of the "**Full Replacement Cost**," which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations) with no depreciation; (B) containing an agreed amount endorsement with respect to the Improvements and Personal Property waiving all co-insurance provisions, or confirmation that co-insurance does not apply; and (C) providing for no deductible in excess of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) for all such insurance coverage. In addition, Borrower shall obtain: (x) if any portion of the Improvements is currently, or at any time in the future, located in a Federally designated "special flood hazard area", flood hazard insurance in an amount equal to the Outstanding Principal Balance or such other amount as Lender shall require; (y) earthquake insurance in amounts and in form and substance satisfactory to Lender in the event the Property is located in an area with a high degree of seismic activity; and (z) windstorm insurance in amounts and in form and substance satisfactory to Lender in the event such windstorm coverage is excluded under the Special Form Coverage, provided that the insurance pursuant to clauses (x), (y) and (z) hereof shall be on terms consistent with the comprehensive "All Risk" or "Special Form" insurance policy required under this subsection (i);

(ii) commercial general liability insurance, including a broad form comprehensive general liability endorsement and coverage against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, such insurance (A) to be on the so-called "occurrence" form with a combined limit of not less than Two Million and No/100 Dollars (\$2,000,000.00) in the aggregate and One Million and No/100 Dollars (\$1,000,000.00) per occurrence (and, if on a blanket policy, containing an "Aggregate Per Location" endorsement); (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 insured contracts; and (5) contractual liability covering the indemnities contained in Article VIII of the Security Instrument to the extent the same is available;

(iii) if there are tenants of the Property, rental loss insurance (A) with loss payable to Lender; (B) covering all risks required to be covered by the insurance provided for in subsection (i) above; and (C) for loss of Rents in an amount equal to one hundred percent (100%) of the projected rents from ` for a period of twelve (12) months from the date of such Casualty (assuming such Casualty had not occurred) and notwithstanding that the policy may expire prior to or at the end of such period. The amount of such loss of Rents or business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on Borrower's reasonable estimate of income to be derived from the Property for the succeeding twelve (12) month period. Notwithstanding anything to the contrary set forth herein, all proceeds payable to Lender pursuant to this subsection shall be held by Lender and shall be applied at Lender's sole discretion to (I) the Debt, or (II) operating expenses for the Property approved by Lender in its sole discretion; *provided, however*, that nothing herein contained shall be deemed to relieve Borrower of its obligations to pay the Debt, 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 forms do not otherwise apply, (A) owner's and contractor's 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 Property, and (4) with an agreed amount endorsement waiving co-insurance provision, or confirmation that co-insurance does not apply;

(v) if Borrower ever has any direct employees, worker's compensation insurance with respect to any employees of Borrower, as required by any Governmental Authority or Legal Requirement;

(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) if Borrower ever has any direct employees or owns any motor vehicles, motor vehicle liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence of not less than One Million and No/100 Dollars (\$1,000,000.00);

(viii) umbrella or excess liability insurance in an amount not less than Five Million and No/100 Dollars (\$5,000,000.00) per occurrence on terms consistent with the commercial general liability insurance policy required under subsection (ii) above;

(ix) if the Property is or becomes a legal "non-conforming" use or structure, ordinance or law coverage to compensate for the value of the undamaged portion of the Property, the cost of demolition and increased cost of construction in amounts as requested by Lender;

(x) if applicable, the commercial property, business income, general liability and umbrella or excess liability insurance required under Sections 6.1(a)(i), (ii), (iii) and (viii) above shall cover perils of terrorism and acts of terrorism and Borrower shall maintain commercial property and business income insurance for loss resulting from perils and acts of terrorism on terms (including amounts) consistent with those required under Sections 6.1(a)(i), (ii), (iii) and (viii) above at all times during the term of the Loan so long as Lender determines that either (I) prudent owners of real estate comparable to the Property are maintaining same or (II) prudent institutional lenders (including, without limitation, investment banks) to such owners are requiring that such owners maintain such insurance; and

(xi) upon sixty (60) days' notice, such other insurance and in such amounts as Lender from time to time may request against such other insurable hazards which at the time are commonly insured against for properties similar to the Property located in or around the region in which the Property is located.

(b) All insurance provided for in Section 6.1(a) shall be obtained under valid and enforceable policies (collectively, the "**Policies**" or in the singular, the "**Policy**"), and shall be subject to the approval of Lender as to insurance companies, amounts, deductibles, loss payees and insureds. The Policies shall be issued by financially sound and responsible insurance companies authorized to do business in the State and having a claims paying ability rating of "A-" or better by S&P or "A-X" or better by AM Best or "A3" or better by Moody's Investor Service, Inc.. Prior to the expiration dates of the Policies theretofore furnished to Lender, certificates of insurance evidencing the renewal or successor Policies accompanied by evidence satisfactory to Lender of payment of the premiums due thereunder (the "**Insurance Premiums**"), shall be delivered by Borrower to Lender. Borrower shall supply an original or certified copy of the original policy within ten (10) days of request by Lender, provided that the policy is available.

(c) Any blanket insurance Policy shall specifically allocate to the 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 Property in compliance with the provisions of Section 6.1(a).

(d) All Policies provided for or contemplated by Section 6.1(a), except for the Policy referenced in Section 6.1(a)(v), shall name Borrower as the insured and Lender (and its successors and assigns) as Mortgagee, Loss Payee and Additional Insured, as its interests may appear, and in the case of property damage, boiler and machinery, flood and earthquake insurance, shall contain a standard non-contributing mortgagee clause in favor of Lender providing that the loss thereunder shall be payable to Lender.

(e) All Policies provided for in this Section 6.1 shall contain clauses or endorsements to the effect that: (i) no act or negligence of Borrower, or anyone acting for Borrower, or of any tenant or other occupant, or failure to comply with the provisions of any Policy, which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Lender is concerned; (ii) the Policies on which Lender is listed as a Mortgagee shall not be canceled without at least thirty (30) days' notice to Lender; (iii) Lender shall not be liable for any Insurance Premiums thereon or subject to any assessments thereunder; and (iv) shall contain a waiver of subrogation in favor of Lender.

(f) If at any time Lender is not in receipt of written evidence that all Policies are in full force and effect, Lender shall have the right, without notice to Borrower, to take such action as Lender deems necessary to protect its interest in the Property, including, without limitation, the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate. 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 Security Instrument and shall bear interest at the Default Rate. Provided no Event of Default exists, Lender shall promptly provide Borrower with notice of any such premiums incurred.

(g) Without limitation, Borrower shall continue to maintain all insurance that is in effect as of the date hereof.

Section 6.2 Casualty. If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (a "**Casualty**"), Borrower shall (a) give prompt notice of such damage to Lender, and (b) promptly commence and diligently prosecute the completion of Restoration so that the Property resembles, as nearly as possible, the condition the Property was in immediately prior to such Casualty, with such alterations as may be reasonably approved by Lender and otherwise in accordance with Section 6.4. Borrower shall pay all costs of such Restoration whether or not such costs are covered by insurance. Lender may, but shall not be obligated to make proof of loss if not made promptly by Borrower. In addition, Lender may participate in (and have approval rights over) any settlement discussions with any insurance companies with respect to any Casualty in which the Net Proceeds or the costs of completing Restoration are equal to or greater than five percent (5%) of the applicable Allocated Loan Amount for the affected Individual Property and Borrower shall deliver to Lender all instruments required by Lender to permit such participation.

Section 6.3 Condemnation. Borrower shall promptly give Lender notice of the actual or threatened commencement of any proceeding in respect of Condemnation, and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings, and Borrower shall from time to time deliver to Lender all instruments requested by 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 taking by any public or quasi-public authority through Condemnation or otherwise (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to perform the Obligations at the time and in the manner provided in this Agreement and the other Loan Documents and the Outstanding Principal Balance shall not be reduced until any Award shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Obligations. Lender shall not be limited to the interest paid on the Award by the applicable 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 Property or any portion thereof is taken by a Governmental Authority, Borrower shall promptly commence and diligently prosecute Restoration and otherwise comply with the provisions of Section 6.4. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the Award, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the Award, or a portion thereof sufficient to pay the Debt.

Section 6.4 Restoration. If there are any Improvements on the Property, the following provisions shall apply:

(a) If the Net Proceeds and the costs of completing Restoration shall each be less than five percent (5%) of the applicable Allocated Loan Amount for the affected Individual Property, then the Net Proceeds will be disbursed by Lender to Borrower upon receipt, provided that all of the conditions set forth in Section 6.4(b)(i) are met and Borrower delivers to Lender a written undertaking to expeditiously commence and to satisfactorily complete with due diligence Restoration in accordance with the terms of this Agreement.

(b) If the Net Proceeds are equal to or greater than five percent (5%) of the applicable Allocated Loan Amount for the affected Individual Property, but less than twenty percent (20%) of the applicable Allocated Loan Amount for the affected Individual Property, or the costs of completing Restoration are equal to or greater than five percent (5%) of the applicable Allocated Loan Amount for the affected Individual Property, but less than twenty percent (20%) of the applicable Allocated Loan Amount for the affected Individual Property, then, in either case, the Net Proceeds will be held by Lender and Lender shall make the Net Proceeds available for Restoration in accordance with the provisions of this Section 6.4. The term "**Net Proceeds**" for purposes of this Section 6.4 shall mean: (i) the net amount of all insurance proceeds received by Lender pursuant to Section 6.1 (a)(i), (iv), (vi), (ix) and (x) as a result of such damage or destruction, after deduction of Lender's reasonable costs and expenses (including, but not limited to, reasonable counsel costs and fees), if any, in collecting same ("**Insurance Proceeds**"), or (ii) the net amount of the Award, after deduction of Lender's reasonable costs and expenses (including, but not limited to, reasonable counsel costs and fees), if any, in collecting same ("**Condemnation Proceeds**"), whichever the case may be.

(i) The Net Proceeds shall be made available to Borrower for Restoration upon the determination of Lender in its sole discretion that the following conditions are met:

(A) no Event of Default shall have occurred and be continuing;

(B) in the event the Net Proceeds are Condemnation Proceeds, 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 Property, and no portion of the Improvements is located on such land;

(C) if applicable, Leases demising in the aggregate a percentage amount equal to or greater than ninety percent (90%) of the total rentable space in the affected Individual Property which has been demised under executed and delivered Leases in effect as of the date of the occurrence of such Casualty or Condemnation, whichever the case may be, shall remain in full force and effect during and after the completion of Restoration, notwithstanding the occurrence of any such Casualty or Condemnation, whichever the case may be, and will make all necessary repairs and restorations thereto at their sole cost and expense;

(D) Borrower shall commence Restoration as soon as reasonably practicable (but in no event later than sixty (60) days after such Casualty or Condemnation, whichever the case may be, occurs) and shall diligently pursue the same to satisfactory completion;

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

(F) Lender shall be satisfied that Restoration will be completed on or before the earliest to occur of (1) four (4) months prior to the Maturity Date, (2) the earliest date required for such completion under the terms of any Leases, (3) such time as may be required under all applicable Legal Requirements in order to repair and restore the affected Individual Property to the condition it was in immediately prior to such Casualty or to as nearly as possible the condition it was in immediately prior to such Condemnation, as applicable, or (4) the expiration of the insurance coverage referred to in Section 6.1(a)(iii);

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

(H) Restoration shall be done and completed by Borrower in an expeditious and diligent fashion and in compliance with all applicable Legal Requirements;

(I) such Casualty or Condemnation, as applicable, does not result in the loss of access to the affected Individual Property or the related Improvements;

(J) Borrower shall deliver, or cause to be delivered, to Lender a signed detailed budget approved in writing by Borrower's architect or engineer stating the entire cost of completing Restoration, which budget shall be acceptable to Lender; and

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

(ii) The Net Proceeds shall be paid directly to Lender for deposit in an interest-bearing account (the "*Net Proceeds Account*") and, until disbursed in accordance with the provisions of this Section 6.4(b), shall constitute additional security for the Debt and the Other Obligations. The Net Proceeds shall be disbursed by Lender to, or as directed by, Borrower from time to time during the course of Restoration, upon receipt of evidence satisfactory to Lender that (A) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with Restoration have been paid for in full, and (B) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Property which have not either been fully bonded to the satisfaction of Lender and discharged of record or in the alternative fully insured to the satisfaction of Lender by the Title Company.

(iii) All plans and specifications required in connection with Restoration shall be subject to prior review and acceptance in all respects by Lender in its discretion and by an independent consulting engineer selected by Lender (the "*Casualty Consultant*"). Lender shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with Restoration. The identity of the contractor engaged in Restoration, as well as the contracts under which it has been engaged, shall be subject to prior review and acceptance by Lender in its discretion and the Casualty Consultant. All costs and expenses incurred by Lender in connection with making the Net Proceeds available for Restoration including, without limitation, reasonable counsel fees and disbursements and the Casualty Consultant's fees, shall be paid by Borrower.

(iv) In no event shall 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 Restoration, as certified by the Casualty Consultant, minus the Retention Amount. The term "*Retention Amount*" shall mean, as to each contractor, subcontractor or materialman engaged in Restoration, an amount equal to ten percent (10%) of the costs actually incurred for work in place as part of Restoration, as certified by the Casualty Consultant, until Restoration has been completed. The Retention Amount shall in no event, and notwithstanding anything to the contrary set forth above in this Section 6.4(b), be less than the amount actually held back by Borrower from contractors, subcontractors and materialmen engaged in Restoration. The Retention Amount shall not be released until the Casualty Consultant certifies to Lender that Restoration has been completed in accordance with the provisions of this Section 6.4(b) and that all approvals necessary for the re-occupancy and use of the Property have been obtained from all appropriate Governmental Authorities, and Lender receives evidence satisfactory to Lender that the costs of Restoration have been paid in full or will be paid in full out of the Retention Amount; *provided, however*, that Lender will release the portion of the Retention Amount being held with respect to any contractor, subcontractor or materialman engaged in 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 Security Instrument and evidence of payment of any premium payable for such endorsement. If required by Lender, the release of any such portion of the Retention Amount shall be approved by the surety company, if any, which has issued a payment or performance bond with respect to the contractor, subcontractor or materialman.

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

(vi) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the 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 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 Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this Section 6.4(b) shall constitute additional security for the Debt and the Other Obligations.

(vii) The excess, if any, of the Net Proceeds and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Lender after the Casualty Consultant certifies to Lender that Restoration has been completed in accordance with the provisions of this Section 6.4(b), and the receipt by Lender of evidence satisfactory to Lender that all costs incurred in connection with Restoration have been paid in full, shall be remitted by Lender to Borrower, provided no Event of Default shall have occurred and shall be continuing.

(c) If Net Proceeds are (i) equal to or greater than twenty percent (20%) of the applicable Allocated Loan Amount for the affected Individual Property, (ii) not required to be made available for Restoration (due to Borrower's inability to satisfy the conditions set forth in Section 6.4(b)(i) or otherwise), or (iii) not to be returned to Borrower as excess Net Proceeds pursuant to Section 6.4(b)(vii), then in any such event all Net Proceeds may be retained and applied by Lender in accordance with Section 2.4.2 hereof toward reduction of the Outstanding Principal Balance whether or not then due and payable in such order, priority and proportions as Lender in its sole discretion shall deem proper, or, in the sole discretion of Lender, the same may be paid, either in whole or in part, to Borrower for such purposes as Lender shall approve, in its sole discretion. No prepayment charge shall be payable by Borrower by reason of a Casualty or Condemnation.

(d) In the event of foreclosure of the Security Instrument, or other transfer of title to the Property in extinguishment in whole or in part of the Debt all right, title and interest of Borrower in and to the Policies that are not blanket Policies then in force concerning the Property and all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure or Lender or other transferee in the event of such other transfer of title.

ARTICLE VII

RESERVE FUNDS

Section 7.1 [Intentionally Omitted]

Section 7.2 [Intentionally Omitted]

Section 7.3 Reserve Funds, Generally.

(a) Borrower (i) hereby grants to Lender a first priority security interest in all of the Reserve Funds and any and all monies now or hereafter deposited in each Reserve Account as additional security for payment and performance of the Obligations and (ii) will take all actions necessary to maintain in favor of Lender a perfected first priority security interest in the Reserve Funds, including, without limitation, filing or authorizing Lender to file UCC-1 financing statements and continuations thereof. Until expended or applied in accordance herewith, the Reserve Funds shall constitute additional security for the Obligations.

(b) Upon the occurrence of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in any or all of the Reserve Funds to the reduction of the Outstanding Principal Balance or the payment of any other amounts then due and owing under this Agreement or any of the other Loan Documents in any order in its sole discretion.

(c) Borrower shall not further pledge, assign or grant any security interest in any Reserve Fund or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 financing statements, except those naming Lender as the secured party, to be filed with respect thereto.

(d) The Reserve Funds shall not constitute trust funds and may be commingled with other monies held by Lender. No earnings or interest on the Reserve Funds shall be payable to Borrower. Lender shall not have any obligation to keep or maintain such Reserve Funds or any funds deposited therein in interest bearing accounts.

(e) Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys' fees and expenses) (collectively, "**Claims**") arising from or in any way connected with the Reserve Funds or the performance of the obligations for which the Reserve Funds were established; provided, however, Borrower shall not be obligated to indemnify Lender for any such Claims to the extent arising from Lender's gross negligence or willful misconduct. Borrower shall assign to Lender all rights and claims Borrower may have against all Persons supplying labor, materials or other services which are to be paid from or secured by the Reserve Funds; *provided, however*, that Lender may not pursue any such right or claim unless an Event of Default has occurred and remains uncured.

(f) Upon payment in full of the Debt in accordance with the terms of this Agreement and the other Loan Documents, Lender shall return any remaining Reserve Funds to Borrower.

Section 7.4 Project Reserve Funds.

7.4.1 Deposits of Project Reserve Funds. Borrower shall deposit with Lender (which amount may be net funded by Lender but deemed disbursed) an amount equal to \$210,000.00 on the Closing Date for the purpose of funding Project Costs, which amounts shall be deposited into a Reserve Account (the "**Project Reserve Account**"). Amounts deposited from time to time into the Project Reserve Account pursuant to this Section 7.4.1 are referred to herein as the "**Project Reserve Funds**". The allocated amount of Project Reserve Funds with respect to each Individual Property, are set forth on Schedule 1.1(a) hereof.

7.4.2 Disbursement of Project Reserve Funds.

(a) Disbursements Upon Completion of Project at Individual Property. Each disbursement of Project Reserve Funds shall be released subject to satisfaction of the following conditions, any of which may be waived by Lender in Lender's sole discretion:

(i) Any request for a disbursement of Project Reserve Funds shall be submitted to Lender on Lender's form of request, not less than ten (10) Business Days prior to the anticipated date for the disbursement of Project Reserve Funds, and shall be accompanied by all evidence required to be approved by Lender as a condition to such disbursement, including an Officer's Certificate stating that said conditions are then satisfied;

(ii) Disbursement of Project Reserve Funds shall only be used for the portion of the Project at the Individual Property to which the request for disbursement of Project Reserve Funds relates shall not exceed the amount of the Project Reserve Funds allocated to the applicable Individual Property;

(iii) Borrower shall be in compliance with the terms and conditions of Section 5.1.24;

(iv) The relevant portion of the Project at an Individual Property to which the requested disbursement of Project Reserve Funds relates shall be Complete;

(v) At Lender's election, Lender shall have received certificates of Lender's consultant, any Architect and the General Contractor that the such portion of the Project is Complete;

(vi) Evidence reasonably acceptable to Lender, together with all other appropriate certificates and other documentation that Lender may require from, and as are customarily issued by, applicable Governmental Authorities, evidencing (i) compliance with all applicable Legal Requirements, including final certificates of occupancy and all consents or approvals required from third parties or any Governmental Authority have been obtained, and (ii) that no petitions, actions or proceedings are pending or threatened which could reasonably be expected to materially alter or declare invalid any approvals, consents, permits or certificates for or relating to the Project, or any part thereof;

(vii) Final unconditional waivers of lien (and evidence of payment) from all other contractors, subcontractors and materialmen as required by Lender or the Title Company; and

(viii) Lender shall have received notices of title continuation showing that since the date of the last disbursement of Project Reserve Funds there has been no adverse change in the state of title to the applicable Individual Property not approved by Lender, and, to the extent that any new improvements have been constructed at the applicable Individual Property outside their footprint on the date of the most recent survey, no adverse survey exceptions with respect to the Property not theretofore approved by Lender, and Lender may, in its discretion, require an endorsement to the Title Insurance Policy, in form and content satisfactory to Lender, insuring, in effect, that such disbursement has the same priority as the initial disbursement of the Loan and that there has been no Material Adverse Change in the condition of title to the Property since the issuance of the Title Insurance Policy;

(ix) No actions, suits or proceedings shall then be pending nor have any been threatened against or which affect Borrower, any Guarantor or the Property which could have a Material Adverse Change on Borrower, Guarantor or the Property;

(x) No Default or Event of Default shall have occurred and be continuing and all representations and warranties set forth in this Agreement and in any other Loan Document shall be materially true and correct as of the date of Borrower's request for the disbursement, the date the disbursement is made, and immediately following the making of the disbursement;

(xi) No substantial unrepaired damage to any portion of the Property by fire or other casualty which is not in Lender's judgment adequately covered by collectible proceeds of insurance; and

(xii) Borrower shall have paid all of the costs and expenses incurred by Lender, including reasonable attorneys' fees and expenses, all title premiums and other title and survey charges in connection with the proposed disbursement and a nonrefundable rehabilitation management in the amount of Two Hundred Ninety-Five and No/100 Dollars (\$295.00) payable to Lender with respect to each disbursement of Project Reserve Funds.

(b) Disbursement by Wire Transfer. Disbursement of Project Reserve Funds shall be made at Lender's election by wire transfer, at Borrower's cost and expense, or by check. Lender may, in its election, make payments of the Project Reserve Funds directly to the contractor, subcontractor, or material supplier. Lender may also require, at Lender's election, in its sole discretion, at Borrower's sole cost and expense, that disbursements of Project Reserve Funds be made through (a) the Title Company pursuant to a construction loan disbursement escrow agreement or (b) a vending control company. Any such arrangement with the Title Company or a vending control company shall be in Lender's sole discretion

(c) Waiver of Conditions. Lender may from time to time, in its sole discretion, waive any condition or conditions to any disbursement of Project Reserve Funds without such waiver or series of waivers constituting a course of dealing or any amendment to this Agreement or a prohibition against subsequent imposition of such condition or conditions or a waiver of a default.

ARTICLE VIII

DEFAULTS

Section 8.1 Event of Default.

8.1.1 Generally.

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

(i) if any portion of the Debt is not paid when due (including, without limitation, the failure of Borrower to repay the entire outstanding principal balance of the Note in full on the Maturity Date);

(ii) if any of the Taxes or Other Charges are not paid when the same are due and payable without payment of a penalty;

(iii) if the Policies are not kept in full force and effect, or if copies of the certificates evidencing the Policies (or certified copies of the Policies if requested by Lender) are not delivered to Lender within thirty (30) days after written request therefor;

(iv) the occurrence of any Transfer (except a Permitted Transfer) or other encumbrance with respect to any portion of the Property or the Collateral in violation of the provisions of this Agreement or Article 6 of the Security Instrument, or the occurrence of any Transfer in violation of the provisions of Section 5.2.10 hereof;

(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 or deemed remade;

(vi) if Borrower or any Guarantor shall (i) make an assignment for the benefit of creditors or (ii) generally not be paying its debts as they become due;

(vii) if a receiver, liquidator or trustee shall be appointed for Borrower, or if Borrower shall be adjudicated bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to Federal bankruptcy law, or any similar Federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower, or if any proceeding for the dissolution or liquidation of Borrower shall be instituted; *provided, however*, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, upon the same not being discharged, stayed or dismissed within ninety (90) days;

(viii) if a receiver, liquidator or trustee shall be appointed for any Guarantor or if any 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 Guarantor, or if any proceeding for the dissolution or liquidation of any Guarantor shall be instituted; *provided, however*, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by the applicable Guarantor, upon the same not being discharged, stayed or dismissed within ninety (90) days; provided, further, however, it shall be at Lender's option to determine whether any of the foregoing shall be an Event of Default;

(ix) 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;

(x) if Borrower breaches any representation, warranty or covenant contained in Section 4.1.26 or any of its respective negative covenants contained in Section 5.2;

(xi) with respect to any term, covenant or provision set forth herein which specifically contains a notice requirement or grace period, if Borrower shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

(xii) Borrower breaches any covenant contained in Section 5.1.11 and such breach continues for ten (10) days after notice from Lender;

(xiii) 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 (xi) 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 thirty (30) day period and provided further that Borrower shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed ninety (90) days; or

(xiv) if there shall be a Default under any of the other Loan Documents beyond any applicable cure periods contained in such documents, whether as to Borrower, Guarantor or the Property.

(b) Upon the occurrence of an Event of Default (other than an Event of Default described in clauses (vi), (vii) or (viii) above) and at any time thereafter, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, Lender may take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, without limitation, declaring the Obligations to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents against Borrower and the Property, including, without limitation, all rights or remedies available at law or in equity; 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.

8.1.2 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 (including, without limitation, Lender may accelerate the Loan and declare the Outstanding Principal Balance and all other amounts under the Loan Documents due and payable and institute foreclosure proceedings), 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. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by 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. To the fullest extent permitted by law or equity, without limiting the generality of the foregoing, Borrower agrees that if an Event of Default is continuing (i) Lender shall not be 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 Property and the Security Instrument has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Debt or the Obligations have been paid in full.

(b) With respect to Borrower and the Property, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to the Property for the satisfaction of any of the Debt in any preference or priority, and Lender may seek satisfaction out of the 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 Security Instrument in any manner and for any amounts secured by the Security Instrument then due and payable as determined by Lender in its sole discretion, including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose the Security Instrument to recover such delinquent payments or (ii) in the event Lender elects to accelerate less than the entire Outstanding Principal Balance, Lender may foreclose the Security Instrument to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by the Security Instrument as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to the Security Instrument to secure payment of sums secured by the Security Instrument and not previously recovered.

(c) Lender shall have the right from time to time to partially foreclose the Security Instrument in any manner and for any amounts secured by the Security Instrument then due and payable as determined by Lender in its sole discretion, including the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and/or interest, Lender may foreclose the Security Instrument to recover such delinquent payments, or (ii) in the event Lender elects to accelerate less than the entire Outstanding Principal Balance, Lender may foreclose the Security Instrument to recover so much of the Debt as Lender may accelerate and such other sums secured by the Security Instrument as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to the Security Instrument to secure payment of sums secured by the Security Instrument and not previously recovered.

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

(e) If an Event of Default exists, Lender may (directly or by its agents, employees, contractors, engineers, architects, nominees, attorneys or other representatives), but without any obligation to do so and without notice to Borrower and without releasing Borrower from any obligation hereunder, cure the Event of Default in such manner and to such extent as Lender may deem necessary to protect the security hereof. Subject to Tenants' rights under the Leases, Lender (and its agents, employees, contractors, engineers, architects, nominees, attorneys or other representatives) are authorized to enter upon the Property to cure such Event of Default, and Lender is authorized to appear in, defend, or bring any action or proceeding reasonably necessary to maintain, secure or otherwise protect the Property or the priority of the Lien granted by the Security Instrument.

(f) Lender may appear in and defend any action or proceeding brought with respect to the Property and may bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its sole discretion, decides should be brought to protect its interest in the Property. Lender shall, at its option, be subrogated to the Lien of any mortgage or other security instrument discharged in whole or in part by the Obligations, and any such subrogation rights shall constitute additional security for the payment of the Obligations.

(g) As used in this Section 8.1.2, a "foreclosure" shall include, without limitation, a power of sale.

8.1.3 Remedies Cumulative; Waivers. The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or to impair any remedy, right or power consequent thereon.

8.1.4 CONFESSION OF JUDGMENT. THE FOLLOWING PARAGRAPH SETS FORTH A WARRANT OF AUTHORITY FOR ANY ATTORNEY TO CONFESS JUDGMENT AGAINST THE BORROWER. IN GRANTING THIS WARRANT OF ATTORNEY TO CONFESS JUDGMENT AGAINST THE BORROWER, BORROWER, FOLLOWING CONSULTATION WITH (OR DECISION NOT TO CONSULT) COUNSEL FOR BORROWER AND WITH KNOWLEDGE OF THE LEGAL EFFECT HEREOF, HEREBY KNOWINGLY, INTENTIONALLY, VOLUNTARILY AND UNCONDITIONALLY WAIVES ANY AND ALL RIGHTS BORROWER HAS OR MAY HAVE TO PRIOR NOTICE AND AN OPPORTUNITY OF REHEARING UNDER THE RESPECTIVE CONSTITUTIONS AND LAWS OF THE UNITED STATES OF AMERICA, THE COMMONWEALTH OF PENNSYLVANIA, OR ELSEWHERE. IT IS SPECIFICALLY ACKNOWLEDGED BY BORROWER THAT LENDER HAS RELIED ON THIS WARRANT OF ATTORNEY AS AN INDUCEMENT TO GRANT FINANCIAL ACCOMMODATIONS TO BORROWER. UPON AND FOLLOWING THE OCCURRENCE OF AN UNCURED EVENT OF DEFAULT, BORROWER HEREBY AUTHORIZES AND EMPOWERS ANY ATTORNEY OF ANY COURT OF RECORD OR THE PROTHONOTARY OR CLERK OF ANY COUNTY IN THE COMMONWEALTH OF PENNSYLVANIA, OR IN ANY JURISDICTION WHERE PERMITTED BY LAW OR THE CLERK OF ANY UNITED STATES DISTRICT COURT, TO APPEAR FOR BORROWER IN ANY AND ALL ACTIONS WHICH MAY BE BROUGHT HEREUNDER AND ENTER AND CONFESS JUDGMENT AGAINST BORROWER OR ANY OF THEM IN FAVOR OF LENDER FOR SUCH SUMS AS ARE DUE OR MAY BECOME DUE HEREUNDER OR UNDER ANY OTHER LOAN DOCUMENT, TOGETHER WITH COSTS OF SUIT AND ACTUAL COLLECTION COSTS INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES EQUAL TO FIVE PERCENT (5%) OF THE LIABILITIES THEN DUE AND OWING BUT IN NO EVENT LESS THAN \$5,000, WITH OR WITHOUT DECLARATION, WITHOUT PRIOR NOTICE, WITHOUT STAY OF EXECUTION AND WITH RELEASE OF ALL PROCEDURAL ERRORS AND THE RIGHT TO ISSUE EXECUTIONS FORTHWITH. IF A COPY OF THIS NOTE VERIFIED BY AFFIDAVIT OF ANY OFFICER OF LENDER SHALL HAVE BEEN FILED IN SUCH ACTION, IT SHALL NOT BE NECESSARY TO FILE THE ORIGINAL THEREOF AS A WARRANT OF ATTORNEY, ANY PRACTICE OR USAGE TO THE CONTRARY NOTWITHSTANDING. THE AUTHORITY HEREIN GRANTED TO CONFESS JUDGMENT SHALL NOT BE EXHAUSTED BY ANY SINGLE EXERCISE THEREOF, BUT SHALL CONTINUE AND MAY BE EXERCISED FROM TIME TO TIME AS OFTEN AS LENDER SHALL FIND IT NECESSARY AND DESIRABLE AND AT ALL TIMES UNTIL FULL PAYMENT OF ALL AMOUNTS DUE HEREUNDER AND UNDER THE OTHER LOAN DOCUMENTS. LENDER MAY CONFESS ONE OR MORE JUDGMENTS IN THE SAME OR DIFFERENT JURISDICTIONS FOR ALL OR ANY PART OF BORROWER'S OBLIGATIONS ARISING HEREUNDER OR UNDER ANY OTHER LOAN DOCUMENT TO WHICH BORROWER IS A PARTY, WITHOUT REGARD TO WHETHER JUDGMENT HAS THERETOFORE BEEN CONFESSED ON MORE THAN ONE OCCASION FOR THE SAME OBLIGATIONS. IN THE EVENT THAT ANY JUDGMENT CONFESSED AGAINST BORROWER IS STRICKEN OR OPENED UPON APPLICATION BY OR ON BEHALF OF BORROWER FOR ANY REASONS, LENDER IS HEREBY AUTHORIZED AND EMPOWERED TO AGAIN APPEAR FOR AND CONFESS JUDGMENT AGAINST BORROWER FOR ANY PART OR ALL OF THE LIABILITIES DUE AND OWING UNDER THIS NOTE AND THE OTHER LOAN DOCUMENTS, AS HEREIN PROVIDED.

ARTICLE IX

SPECIAL PROVISIONS

Section 9.1 Transfer of Loan. Lender may, at any time, sell, transfer or assign this Agreement, the Note, the Security Instrument and the other Loan Documents, and any or all servicing rights with respect thereto, or grant participations therein or issue mortgage pass-through certificates or other securities (the "*Securities*") evidencing a beneficial interest in a rated or unrated public offering or private placement (such sales, participation, offering and/or placement, collectively, a "*Lender Assignment*"). Lender may forward to each purchaser, transferee, assignee, servicer, participant or investor in such participations or Securities (collectively, the "*Investor*"), each prospective Investor, and any organization maintaining databases on the underwriting and performance of commercial mortgage loans, all documents and information which Lender now has or may hereafter acquire relating to the Loan or to Borrower, any Guarantor or the Property, whether furnished by Borrower, any Guarantor or otherwise, as Lender determines necessary or desirable, including, without limitation, financial statements relating to Borrower, Guarantor, the Property and any Tenant at the Property. Borrower irrevocably waives any and all rights it may have under law or in equity to prohibit such disclosure, including but not limited to any right of privacy.

Section 9.2 Severed Loan Documents. 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 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 (and cause other parties who executed any of the Loan Documents to execute and deliver) to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender may reasonably request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender and Borrower. 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 the parties thereto only as of the Closing Date.

Section 9.3 Servicer. At the option of Lender, the Loan may be serviced by a master servicer, primary servicer, special servicer and/or trustee (any such master servicer, primary servicer, special servicer, and trustee, together with its agents, nominees or designees, are collectively referred to as "*Servicer*") selected by Lender and Lender may delegate all or any portion of its responsibilities under this Agreement and the other Loan Documents to Servicer pursuant to a pooling and servicing agreement, servicing agreement, special servicing agreement or other agreement providing for the servicing of one or more mortgage loans (collectively, the "*Servicing Agreement*") between Lender and Servicer. Without limitation, Borrower shall promptly reimburse Lender on demand for (a) interest payable on advances made by Servicer with respect to delinquent debt service payments (to the extent interest at the Default Rate actually paid by Borrower in respect of such payments are insufficient to pay the same) or expenses paid by Servicer or trustee in respect of the protection and preservation of the Property (including, without limitation, on account of Basic Carrying Costs), (b) all costs and expenses, liquidation fees, workout fees, special servicing fees, operating advisor fees or any other similar fees payable by Lender to Servicer which may be due and payable under the Servicing Agreement (whether on a periodic or a continuing basis) as a result of an Event of Default under the Loan, the Loan becoming specially serviced, the commencement or continuance of any enforcement action of any kind with respect to the Loan or any of the Loan Documents, a refinancing or a restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" of the Loan Documents, or any Bankruptcy Action involving Borrower, Principal, Guarantor or any of their respective principals or Affiliates, (c) all costs and expenses of any Property inspections and/or appraisals (or any updates to any existing inspection or appraisal) that Servicer or the trustee may be required to obtain (but not more than one appraisal in any twelve months unless an Event of Default exists), and (d) all costs and expenses relating to or arising from any special requests made by Borrower or Guarantor during the term of the Loan including, without limitation, in connection with a prepayment, defeasance, assumption or modification of the Loan.

Section 9.4 Cooperation. Borrower and Guarantor agree to reasonably cooperate with Lender (and agree to cause their respective officers and representatives to cooperate) in connection with any Lender Assignment or potential Lender Assignment.

ARTICLE X

MISCELLANEOUS

Section 10.1 Survival. This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Obligations are outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the legal representatives, successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Lender.

Section 10.2 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 and absolute discretion of Lender and shall be final and conclusive.

Section 10.3 Governing Law. **THIS AGREEMENT WAS NEGOTIATED IN THE COMMONWEALTH OF PENNSYLVANIA, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE COMMONWEALTH OF PENNSYLVANIA, AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE COMMONWEALTH OF PENNSYLVANIA, 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 COMMONWEALTH OF PENNSYLVANIA APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT TO THE SECURITY INSTRUMENT AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE COMMONWEALTH OF PENNSYLVANIA SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND/OR THE OTHER LOAN DOCUMENTS, AND THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA.**

(a) EXCEPTIONS, NOTWITHSTANDING THE FOREGOING CHOICE OF LAW:

(i) THE PROCEDURES GOVERNING THE ENFORCEMENT BY LENDER OF ITS FORECLOSURE AND OTHER REMEDIES AGAINST BORROWER AND GUARANTOR UNDER THE SECURITY INSTRUMENT AND UNDER THE OTHER LOAN DOCUMENTS WITH RESPECT TO THE REAL PROPERTY ASSETS OF BORROWER, INCLUDING BY WAY OF ILLUSTRATION, BUT NOT IN LIMITATION, ACTIONS FOR FORECLOSURE, FOR INJUNCTIVE RELIEF OR FOR THE APPOINTMENT OF A RECEIVER SHALL BE GOVERNED BY THE LAWS OF THE STATE WHERE SUCH PROPERTY OR OTHER ASSETS ARE LOCATED;

(ii) LENDER SHALL COMPLY WITH APPLICABLE LAW IN THE STATE WHERE THE PROPERTY OR OTHER ASSETS ARE LOCATED TO THE EXTENT REQUIRED BY THE LAW OF SUCH JURISDICTION IN CONNECTION WITH THE FORECLOSURE OF THE SECURITY INTERESTS AND LIENS CREATED UNDER THE SECURITY INSTRUMENT;

(iii) PROVISIONS OF FEDERAL LAW AND THE LAW OF THE STATE WHERE THE PROPERTY IS LOCATED SHALL APPLY IN DEFINING THE TERMS HAZARDOUS SUBSTANCES, ENVIRONMENTAL STATUTES, AND LEGAL REQUIREMENTS AS SUCH TERMS ARE USED IN THIS LOAN AGREEMENT, AND THE OTHER LOAN DOCUMENTS, WITH RESPECT TO THE PROPERTY, BORROWER AND GUARANTOR; AND

(iv) MATTERS OF REAL ESTATE, LANDLORD-TENANT AND PROPERTY LAW SHALL BE GOVERNED BY THE LAWS OF THE STATE WHERE THE PROPERTY IS SITUATED.

(b) AGENT FOR SERVICE OF PROCESS. ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY AT LENDER'S SOLE OPTION BE INSTITUTED IN ANY FEDERAL DISTRICT COURT OR STATE COURT IN THE COMMONWEALTH OF PENNSYLVANIA, COUNTY OF NORTHAMPTON, PURSUANT TO PENNSYLVANIA LAW, AND BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY OBJECTIONS WHICH BORROWER MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

FTE Networks, Inc.
237 West 35th Street, Suite 806
New York, NY 10001
Attn: CEO
Phone: 646-755-3605
Email: mbeys@blmlp.com

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON BORROWER'S 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 THE COMMONWEALTH OF PENNSYLVANIA, AND BORROWER 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 CONCLUSIVELY BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE COMMONWEALTH OF PENNSYLVANIA. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN THE COMMONWEALTH OF PENNSYLVANIA (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN THE COMMONWEALTH OF PENNSYLVANIA OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR. NOTHING CONTAINED HEREIN SHALL AFFECT THE RIGHT OF AGENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST BORROWER IN ANY OTHER JURISDICTION.

Section 10.4 Modification, Waiver in Writing. No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Note, or of any other Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances.

Section 10.5 Delay Not a Waiver. Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

Section 10.6 Notices. All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested, (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, or (c) facsimile (with answer back acknowledged) or as a PDF or similar attachment to an e-mail, provided that such facsimile or email attachment shall be followed within one (1) business day by delivery of such notice pursuant to clause (a) or (b) above, in each case addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a notice to the other parties hereto in the manner provided for in this Section 10.6):

If to Lender: DLP Lending Fund LLC
95 Highland Avenue, Suite 300
Bethlehem, PA 28017
Attention: Barry W. DeGroot, Esq.
E-Mail: barry@dlpre.com

with a copy to: Pircher, Nichols & Meeks LLP
1901 Avenue of the Stars, Suite 1200
Los Angeles, California 90067
Attention: Real Estate Notices (WBT: 6004.2)
Facsimile No.: (310) 201-8922
E-Mail: realestatenotices@pircher.com

If to Borrower: FTE Legal
237 West 35th Street, Suite 806
New York, NY 10001
Attn: Corporate Counsel
Phone: (239) 315-3161
Email: legal@fnet.com

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; in the case of expedited prepaid delivery, upon the first attempted delivery on a Business Day; or in the case of facsimile or PDF or similar attachment to an e-mail, upon sender's receipt of a machine-generated confirmation of successful transmission after advice by telephone to recipient that a facsimile or e-mail notice is forthcoming. Any failure to deliver a notice by reason of a change of address not given in accordance with this Section 10.6, or any refusal to accept a notice, shall be deemed to have been given when delivery was attempted. Any notice required or permitted to be given by any party hereunder or under any other Loan Document may be given by its respective counsel.

Section 10.7 Waiver of Trial by Jury. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER.

Section 10.8 Headings. The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 10.9 Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Section 10.10 Preferences. 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 Debt. 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 10.11 Waiver of Notice. Borrower hereby expressly waives, and 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.

Section 10.12 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, Borrower agrees that neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment. The parties hereto agree that any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment. Further, it is agreed Lender shall not be in default under this Agreement, or under any other Loan Document, unless a written notice specifically setting forth the claim of Borrower shall have been given to Lender within thirty (30) days after Borrower first had knowledge of the occurrence of the event which Borrower alleges gave rise to such claim and Lender does not remedy or cure the default, if any there be, promptly thereafter. Failure to give such notice shall constitute a waiver of such claim.

Section 10.13 Expenses; Indemnity.

(a) Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender upon receipt of notice from Lender for all costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Lender in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including without limitation any opinions requested by Lender as to any legal matters arising under this Agreement or the other Loan Documents with respect to the Property); (ii) Borrower's ongoing performance of and compliance with Borrower's respective agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date, including, without limitation, confirming compliance with environmental and insurance requirements; (iii) Lender's ongoing performance and compliance with all agreements and conditions contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date; (iv) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters requested by Lender; (v) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement; (vi) the filing and recording fees and expenses, title insurance and 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; (vii) enforcing or preserving any rights, either in response to third party claims or in prosecuting or defending any action or proceeding or other litigation, in each case against, under or affecting Borrower, this Agreement, the other Loan Documents, the Property, or any other security given for the Loan; and (viii) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the 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 or any other amounts required under Section 9.3; *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 cost and expenses due and payable to Lender may be paid by Lender from any Reserve Account.

(b) Borrower shall indemnify, defend and hold harmless the Indemnified Parties from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for Lender in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not Lender shall be designated a party thereto), that may be imposed on, incurred by, or asserted against any Indemnified Party in any manner relating to or arising out of (i) any breach by Borrower of its Obligations under, or any 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 (the liabilities, losses, costs, expenses and other matters described in this subparagraph (b), collectively, the “**Indemnified Liabilities**”); *provided, however*, that Borrower shall not have any obligation to an Indemnified Party hereunder to the extent that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of such Indemnified Party. To the extent that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall pay the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by the Indemnified Parties.

Section 10.14 Exhibits and Schedules Incorporated. Any Exhibits and Schedules annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

Section 10.15 Offsets, Counterclaims and Defenses. Any assignee of Lender’s interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses solely to the extent such offsets, counterclaims or defenses are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

Section 10.16 No Joint Venture or Partnership; No Third Party Beneficiaries.

(a) Borrower 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 Property other than that of mortgagee, beneficiary or lender.

(b) This Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the Obligations contained herein or therein. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender’s sole discretion, Lender deems it advisable or desirable to do so.

Section 10.17 Publicity. All news releases, publicity or advertising by Borrower or its Affiliates through any media intended to reach the general public which refers to the Loan Documents or the financing evidenced by the Loan Documents, to Lender or any of its Affiliates shall be subject to the prior approval of Lender.

Section 10.18 Waiver of Marshalling of Assets; Homestead Waiver. 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 Property, or to a sale in inverse order of alienation in the event of foreclosure of the Security Instrument, 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 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 Property in preference to every other claimant whatsoever. To the extent permitted by applicable law, Borrower hereby waives any Homestead protections that may be available to Borrower under the law of the state in which the Property is located.

Section 10.19 Waiver of Counterclaim. Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents.

Section 10.20 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 its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any 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 10.21 Brokers and Financial Advisors. Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement other than Direct Lending Partners LLC, which arranged the Loan. Borrower hereby agrees to 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 10.21 shall survive the expiration and termination of this Agreement and the payment of the Debt.

Section 10.22 Prior Agreements. This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, including, without limitation, the Term Sheet dated April 13, 2020 between Borrower (or an agent or representative of Borrower) and Lender, are superseded by the terms of this Agreement and the other Loan Documents.

Section 10.23 Cumulative Rights. All of the rights of Lender under this Agreement hereunder and under each of the other Loan Documents and any other agreement now or hereafter executed in connection herewith or therewith, shall be cumulative and may be exercised singly, together, or in such combination as Lender may determine in its sole judgment.

Section 10.24 Counterparts; Electronic Delivery. This Agreement and all of the other Loan Documents may be executed in several counterparts, each of which when executed and delivered is an original, but all of which together shall constitute one instrument. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart which is executed by the party against whom enforcement of this Agreement is sought. The delivery of an executed counterpart of this Agreement or any other Loan Document (other than Note) by facsimile or as a PDF or similar attachment to an email shall constitute effective delivery of such counterpart for all purposes with the same force and effect as the delivery of an original, executed counterpart.

Section 10.25 Time is of the Essence. Time is of the essence of each provision of this Agreement and the other Loan Documents.

Section 10.26 Consent of Holder. Wherever this Agreement refers to Lender's consent or discretion or other rights, such references to Lender shall be deemed to refer to any holder of the Loan. The holder of the Loan may from time to time appoint a trustee or servicer, and Borrower shall be entitled to rely upon written instructions executed by a purported officer of the holder of the Loan as to the extent of authority delegated to any such trustee or from time to time and determinations made by such trustee or servicer to the extent identified as within the delegated authority of such trustee or servicer, unless and until such instructions are superseded by further written instructions from the holder of the Loan.

Section 10.27 Successor Laws. Any reference in this Agreement to any statute or regulation shall be deemed to include any successor statute or regulation.

Section 10.28 Reliance on Third Parties. Lender may perform any of its responsibilities hereunder through one or more agents, attorneys or independent contractors. In addition, Lender may conclusively rely upon the advice or determinations of any such agents, attorneys or independent contractors in performing any discretionary function under the terms of this Agreement.

Section 10.29 Joint Borrower. The representations, covenants, warranties and obligations of Borrower shall be joint and several. Each entity that constitutes Borrower acknowledges and agrees that it shall be jointly and severally liable for the Loan and all other Obligations arising under this Agreement and/or any of the other Loan Documents. In furtherance thereof, each Borrower acknowledges and agrees as follows:

(a) For the purpose of implementing the joint borrower provisions of the Loan Documents, each Borrower hereby irrevocably appoints each other Borrower as its agent and attorney-in-fact for all purposes of the Loan Documents, including the giving and receiving of notices and other communications.

(b) To induce Lender to make the Loan, and in consideration thereof, each Borrower hereby agrees to indemnify Lender against, and hold Lender harmless from, any and all liabilities, expenses, losses, damages and/or claims of damage or injury asserted against Lender by any Borrower or by any other Person arising from or incurred by reason of (i) reliance by Lender on any requests or instructions from any Borrower, or (ii) any other action taken by Lender in good faith with respect to this Agreement or the other Loan Documents.

(c) Each Borrower acknowledges that the liens and security interests created or granted herein and by the other Loan Documents will secure the Obligations of all Borrowers under the Loan Documents and, in full recognition of that fact, each Borrower consents and agrees that Lender may, at any time and from time to time, without notice or demand, and without affecting the enforceability or security hereof or of any other Loan Document:

(i) agree with any Borrower to supplement, modify, amend, extend, renew, accelerate, or otherwise change the time for payment or the terms of the Obligations or any part thereof, including any increase or decrease of the rate(s) of interest thereon;

(ii) agree with any Borrower to supplement, modify, amend or waive, or enter into or give any agreement, approval or consent with respect to, the Obligations or any part thereof or any of the Loan Documents or any additional security or guaranties, or any condition, covenant, default, remedy, right, representation or term thereof or thereunder;

(iii) accept new or additional instruments, documents or agreements in exchange for or relative to any of the Loan Documents or the Obligations or any part thereof;

(iv) accept partial payments on the Obligations;

(v) receive and hold additional security or guaranties for the Obligations or any part thereof;

(vi) release, reconvey, terminate, waive, abandon, subordinate, exchange, substitute, transfer and enforce any security for or guaranties of the Obligations, and apply any security and direct the order or manner of sale thereof as Lender, in its sole and absolute discretion may determine;

(vii) release any Person or any guarantor from any personal liability with respect to the Obligations or any part thereof; or

(viii) settle, release on terms satisfactory to Lender or by operation of applicable laws or otherwise liquidate or enforce any Obligations and any security therefor or guaranty thereof in any manner, consent to the transfer of any such security and bid and purchase at any sale; and consent to the merger, change or any other restructuring or termination of the corporate existence of any Borrower or any other Person, and correspondingly restructure the obligations of such Borrower or other Person, and any such merger, change, restructuring or termination shall not affect the liability of any Borrower or the continuing existence of any lien or security interest hereunder, under any other Loan Document to which any Borrower is a party or the enforceability hereof or thereof with respect to all or any part of the Obligations.

(d) Upon the occurrence of and during the continuance of any Event of Default, Lender may enforce this Agreement and the other Loan Documents independently as to each Borrower and independently of any other remedy or security Lender at any time may have or hold in connection with the Obligations, and in collecting on the Loan it shall not be necessary for Lender to marshal assets in favor of any Borrower or any other Person or to proceed upon or against and/or exhaust any other security or remedy before proceeding to enforce this Agreement and the other Loan Documents. Each Borrower expressly waives any right to require Lender, in connection with Lender's efforts to obtain repayment of the Loan and Other Obligations, to marshal assets in favor of any Borrower or any other Person or to proceed against any other Person or any collateral provided by any other Person, and agrees that Lender may proceed against any Persons and/or collateral in such order as it shall determine in its sole and absolute discretion in connection with Lender's efforts to obtain repayment of the Loan and other Obligations. Lender may file a separate action or actions against each Borrower to enforce the Obligations, whether action is brought or prosecuted with respect to any other security or against any other Person, or whether any other Person is joined in any such action or actions. Each Borrower agrees that Lender, each Borrower and/or any other Person may deal with each other in connection with the Obligations or otherwise, or alter any contracts or agreements now or hereafter existing between any of them, in any manner whatsoever, all without in any way altering or affecting the security of this Agreement or the other Loan Documents. The rights of Lender hereunder and under the other Loan Documents shall be reinstated and revived, and the enforceability of this Agreement and the other Loan Documents shall continue, with respect to any amount at any time paid on account of the Obligations which thereafter shall be required to be restored or returned by Lender as a result of the bankruptcy, insolvency or reorganization of any Borrower or any other Person, or otherwise, all as though such amount had not been paid. The enforceability of this Agreement and the other Loan Documents at all times shall remain effective even though any or all Obligations, or any other security or guaranty therefor, may be or hereafter may become invalid or otherwise unenforceable as against any Borrower or any other Person and whether or not any Borrower or any other Person shall have any personal liability with respect thereto. Each Borrower expressly waives any and all defenses to the enforcement of its Obligations under the Loan Documents now or hereafter arising or asserted by reason of (i) any disability or other defense of any Borrower or any other Person with respect to the Obligations, (ii) the unenforceability or invalidity of any security or guaranty for the Obligations or the lack of perfection or continuing perfection or failure of priority of any security for the Obligations, (iii) the cessation for any cause whatsoever of the liability of any Borrower or any other Person (other than by reason of the full and final payment and performance of all Obligations), (iv) any failure of Lender to marshal assets in favor of any of the Borrowers or any other Person, (v) any failure of Lender to give notice of sale or other disposition of any Collateral for the Obligations to any Borrower or to any other Person or any defect in any notice that may be given in connection with any such sale or disposition, (vi) any failure of Lender to comply in any non-material respect with applicable laws in connection with the sale or other disposition of any collateral or other security for any Obligation, (vii) any act or omission of Lender or others that directly or indirectly results in or aids the discharge or release of any Borrower or of any other Person or of any of the Obligations or any other security or guaranty therefor by operation of law or otherwise, (viii) any law which provides that the obligation of a surety or guarantor must neither be larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety's or guarantor's obligation in proportion to the principal obligation, (ix) any failure of Lender to file or enforce a claim in any bankruptcy or similar proceeding with respect to any Person, (x) the election by Lender, in any bankruptcy or similar proceeding of any Person, of the application or non-application of Section 1111(b)(2) of the Bankruptcy Code, (xi) any extension of credit or the grant of any lien under Section 364 of the Bankruptcy Code except to the extent otherwise provided in this Agreement, (xii) any use of cash collateral under Section 363 of the Bankruptcy Code, (xiii) any agreement or stipulation with respect to the provision of adequate protection in any bankruptcy or similar proceeding of any Person, (xiv) the avoidance of any lien or security interest in favor of Lender securing the Obligations for any reason, or (xv) any bankruptcy or similar proceeding commenced by or against any Person, including any discharge of, or bar or stay against collecting, all or any of the Obligations (or any interest thereon) in or as a result of any such proceeding. Without in any way limiting the foregoing, with respect to the Loan Documents and the Obligations, Borrower: (A) waives all rights and defenses arising out of an election of remedies by Lender even though that election of remedies, such as non-judicial foreclosure with respect to security for Borrowers' obligations, has destroyed each of their rights of subrogation and reimbursement against the other; and (B) waives any right to a fair value hearing or similar proceeding following a non-judicial foreclosure of the Obligations.

(e) Borrowers represent and warrant to Lender that they have established adequate means of obtaining from each other, on a continuing basis, financial and other information pertaining to their respective businesses, operations and condition (financial and otherwise) and their respective properties, and each now is and hereafter will be completely familiar with the businesses, operations and condition (financial and otherwise) of the other and their respective properties. Each Borrower hereby expressly waives and relinquishes any duty on the part of Lender to disclose to such Borrower any matter, fact or thing related to the businesses, operations or condition (financial or otherwise) of the other Borrowers or the other Borrowers' properties, whether now known or hereafter known by Lender during the life of this Agreement. With respect to any of the Obligations, Lender need not inquire into the powers of any Borrower or the officers, employees or other Persons acting or purporting to act on such Borrower's behalf.

(f) Without limiting the foregoing, or anything else contained in this Agreement, each Borrower waives all rights and defenses that it may have because the Obligations are secured by real property. This means, among other things:

(i) Lender may collect on the Obligations from any Borrower without first foreclosing on any real or personal property collateral pledged by the other Borrowers; and

(ii) If Lender foreclose on any real property collateral pledged by any Borrower for the Obligations: (A) the amount of the indebtedness owed by the other Borrowers may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; and (B) Lender may collect from any Borrower even if Lender, by foreclosing on the real property collateral, has destroyed any right any Borrower may have to collect from the other Borrowers.

(iii) This is an unconditional and irrevocable waiver of any rights and defenses each Borrower may have because the Obligations are secured by real property. Each Borrower expressly waives any right to receive notice of any judicial or nonjudicial foreclosure or sale of any real property collateral provided by the other Borrowers to secure the Obligations and failure to receive any such notice shall not impair or affect such Borrower's obligations hereunder or the enforceability of this Agreement or the other Loan Documents or any liens created or granted hereby or thereby.

(iv) Notwithstanding anything to the contrary elsewhere contained herein or in any other Loan Document to which any Borrower is a party, with respect to the Loan and all other Obligations, each Borrower hereby waives with respect to the other Borrowers and their successors and assigns (including any surety) and any other Person any and all rights at law or in equity, to subrogation, to reimbursement, to exoneration, to contribution, to set-off, to any other rights and defenses available to it or to any other rights that could accrue to a surety against a principal, to a guarantor against a maker or obligor, to an accommodation party against the party accommodated, or to a holder or transferee against a maker and which each of them may have or hereafter acquire against the other or any other Person in connection with or as a result of such Borrower's execution, delivery and/or performance of this Agreement or any other Loan Document to which it is a party until the Obligations are paid and performed in full. Each Borrower agrees that it shall not have or assert any such rights against any other Borrower or any other Borrower's successors and assigns or any other Person (including any surety), either directly or as an attempted set-off to any action commenced against such Borrower by any other Borrower (as borrower or in any other capacity) or any other Person until all the Obligations are paid and performed in full. Each Borrower hereby acknowledges and agrees that this waiver is intended to benefit Lender and shall not limit or otherwise affect any Borrower's liability under this Agreement or any other Loan Document to which it is a party, or the enforceability hereof or thereof.

EACH BORROWER WARRANTS AND AGREES THAT EACH OF THE WAIVERS AND CONSENTS SET FORTH HEREIN IS MADE WITH FULL KNOWLEDGE OF ITS SIGNIFICANCE AND CONSEQUENCES, WITH THE UNDERSTANDING THAT EVENTS GIVING RISE TO ANY DEFENSE WAIVED MAY DIMINISH, DESTROY OR OTHERWISE ADVERSELY AFFECT RIGHTS WHICH EACH OTHERWISE MAY HAVE AGAINST THE OTHER, AGAINST LENDER OR OTHERS, OR AGAINST ANY COLLATERAL. IF ANY OF THE WAIVERS OR CONSENTS HEREIN IS DETERMINED TO BE CONTRARY TO ANY APPLICABLE LAW OR PUBLIC POLICY, SUCH WAIVERS AND CONSENTS SHALL BE EFFECTIVE TO THE MAXIMUM EXTENT PERMITTED BY LAW.

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

BORROWER:

Kaja Holdings 2, LLC,
a Delaware limited liability company

By: /s/ Michael P. Beys

Michael P. Beys, in his capacity as President of US Home Rentals, LLC, the sole member of Kaja Holdings 2, LLC

(Signatures continue on following page)

LENDER:

DLP Lending Fund LLC,
a Delaware limited liability company

By: /s/ Donald Wenner
Donald Wenner
President

SCHEDULE 1

Borrower Entities

[to be inserted]

Schedule 1 - 1

SCHEDULE 1.1(a)

Allocated Loan Amounts

Attached.

Schedule 1.1(a) - 1

SCHEDULE 1.1(b)

List of Projects

[to be inserted]

Schedule 1.1(b) - 1

SCHEDULE 4.1.1

Organizational Chart

[to be inserted]

Schedule 4.1.1 - 1

PROMISSORY NOTE

\$2,501,225.00

August 26, 2020

FOR VALUE RECEIVED, the undersigned, jointly and severally (individually and collectively, "**Borrower**"), as maker, having its principal place of business at 16 Berryhill Road, Suite 200 Columbia, SC 29210, hereby unconditionally promises to pay to the order of DLP LENDING FUND LLC, a Delaware limited liability company, as lender, having an address at 95 Highland Avenue, St. Augustine, FL 32095 (together with its successors and assigns, collectively, "**Lender**"), or at such other place as the holder hereof may from time to time designate in writing, the principal sum of TWO MILLION FIVE HUNDRED ONE THOUSAND TWO HUNDRED TWENTY FIVE and 30/100 Dollars (\$2,501,225.00), or so much thereof as is advanced pursuant to that certain Loan Agreement, dated the date hereof, between Borrower and Lender (as the same may be amended, modified, restated, replaced, supplemented or otherwise modified from time to time, the "**Loan Agreement**"), in lawful money of the United States of America, with interest thereon to be computed from the date of this Promissory Note (as the same may be amended, supplemented, restated, replaced or otherwise modified from time to time, this "**Note**") at the Interest Rate (as defined in the Loan Agreement), and to be paid in accordance with the terms of this Note and the Loan Agreement. All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement.

ARTICLE 1 – PAYMENT TERMS

Borrower agrees to pay the principal sum of this Note and interest on the unpaid principal sum of this Note and all other amounts due under the Loan Agreement and other Loan Documents from time to time outstanding without relief from valuation and appraisal laws at the rates and at the times specified in the Loan Agreement and the outstanding balance of the principal sum of this Note and all accrued and unpaid interest thereon and all other amounts due under the Loan Agreement and other Loan Documents shall be due and payable, in all events, on the Maturity Date. The obligations of each Borrower or party under this Note shall be joint and several.

ARTICLE 2 – DEFAULT AND ACCELERATION

The Debt shall without notice become immediately due and payable at the option of Lender, if any payment required in this Note is not paid (a) on or prior to the date when due, (b) on the Maturity Date or (c) on the happening of any other Event of Default.

ARTICLE 3 – LOAN DOCUMENTS

This Note is secured by the Security Instrument and the other Loan Documents. All of the terms, covenants and conditions contained in the Loan Agreement, the Security Instrument and the other Loan Documents are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. In the event of a conflict or inconsistency between the terms of this Note and the Loan Agreement, the terms and provisions of the Loan Agreement shall govern.

ARTICLE 4 – SAVINGS CLAUSE

Notwithstanding anything to the contrary contained herein, (a) all agreements and communications between Borrower and Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed interest, the interest contracted for, charged or received by Lender shall never exceed the Maximum Legal Rate or amount, (b) in calculating whether any interest exceeds the Maximum Legal Rate, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Borrower to Lender, and (c) if through any contingency or event Lender receives or is deemed to receive interest in excess of the Maximum Legal Rate, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Borrower to Lender.

ARTICLE 5 – NO ORAL CHANGE

This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

ARTICLE 6 – WAIVERS

Borrower and all others who may become liable for the payment of all or any part of the Debt do hereby jointly and severally waive presentment and demand for payment, notice of dishonor, notice of intention to accelerate, notice of acceleration, protest and notice of protest and non-payment and all other notices of any kind. No release of any security for the Debt or extension of time for payment, of this Note or any installment hereof, and no alteration, amendment or waiver of any provision of this Note, the Loan Agreement or the other Loan Documents made by agreement between Lender or any other Person shall release, modify, amend, waive, extend, change, discharge, terminate or affect the liability of Borrower, and any other Person who may become liable for the payment of all or any part of the Debt, under this Note, the Loan Agreement or the other Loan Documents. No notice to or demand on Borrower shall be deemed to be a waiver of the obligation of Borrower or of the right of Lender to take further action without further notice or demand as provided for in this Note, the Loan Agreement or the other Loan Documents. If Borrower is a partnership or limited liability company, the agreements herein contained shall remain in force and be applicable, notwithstanding any changes in the individuals or entities comprising the partnership or limited liability company, and the term "Borrower," as used herein, shall include any alternate or successor partnership or limited liability company, but any predecessor partnership or limited liability company and their partners or members shall not thereby be released from any liability. If Borrower is a corporation, the agreements contained herein shall remain in full force and be applicable notwithstanding any changes in the shareholders comprising, or the officers and directors relating to, the corporation, and the term "Borrower" as used herein, shall include any alternative or successor corporation, but any predecessor corporation shall not be relieved of liability hereunder. Nothing in the foregoing two sentences shall be construed as a consent to, or a waiver of, any prohibition or restriction on transfers of interests in such partnership, limited liability company or corporation, as applicable, which may be set forth in the Loan Agreement, the Security Instrument or any other Loan Document.

ARTICLE 7 – TRANSFER

Upon the transfer of this Note in whole or in part, Borrower hereby waiving notice of or consent to any such transfer, Lender may deliver all the collateral mortgaged, granted, pledged or assigned pursuant to the Loan Documents, or any part thereof, to the transferee who shall thereupon become vested with all the rights (and liabilities arising thereafter) herein or under Legal Requirements of and given to Lender with respect thereto, and Lender shall thereafter forever be relieved and fully discharged from any liability or responsibility in the matter; but Lender shall retain all rights hereby given to it with respect to any liabilities and the collateral not so transferred.

ARTICLE 8 – GOVERNING LAW AND WAIVER OF TRIAL BY JURY

This Note shall be governed in accordance with the terms and provisions of Section 10.3 and Section 10.7 of the Loan Agreement.

ARTICLE 9 – NOTICES

All notices or other written communications hereunder shall be delivered in accordance with Section 10.6 of the Loan Agreement.

ARTICLE 10 TRANSACTION ASSIGNMENT AND REGISTRAR

I. ASSIGNMENTS, PARTICIPATIONS

A. Assignments by Lender, etc. Subject to compliance with this Article 10, any Lender may on or after the date hereof sell and assign, or pledge, hypothecate or encumber, all or any portion of its Loans and all other Obligations with respect thereto, to or with Persons as may be selected by such Lender in its sole and absolute discretion (each an “*Assignee*”) and on terms and conditions satisfactory to in its sole and absolute discretion (which shall include the execution and delivery by the Assignee of assignment documentation in form and substance satisfactory to such assigning Lender). Borrower shall cooperate in all reasonable respects with such Lender in connection with the sale and assignment, or pledge, hypothecation or encumbrance, of all or any portion of such Lender’s interest in the Loan, and shall, in connection therewith, promptly execute and deliver such documents as may be reasonably requested by such Lender; provided, that such cooperation shall not include reimbursement of any Lender or any Assignee for any costs incurred in connection with such assignment or related documents.

A. Effect of Assignment. Pursuant to any assignment or participation of all or any portion of a Lender’s Loan as contemplated in this Article 10 to any Assignee, such Lender (a) may, subject to compliance with this Article 10, transfer its obligations hereunder and under the other Loan Documents (or may transfer the portion thereof corresponding to the transferred portion of the Obligations) and, except as otherwise specified herein, any Assignee shall succeed to the rights and obligations of Lender hereunder in respect of the transferred portion, and (b) shall relinquish its rights and be released from its obligations hereunder and under this Agreement and the other Loan Documents as to the transferred portion of its interest in the Loan.

B. Assignments by Borrower. No Borrower shall have any right to assign its rights or obligations hereunder or under the other Loan Documents or any interest herein or therein without the prior written consent of Lender and each of its successors and assigns, which consent may be withheld by in their sole and absolute discretion. Any attempted or purported assignment in contravention of this Article 10 shall be null and void ab initio.

C. Participations. Subject to compliance with this Article 10, any Lender may at any time, without the consent of, or notice to, Borrower, sell to one or more Persons as may be selected by such Lender in its sole and absolute discretion a participation (each a “*Participant*”) in all or a portion of such Lender’s rights and/or obligations under this Agreement (including all or a portion of the interest in the Loan owing to it); provided that (a) such Lender’s obligations under this Agreement shall remain unchanged, (b) such Lender shall remain solely responsible to the other Parties hereto for the performance of such obligations, (c) Borrower shall continue to deal solely and directly with Lender in connection with such Lender’s rights and obligations under this Agreement and the other Loan Documents, and (d) no Participant shall have any right to approve any amendment or waiver of any provision of any Loan Document, or any consent to any departure by Borrower or any other party therefrom, except to the extent that such amendment, waiver or consent would reduce the principal of, or interest on, the Loan or any fees or other amounts payable hereunder, in each case to the extent subject to such participation, or postpone any date fixed for any payment of any amount hereunder, to the extent subject to such participation.

II. REGISTRATION

A. Registered Obligation. Borrower hereby acknowledges and makes this Note (if any) a registered obligation for United States withholding tax purposes. DLP Lending Fund LLC, as Borrower's non-fiduciary agent for this purpose, shall be the registrar for this Note (if any) (the "**Registrar**") with full power of substitution. In the event the Registrar becomes unable or unwilling to act as registrar under this Agreement, Borrower shall reasonably designate a successor Registrar.

B. Register. The Registrar shall maintain, or cause to be maintained, a register (the "**Register**") for the recordation of the names and addresses of each Lender and any Assignee of all or any portion of such Lender's interest in the Loan and the principal amount outstanding of the Loan (and stated interest accrued but unpaid thereon) (the "**Registered Loan**") held by Lender and each Assignee from time to time. Borrower, each Lender and each Assignee shall treat each Person whose name is recorded in the Register as a "Lender" hereunder for all purposes of this Agreement. The Register shall be available for inspection by Borrower at any reasonable time and from time to time upon reasonable prior notice.

C. Registration of Assignment. A Registered Loan (and the registered Note evidencing the same, if any) may be assigned or sold in whole or in part only by registration of such assignment or sale on the Register (and each registered Note, if any, shall expressly so provide), which registration the Registrar shall effect immediately upon receipt of assignment documentation. Any assignment or sale of all or part of such Registered Loan (and the registered Note evidencing the same, if any) may be effected only by registration of such assignment or sale on the Register, together with the surrender of the registered Note evidencing the same, if any, duly endorsed by (or accompanied by a written instrument of assignment or sale duly executed by) the holder of such registered Note, if any, whereupon, at the request of the designated assignee(s) or transferee(s), one or more new registered Notes in the same aggregate principal amount shall be issued to the designated assignee(s) or transferee(s). Prior to the registration of assignment or sale of any Registered Loan (and the registered Note evidencing the same, if any), Borrower shall treat the Person in whose name such Registered Loan (and the registered Note evidencing the same, if any) is registered as the owner thereof for the purpose of receiving all payments thereon and for all other purposes, notwithstanding notice to the contrary.

D. Participant Register. If any Lender sells a participation or participations in the Loan to a Participant, such Lender shall report such sale of a participation to the Registrar and the Registrar shall, acting solely for this purpose as a non-fiduciary agent of Borrower, maintain a register on which it enters the name and the address of each Participant and the principal amounts of each Participant's participation interest in the Loan (or other rights or obligations) held by it (the "**Participant Register**"). The entries in the Participant Register shall be conclusive, absent manifest error, and each Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation interest as the owner thereof for all purposes notwithstanding any notice to the contrary. In maintaining the Participant Register, the Registrar shall be acting as the agent of Borrower solely for purposes of applicable United States federal income tax law and undertakes no duty, responsibility or obligation to Borrower and, without limitation, in no event shall the Registrar be a fiduciary of Borrower for any purpose, except that the Registrar shall maintain the Participant Register and, upon reasonable prior notice from Borrower, shall make the Participant Register available for inspection by Borrower at any reasonable time and from time to time.

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IN WITNESS WHEREOF, Borrower has duly executed this Promissory Note as of the day and year first above written.

BORROWER:

Kaja Holdings 2, LLC,
a Delaware limited liability company

/s/ Michael P. Beys

By: Michael P. Beys, in his capacity as President of US Home
Rentals, LLC, the sole member of Kaja Holdings 2, LLC

Signature Page – Promissory Note

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

FTE Networks, Inc.
New York, New York

We hereby consent to the incorporation by reference in the Registration Statement on Form S-8 (No. 333-225240) of FTE Networks, Inc. of our report dated November 5, 2020 relating to the consolidated financial statements of FTE Networks, Inc. included in this Annual Report (Form 10-K) for the fiscal year ended December 31, 2019.

/s/ Turner, Stone & Company, LLP

Dallas, Texas
November 5, 2020

SECTION 302 CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER

I, Michael P. Beys, certify that:

1. I have reviewed this Annual Report on Form 10-K of FTE Networks, Inc.
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report.
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report.
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 5, 2020

/s/ Michael P. Beys

Michael P. Beys
Interim Chief Executive Officer
(Principal Executive Officer)

SECTION 302 CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER

I, Ernest J. Scheidemann, certify that:

1. I have reviewed this Annual Report on Form 10-K of FTE Networks, Inc.
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report.
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report.
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 5, 2020

/s/ Ernest J. Scheidemann
Ernest J. Scheidemann
(Principal Financial Officer)
Interim Chief Financial Officer

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER

PURSUANT TO

18 U.S.C. SECTION 1350,

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

Pursuant to 18 U.S.C. § 1350, the undersigned officer of FTE Networks, Inc. (the “Company”) hereby certifies that the Company’s Annual Report on Form 10-K for the year ended December 31, 2019 (the “Report”) fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934 and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: November 5, 2020

/s/ Michael P. Beys

Michael P. Beys
Principal Executive Officer
Interim Chief Executive Officer

The foregoing certification is being furnished solely pursuant to 18 U.S.C. § 1350 and is not being filed as part of the Report or as a separate disclosure document.

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER

PURSUANT TO

18 U.S.C. SECTION 1350,

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

Pursuant to 18 U.S.C. § 1350, the undersigned officer of FTE Networks, Inc. (the “Company”) hereby certifies that the Company’s Annual Report on Form 10-K for the year ended December 31, 2019 (the “Report”) fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934 and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: November 5, 2020

/s/ Ernest J. Scheidemann

Ernest J. Scheidemann
Principal Financial Officer
Interim Chief Financial Officer

The foregoing certification is being furnished solely pursuant to 18 U.S.C. § 1350 and is not being filed as part of the Report or as a separate disclosure document.
