

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 Laws; (iii) neither the Property nor any part thereof or interest therein will have a reasonable likelihood of being sold, forfeited, terminated, cancelled or lost as a result of such contest; (iv) Borrower shall promptly upon final determination thereof pay the amount of any such Taxes or Other Charges, together with all costs, interest and penalties which may be payable in connection therewith; (v) to the extent Borrower has not paid such Taxes or Other Charges, such proceeding shall suspend the collection of such contested Taxes or Other Charges from the Property; and (vi) Borrower shall furnish such security as may be required in the proceeding (or if no such security is required by the proceeding, such security 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 apply such security or part thereof held by Lender at any time when, in the reasonable judgment of Lender, the validity or applicability of such Taxes or Other Charges are established or the Property (or part thereof or interest therein) shall be in imminent 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.

(b) Until such time as a separate tax lot or parcel has been obtained for the Real Property which does not include any portion of the Resort Property, unless the Resort Lender is currently budgeting loan proceeds for (and Lender has no reasonable belief that Resort Lender will not be able to timely pay or cause to be paid with such budgeted proceeds) Taxes for both the Resort Property and the Real Property, Borrower shall be required to escrow Taxes with respect to the Resort Property with Lender.

5.1.3 Litigation.

Borrower shall give prompt written notice to Lender of any litigation or governmental proceedings pending or threatened against Borrower which could reasonably be expected to materially adversely affect Borrower's condition (financial or otherwise) or business or the Property.

5.1.4 Access to the Property.

Borrower shall permit agents, representatives and employees of Lender and the Construction Consultant to inspect the Property or any part thereof at reasonable hours upon reasonable advance notice.

5.1.5 Notice of Default.

Borrower shall promptly advise Lender of any material adverse change in Borrower'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 adversely 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 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 Award or Insurance Proceeds.

5.1.8 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 reasonably requested by Lender in connection therewith;

(b) execute and deliver to Lender such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect the collateral at any time securing or intended to secure the obligations of Borrower under the Loan Documents, as Lender may reasonably require including, without limitation, the authorization of Lender to execute and/or the execution by Borrower of UCC financing statements; 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, provided that the same does not unreasonably increase the obligations of or restrictions imposed upon the Borrower or any Guarantor under this Agreement or any other Loan Document.

5.1.9 Mortgage and Intangible Taxes.

Borrower shall pay all State, county and municipal recording, mortgage, and intangible, and all other taxes imposed upon the execution and recordation of the Security Instrument and/or upon the execution and delivery of the Note.

5.1.10 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 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 on an individual basis of the Property. Lender shall have the right from time to time at all times during normal business hours upon reasonable notice 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 determine to be necessary or appropriate in the protection of Lender's interest.

(b) Borrower will furnish to Lender annually, within one hundred twenty (120) days following the end of each Fiscal Year, a complete copy of Borrower's annual financial statements audited by an Approved Accountant in accordance with GAAP (or such other accounting basis acceptable to Lender) covering the Property for such Fiscal Year and containing statements of profit and loss for Borrower and the Property and a balance sheet for Borrower. Such statements shall set forth the financial condition and the results of operations for the Property for such Fiscal Year, and shall include, but not be limited to, amounts representing Operating Expenses and, following Borrower's initial receipt of any Rents or other Gross Income from Operations, amounts representing annual Net Cash Flow and Gross Income from Operations. Borrower's annual financial statements shall be accompanied by (i) a comparison of the budgeted income and expenses and the actual income and expenses for the prior Fiscal Year, (ii) a certificate executed by a Responsible Officer or other appropriate officer of Borrower, stating that each such annual financial statement presents fairly the financial condition and the results of operations of Borrower and the Property being reported upon and has been prepared in accordance with GAAP, (iii) a certificate executed by a Responsible Officer or other appropriate officer of Borrower, certifying as to the Net Operating Income, (iv) an unqualified opinion of an Approved Accountant, (v) a list of tenants, if any, occupying more than twenty (20%) percent of the total floor area of the Improvements and (vi) a schedule prepared and certified to by a Responsible Officer of Borrower Net Operating Income to Net Cash Flow (the "Net Cash Flow Schedule"), which shall itemize all adjustments made to Net Operating Income to arrive at Net Cash Flow deemed material by such Responsible Officer. Together with Borrower's annual financial statements, Borrower shall furnish to Lender an Officer's Certificate certifying as of the date thereof whether there exists an event or circumstance which constitutes a Default or Event of Default under the Loan Documents executed and delivered by, or applicable to, Borrower, and if such Default or Event of Default exists, the nature thereof, the period of time it has existed and the action then being taken to remedy the same.

(c) Borrower will furnish, or cause to be furnished, to Lender on or before thirty (30) days after the end of each calendar month the following items (which items are not required to be audited by an Approved Accountant unless expressly stated otherwise), accompanied by a certificate of a Responsible Officer or other appropriate officer of Borrower, stating that such items are true, correct, accurate, and complete and fairly present the financial condition and results of the operations of Borrower and the Property (subject to normal year-end adjustments): (i) commencing upon the execution of the first Lease by Borrower, a rent roll for the subject month accompanied by an Officer's

Certificate with respect thereto; (ii) commencing upon Borrower's initial receipt of any Rents or other Gross Income from Operations, monthly and year-to-date operating statements prepared for each calendar month, noting Net Operating Income, Gross Income from Operations, Operating Expenses, Capital Expenditures and other information necessary and sufficient to fairly represent the financial position and results of operation of the Property during such calendar month, and containing a comparison of budgeted income and expenses and the actual income and expenses together with a detailed explanation of any variances of five percent (5%) or more between budgeted and actual amounts for such periods, all in form satisfactory to Lender; (iii) commencing upon Borrower's initial receipt of any Rents or other Gross Income from Operations, a calculation reflecting the annual Debt Service Coverage Ratio for the immediately preceding twelve (12) month period (or such shorter period commencing upon the date of Borrower's initial receipt of any such Rents or other Gross Income from Operations) as of the last day of such month accompanied by an Officer's Certificate with respect thereto; (iv) an update as to Borrower's Leasing Plan (showing the number of inquiries made and/or rental applications received from tenants or prospective tenants, letters of intent in existence and deposits received from tenants and any other information requested by Lender), (v) an update as to the actual costs spent to date (at the time such update is given) in connection with the completion of the Future Improvements to be constructed (or paid for) by Borrower as well as the projected costs of completion for such Future Improvements in accordance with the Plans and Specifications and Applicable Laws, (vi) an update as to the actual costs spent to date (at the time such update is given) by Borrower and its Affiliates in connection with the completion of the Project Future Improvements as well as the projected costs for Borrower and its Affiliates of completion for such Project Future Improvements in accordance with the Project Plans and Specifications and Applicable Laws and (vii) a Net Cash Flow Schedule. In addition, such certificate shall also be accompanied by a certificate of a Responsible Officer or other appropriate officer of Borrower stating that the representations and warranties of Borrower set forth in Section 4.1.35 are true and correct as of the date of such certificate and that there are no trade payables outstanding for more than sixty (60) days unless the same are being contested in good faith and such amounts are immaterial (in which case such certificate shall certify as to the same). Borrower will furnish, or cause to be furnished, to Lender on or before twenty (20) days after the end of each calendar quarter a calculation reflecting the Debt Service Coverage Ratio for such calendar quarter accompanied by an Officer's Certificate with respect thereto.

(d) (i) For the partial year period commencing on the date hereof, and for each Fiscal Year thereafter, Borrower shall submit to Lender a commercially reasonable leasing plan appropriate for a property of the type and character of the Property, including a marketing plan and projections for rollovers, vacancies, leasing commission costs, tenant improvement costs and other capital costs (a "Leasing Plan") and Borrower will lease the Property in accordance with the Leasing Plan and (ii) Borrower shall submit to Lender an Annual Budget for the Property not later than sixty (60) days prior to the Opening Date (as defined in the Master Disbursement Agreement) and the commencement of each Fiscal Year thereafter in form reasonably satisfactory to Lender, and shall be subject to Lender's written approval (each such Annual Budget, after it has been approved in writing by Lender shall be hereinafter referred to as an "Approved

Annual Budget”). In the event that Lender objects to a proposed Annual Budget submitted by Borrower, Lender shall advise Borrower of such objections within fifteen (15) days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and Borrower shall promptly revise such Annual Budget and resubmit the same to Lender. Lender shall advise Borrower of any objections to such revised Annual Budget within ten (10) days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and Borrower shall promptly revise the same in accordance with the process described in this subsection until Lender approves the Annual Budget. Until such time that Lender approves a proposed Annual Budget, the most recently Approved Annual Budget shall apply; provided that, such Approved Annual Budget shall be adjusted to reflect actual increases in Taxes, Insurance Premiums and utilities expenses.

(e) Borrower shall furnish to Lender, within ten (10) Business Days after request 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, including, without limitation, an annual operating budget for the Property.

(f) Any reports, statements or other information required to be delivered under this Agreement shall be delivered (i) in paper form, (ii) on a diskette, and (iii) if requested by Lender and within the capabilities of Borrower’s data systems without change or modification thereto, in electronic form and prepared using a Microsoft Word for Windows or WordPerfect for Windows files (which files may be prepared using a spreadsheet program and saved as word processing files).

(g) Borrower agrees that Lender may forward to each purchaser, transferee, assignee, servicer, participant, Co-Lender or investor in all or any portion of the Loan or any Securities (collectively, the “Investor”) or any Rating Agency rating such participations and/or Securities and 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 Debt and to Borrower, any Guarantor, and the Property, whether furnished by Borrower, any Guarantor, or otherwise, as Lender determines necessary or desirable. Borrower irrevocably waives any and all rights it may have under any Applicable Laws to prohibit such disclosure, including, but not limited, to any right of privacy.

(h) If requested by Lender, Borrower shall provide Lender, promptly upon request or within the time periods set forth in this subsection (h), with the following financial statements if, at the time a Disclosure Document is being prepared for a Securitization, it is expected that the principal amount of the Loan together with any Affiliated Loans at the time of Securitization may equal or exceed 20% of the aggregate principal amount of all mortgage loans included or expected to be included, as applicable, in the Securitization:

(i) A balance sheet with respect to the Property for the two most recent fiscal years, meeting the requirements of Section 210.3-01 of Regulation S-X of the Securities Act and statements of income and statements of cash flows

with respect to the Property for the three most recent fiscal years, meeting the requirements of Section 210.3-02 of Regulation S-X, and, for any interim period between the last audited balance sheet and the date of the most recent interim financial statements, interim financial statements of the Property meeting the requirements of Section 210.3-01 and 210.3-02 of Regulation S-X (all of such financial statements, collectively, the "Standard Statements"); provided, however, that with respect to a Property (other than properties that are hotels, nursing homes, or other properties that would be deemed to constitute a business and not real estate under Regulation S-X or other legal requirements) that has been acquired by Borrower from an unaffiliated third party (such Property, "Acquired Property"), as to which the other conditions set forth in Section 210.3-14 of Regulation S-X for provision of financial statements in accordance with such Section have been met, in lieu of the Standard Statements otherwise required by this section, Borrower shall instead provide the financial statements required by such Section 210.3-14 of Regulation S-X ("Acquired Property Statements").

(ii) Not later than 30 days after the end of each fiscal quarter following the date hereof, a balance sheet of the Property as of the end of such fiscal quarter, meeting the requirements of Section 210.3-01 of Regulation S-X, and statements of income and statements of cash flows of the Property for the period commencing following the last day of the most recent fiscal year and ending on the date of such balance sheet and for the corresponding period of the most recent fiscal year, meeting the requirements of Section 210.3-02 of Regulation S-X (provided, that if for such corresponding period of the most recent fiscal year Acquired Property Statements were permitted to be provided hereunder pursuant to subsection (i) above, Borrower shall instead provide Acquired Property Statements for such corresponding period).

(iii) Not later than 75 days after the end of each fiscal year following the date hereof, a balance sheet of the Property as of the end of such fiscal year, meeting the requirements of Section 210.3-01 of Regulation S-X, and statements of income and statements of cash flows of the Property for such fiscal year, meeting the requirements of Section 210.3-02 of Regulation S-X.

(iv) Within ten business days after notice from the Lender in connection with the Securitization of this Loan, such additional financial statements, such that, as of the date (each an "Offering Document Date") of each Disclosure Document, Borrower shall have provided Lender with all financial statements as described in subsection (h)(i) above; provided that the fiscal year and interim periods for which such financial statements shall be provided shall be determined as of such Offering Document Date.

(i) If requested by Lender, Borrower shall provide Lender, promptly upon request (but in no event later than the time periods set forth in Section 5.1.10(h) hereof), with "selected financial data" regarding the net operating income for the Borrower and the Property for the most recent fiscal year and interim period (or such longer period as may be required by Regulation S-K if the Loan is not treated as a non-recourse loan

under Instruction 3 for Item 1101(k) of Regulation AB) meeting the requirements and covering the time periods specified in Section 301 of Regulation S-K and Item 1112 of Regulation AB of the Securities Act if, at the time a Disclosure Document is being prepared for a Securitization, it is expected that the principal amount of the Loan and any Affiliated Loans at the time of Securitization may equal or exceed 10% (but is less than 20%) of the aggregate principal amount of all mortgage loans expected to be included in a Securitization.

(j) All financial statements provided by Borrower hereunder pursuant to Section 5.1.10(h) and (i) hereof shall be prepared in accordance with GAAP, and shall meet the requirements of Regulation S-K or Regulation S-X, as applicable, Regulation AB and other applicable legal requirements. All financial statements referred to in Subsections 5.1.10(h)(i) and 5.1.10(h)(iii) above shall be audited by independent Approved Accountants of Borrower acceptable to Lender in accordance with Regulation S-K or Regulation S-X, as applicable, Regulation AB and all other applicable legal requirements, shall be accompanied by the manually executed report of the independent Approved Accountants thereon, which report shall meet the requirements of Regulation S-K or of Regulation S-X, as applicable, Regulation AB and all other applicable legal requirements, and shall be further accompanied by a manually executed written consent of the independent Approved Accountants, in form and substance acceptable to Lender, to the inclusion of such financial statements in any Disclosure Document and any Exchange Act Filing and to the use of the name of such independent Approved Accountants and the reference to such independent Approved Accountants as "experts" in any Disclosure Document and Exchange Act Filing, all of which shall be provided at the same time as the related financial statements are required to be provided. All financial statements (audited or unaudited) provided by Borrower under this Section 5.1.10 shall be certified by the chief financial officer or administrative member of Borrower, which certification shall state that such financial statements meet the requirements set forth in the first sentence of this Section 5.1.10(j).

(k) If requested by Lender, Borrower shall provide Lender, promptly upon request, with any other or additional financial statements, or financial, statistical or operating information, as Lender shall determine to be required pursuant to Regulation S-K or Regulation S-X, as applicable, Regulation AB or any amendment, modification or replacement thereto or other legal requirements in connection with any Disclosure Document or any Exchange Act filing in connection with or relating to a Securitization or as shall otherwise be reasonably requested by the Lender.

(l) In the event Lender determines, in connection with a Securitization, that the financial statements required in order to comply with Regulation S-K or Regulation S-X, as applicable, Regulation AB or other legal requirements are other than as provided herein, then notwithstanding the provisions of Sections 5.1.10(h), (i) and (j) hereof, Lender may request, and Borrower shall promptly provide, such combination of Acquired Property Statement and/or Standard Statements or such other financial statements as Lender determines to be necessary or appropriate for such compliance.

(m) The term "Affiliated Loans" shall mean a loan made by Lender to a parent, subsidiary or such other entity affiliated with Borrower, any Guarantor and any other loan that is cross-collateralized with the Loan.

(n) If requested by Lender, Borrower shall provide Lender, promptly upon request, a list of tenants (including all affiliates of such tenants) that in the aggregate (1) occupy 10% or more (but less than 20%) of the total floor area of the improvements or represent 10% or more (but less than 20%) of aggregate base rent, and (2) occupy 20% or more of the total floor area of the improvements or represent 20% or more of aggregate base rent.

In addition, if requested by Lender, Borrower shall provide Lender, promptly upon request, with financial information regarding any of the tenants identified in the list prepared pursuant to the preceding sentence in form and substance sufficient to satisfy the requirements of Item 1112 of Regulation AB.

5.1.11 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. The Property shall be used only for a retail center and any ancillary uses relating thereto (including the operation of one or more restaurants), and for no other uses without the prior written consent of Lender, which consent shall not be unreasonably withheld. Borrower will remain in good standing under the laws of each jurisdiction the extent required for the ownership, maintenance, management and operation of the Property.

5.1.12 Costs of Enforcement.

In the event (a) that the Security Instrument encumbering the Property 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 encumbering the Property which proceeding Lender is made a party, or (c) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Borrower or any of its constituent Persons or an assignment by Borrower or any of its constituent Persons for the benefit of its creditors, Borrower, its successors or assigns, shall be chargeable with and agrees to pay all costs of collection and defense, including attorneys' fees and costs, incurred by Lender or Borrower in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, together with all required service or use taxes.

5.1.13 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 amount of the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the Applicable Interest Rate of the Note, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the payment of the Debt, and (vi) that the Note, this Agreement, the Security Instrument and the other Loan Documents are

valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

(b) Borrower shall use commercially reasonable efforts to deliver to Lender upon request (but not more than once in any calendar year unless (i) an Event of Default then exists or (ii) in connection with a Securitization or Syndication), tenant estoppel certificates from each commercial tenant leasing space at the Property in form and substance reasonably satisfactory to Lender.

(c) Borrower shall, promptly upon request of Lender, deliver an estoppel certificate from Fee Owner stating that (i) the Air Rights Lease is in full force and effect and has not been modified, amended or assigned, (ii) neither Fee Owner nor Borrower is in default under any of the terms, covenants or provisions of the Air Rights Lease and the Air Rights Lessor know of no event which, but for the passage of time or the giving of notice or both, would constitute an event of default under the Air Rights Lease, (iii) neither the Fee Owner nor Borrower has commenced any action or given or received any notice for the purpose of terminating the Air Rights Lease and (iv) all sums due and payable to Fee Owner under the Air Rights Lease have been paid in full.

(d) Borrower shall deliver to Lender upon request (but not more than once in any calendar year unless (i) an Event of Default then exists or (ii) in connection with a Securitization or syndication) an estoppel certificate from each party to the Master REA (and shall use commercially reasonable efforts with respect to any other material REA, as determined by Lender in its reasonable discretion) in form and substance reasonably satisfactory to Lender.

(e) After request by Borrower, Lender shall (but not more than once in any calendar year and provided no Event of Default then exists) within ten (10) days, furnish Borrower with a statement, duly acknowledged and certified, setting forth (i) the amount of the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the Applicable Interest Rate of the Note (iv) the date installments of interest and/or principal were last paid and (v) that the Note, this Agreement, the Security Instrument and the other Loan Documents have not been modified or if modified, giving particulars of such modification.

5.1.14 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. hereof.

5.1.15 Performance by Borrower.

Borrower shall in a timely manner (and subject to any applicable notice and grade periods expressly provided for in the Loan Documents) 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 executed and delivered by, or applicable to, Borrower without the prior written consent of Lender.

5.1.16 Confirmation of Representations.

Borrower shall deliver, in connection with any Securitization or Syndication, (a) one or more Officer's Certificates certifying as to the accuracy of all representations made by Borrower in the Loan Documents as of the date of the closing of such Securitization or Syndication in all relevant jurisdictions (or, to the extent such representations are not then true, indicating the exceptions thereto), and (b) certificates of the relevant Governmental Authorities in all relevant jurisdictions indicating the good standing and qualification of Borrower as of the date of the closing of such Securitization or Syndication.

5.1.17 Leasing Matters.

(a) Borrower may enter into a proposed Lease (including the renewal or extension of an existing Lease (a "Renewal Lease")) without the prior written consent of Lender, provided such proposed Lease or Renewal Lease (i) provides for rental rates and terms comparable to existing local market rates and terms (taking into account the type and quality of the tenant) as of the date such Lease is executed by Borrower (unless, in the case of a Renewal Lease, the rent payable during such renewal, or a formula or other method to compute such rent, is provided for in the original Lease), (ii) is an arms-length transaction with a bona fide, independent third party tenant, (iii) does not have a material adverse effect on the value or quality of the Property, (iv) is subject and subordinate to the Security Instrument and the lessee thereunder agrees to attorn to Lender, (v) is in the form of Exhibit H attached hereto approved by Lender (other than factual information with respect to the tenant and other commercially reasonable modifications not material to the Property taken as a whole and that could not be reasonably expected to result in a Material Adverse Effect, as determined by Borrower in its good faith reasonable business judgement, provided in all events that any such proposed Lease shall be subordinate to the Security Instrument and the other Loan Documents), and (vi) is not a Major Lease. All proposed Leases which do not satisfy the requirements set forth in this Section 5.1.17(a) shall be subject to the prior approval of Lender, which approval shall not be unreasonably withheld, conditioned or delayed. At Lender's request, Borrower shall promptly deliver to Lender copies of all Leases which are entered into pursuant to this Subsection together with Borrower's certification that it has satisfied all of the conditions of this Section.

(b) Borrower (i) shall observe and perform all the material obligations imposed upon the lessor under the Leases and shall not do or permit to be done anything to materially impair the value of any of the Leases as security for the Debt; (ii) shall promptly send copies to Lender of all notices of default or other material matters which Borrower shall send or receive with respect to the Leases; (iii) shall enforce all of the material terms, covenants and conditions contained in the Leases upon the part of the tenant thereunder to be observed or performed (except for termination of a Major Lease which shall require Lender's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed); (iv) shall not collect any of the Rents more than one (1) month in advance (except Security Deposits shall not be deemed Rents collected in advance); (v) shall, immediately upon receipt, deposit all Lease Termination Payments into such account as directed by Lender, (vi) shall not execute any other

assignment of the lessor's interest in any of the Leases or the Rents; and (vii) shall not consent to any assignment of or subletting under any Leases not in accordance with their terms, without the prior written consent of Lender, which consent shall not be unreasonably withheld, conditioned or delayed.

(c) Borrower may, without the consent of Lender, amend, modify or waive the provisions of any Lease or terminate, reduce rents under, accept a surrender of space under, or shorten the term of, any Lease (including any guaranty, letter of credit or other credit support with respect thereto) provided that such Lease is not a Major Lease and that such action (taking into account, in the case of a termination, reduction in rent, surrender of space or shortening of term, the planned alternative use of the affected space) does not have a material adverse effect on the value of the Property taken as a whole, and provided that such Lease, as amended, modified or waived, is otherwise in compliance with the requirements of this Agreement and any lease subordination agreement binding upon Lender with respect to such Lease. A termination of a Lease (other than a Major Lease) with a tenant who is in default beyond applicable notice and grace periods shall not be considered an action which has a material adverse effect on the value of the Property taken as a whole. Any amendment, modification, waiver, termination, rent reduction, space surrender or term shortening which does not satisfy the requirements set forth in this Subsection shall, at Borrower's expense, be subject to the prior written approval of Lender and its counsel, which approval shall not be unreasonably withheld, conditioned or delayed. At Lender's request, Borrower shall promptly deliver to Lender copies of all Leases, amendments, modifications and waivers which are entered into pursuant to this Section 5.1.17(b) together with Borrower's certification that it has satisfied all of the conditions of this Section 5.1.17(b).

(d) Notwithstanding anything contained herein to the contrary, Borrower shall not, without the prior written consent of Lender, enter into, renew, extend, amend (unless such amendment is not material to the Property, taken as whole and could not be reasonably expected result in a Material Adverse Effect), modify (unless such modification is not material to the Property, taken as whole and could not be reasonably expected result in a Material Adverse Effect), waive any provisions of (unless such waiver is not material to the Property, taken as a whole and could not be reasonably expected to result in a Material Adverse Effect), terminate, reduce rents under, accept a surrender of space under, or shorten the term of, any Major Lease or any instrument guaranteeing or providing credit support for any Major Lease.

(e) Lender shall hold any and all monies representing security deposits under the Leases (the "Security Deposits") received by Lender, in accordance with the terms of the respective Lease, and shall only release the Security Deposits in order to return a tenant's Security Deposit to such tenant if such tenant is entitled to the return of the Security Deposit under the terms of the Lease.

(f) In connection with any restaurant Lease to an Affiliate of Borrower which a "celebrity" (as determined by Lender in its reasonable discretion) chef (a "Celebrity Chef") has agreed to associate his/her name with the Property, Borrower shall use commercially reasonable efforts to deliver, or cause to be delivered, an agreement from

such Celebrity Chef stating that if there is a foreclosure of the Security Instrument or similar enforcement action resulting in the transfer of title to the Property, or if Borrower becomes insolvent, such Celebrity Chef shall, at the election of Lender, complete its obligations under any relevant Lease or contract (or other arrangement) previously entered into with Borrower for the benefit of and with no additional charge or expense to Lender, its nominee or wholly owned subsidiary.

(g) Lender agrees, from time to time upon Borrower's request, to enter into a subordination, nondisturbance and attornment agreement with any tenant under a Lease, which agreement shall be substantially in the form attached as Exhibit E, in each case with such changes as may be mutually acceptable to Lender and such tenant.

Notwithstanding the provisions of this Section 5.1.17 to the contrary, to the extent that Lender's prior written approval is required pursuant to this Section 5.1.17 with respect to new Leases and modifications and amendments of, or waivers with respect to, existing Leases, such request for approval shall be deemed approved if (i) Lender shall have failed to notify Borrower of its approval or disapproval within seven (7) Business Days (the "Approval Period") following Lender's receipt of Borrower's written request together with any and all information and documentation relating thereto reasonably requested by Lender to reach a decision, (ii) Borrower shall have delivered to Lender a written notice of Lender's failure to respond to Borrower's request within the Approval Period (the "Failure to Respond Notice"), which Failure to Respond Notice is marked in bold lettering (of no less than fourteen point type and underlined) with the following: "IMMEDIATE RESPONSE REQUIRED, FAILURE TO RESPOND TO THIS APPROVAL REQUEST WITHIN SEVEN (7) BUSINESS DAYS FROM RECEIPT SHALL BE DEEMED TO BE LENDER'S APPROVAL", and (iii) Lender shall have failed to notify Borrower of its approval or disapproval within seven (7) Business Days following Lender's receipt of the Failure to Respond Notice. Upon Lender's request, Borrower shall be required to provide Lender with such information and documentation as may be reasonably required by Lender, in its reasonable discretion, including without limitation, lease comparables and other market information as reasonably required by Lender

5.1.18 Management Agreement.

(a) Borrower shall not enter into a Management Agreement for the Property without Lender's prior written consent (provided that Lender's consent shall not be required with respect to the Approved Management Agreement or any other Management Agreement in the form attached (with such de minimis changes agreed to by Borrower) hereto as Exhibit J, with a Qualified Manager and otherwise in accordance with Section 5.1.18(b) below).

(b) In no event shall the management fees under any Management Agreement exceed three percent (3%) of the gross revenue derived from the Property. Borrower shall (i) diligently perform and observe all of the terms, covenants and conditions of any Management Agreement, on the part of Borrower to be performed and observed to the end that all things shall be done which are necessary to keep unimpaired the rights of Borrower under any Management Agreement and (ii) promptly notify Lender of the giving of any notice by any Manager to Borrower of any default by Borrower in the

performance or observance of any of the terms, covenants or conditions of any Management Agreement on the part of Borrower to be performed and observed and deliver to Lender a true copy of each such notice. Borrower shall not surrender any Management Agreement, consent to the assignment by any Manager of its interest under any Management Agreement, or terminate or cancel any Management Agreement, or modify, change, supplement, alter or amend any Management Agreement, in any material respect, either orally or in writing. Borrower hereby assigns to Lender as further security for the payment of the Debt and for the performance and observance of the terms, covenants and conditions of this Agreement, all the rights, privileges and prerogatives of Borrower to surrender any Management Agreement, or to terminate, cancel, modify, change, supplement, alter or amend any Management Agreement, in any respect (provided that Lender shall not exercise such rights except during the continuance of an Event of Default or as otherwise expressly permitted under the Loan Documents), and any such surrender of any Management Agreement, or termination, cancellation, modification, change, supplement, alteration or amendment of any Management Agreement in any material respect, without the prior consent of Lender shall be void and of no force and effect. Notwithstanding the foregoing, Borrower shall have the right to terminate the Management Agreement without Lender's prior written consent upon satisfaction of the following conditions: (i) Borrower delivers to Lender written notice of its intention to terminate the Management Agreement at least ten (10) Business Days prior to such termination; (ii) Borrower replaces the Manager within thirty (30) days after the termination of the Management Agreement with a Qualified Manager pursuant to a Replacement Management Agreement; and (iii) such Qualified Manager delivers to Lender an Assignment of Management Agreement which is also executed by the Borrower. If Borrower shall default in the performance or observance of any material term, covenant or condition of any Management Agreement on the part of Borrower to be performed or observed, then, without limiting the generality of the other provisions of this Agreement, and without waiving or releasing Borrower from any of its obligations hereunder, Lender shall have the right, but shall be under no obligation, to pay any sums and to perform any act or take any action as may be appropriate to cause all the terms, covenants and conditions of any Management Agreement on the part of Borrower to be performed or observed to be promptly performed or observed on behalf of Borrower, to the end that the rights of Borrower in, to and under any Management Agreement shall be kept unimpaired and free from default. Lender and any Person designated by Lender shall have, and are hereby granted, the right to enter upon the Property at any time and from time to time for the purpose of taking any such action. If any Manager shall deliver to Lender a copy of any notice sent to Borrower of default under any Management Agreement, such notice shall constitute full protection to Lender for any action taken or omitted to be taken by Lender in good faith, in reliance thereon. Borrower shall not, and shall not permit any Manager to, sub-contract any or all of its management responsibilities under any Management Agreement to a third-party without the prior written consent of Lender, which consent shall not be unreasonably withheld. Borrower shall, from time to time, obtain from any Manager such certificates of estoppel with respect to compliance by Borrower with the terms of any Management Agreement as may be requested by Lender (which request may be made no more often than once per calendar year unless (i) in connection with a Syndication or Securitization or (ii) an Event

of Default then exists). During the continuance of an Event of Default, Borrower shall exercise each individual option, if any, to extend or renew the term of any Management Agreement upon demand by Lender made at any time within one (1) year of the last day upon which any such option may be exercised, and Borrower hereby expressly authorizes and appoints Lender its attorney-in-fact to exercise any such option in the name of and upon behalf of Borrower, which power of attorney shall be irrevocable and shall be deemed to be coupled with an interest. Any sums expended by Lender pursuant to this paragraph (i) shall bear interest at the Default Rate from the date such cost is incurred to the date of payment to Lender, (ii) shall be deemed to constitute a portion of the Debt, (iii) shall be secured by the lien of the Security Instrument and the other Loan Documents and (iv) shall be immediately due and payable upon demand by Lender therefor.

(c) Without limitation of the foregoing, Borrower, upon the request of Lender, shall terminate any Management Agreement and replace any Manager, without penalty or fee, if at any time during the Loan: (a) any Manager shall become insolvent or a debtor in any bankruptcy or insolvency proceeding, (b) there exists an Event of Default or (c) there exists a default by Manager under any Management Agreement beyond any applicable notice and cure periods. Within thirty (30) days after any such removal, a Qualified Manager shall assume management of the Property pursuant to a Replacement Management Agreement.

5.1.19 Environmental Covenants.

(a) Borrower covenants and agrees that so long as the Loan is outstanding (i) Borrower shall, and shall use commercially reasonable efforts to ensure that all other Persons (including, but not limited to, all tenants and subtenants) shall, cause all uses and operations on or of the Real Property to be in compliance in all material respects with all Environmental Laws and permits issued pursuant thereto; (ii) there shall be no Releases of Hazardous Materials by Borrower in, on, under or from any of the Real Property and Borrower shall use commercially reasonable efforts to insure that there shall be no Releases of Hazardous Materials by any other Person in, on, under or from any of the Real Property; (iii) there shall be no Hazardous Materials in, on, or under the Real Property, except those that are both (A) in compliance with all Environmental Laws and with permits issued pursuant thereto, if and to the extent required, and (B) (1) in amounts not in excess of that necessary to operate the Real Property or (2) fully disclosed to and approved by Lender in writing; (iv) Borrower shall keep the Real Property free and clear of all liens and other encumbrances imposed pursuant to any Environmental Law, whether due to any act or omission of Borrower or any other Person (the "Environmental Liens"); (v) Borrower shall, at its sole cost and expense, fully and expeditiously cooperate in all activities pursuant to paragraph (b) below, including but not limited to providing all relevant information and making knowledgeable persons available for interviews; (vi) Borrower shall, at its sole cost and expense, perform any environmental site assessment or other investigation of environmental conditions in connection with the Real Property, pursuant to any reasonable written request of Lender, upon Lender's reasonable belief that the Real Property is not in compliance with all Environmental Laws in any material respect (other than such lack of compliance as has been previously disclosed to, and approved of in writing by, Lenders), and share with Lender the reports

and other results thereof, and Lender and other Indemnified Parties shall be entitled to rely on such reports and other results thereof; (vii) Borrower shall, at its sole cost and expense, comply with all reasonable written requests of Lender to (A) reasonably effectuate remediation of any Hazardous Materials in, on, under or from the Real Property; and (B) comply with any Environmental Law; (viii) Borrower shall not knowingly allow any tenant or other user of any of the Real Property to violate any Environmental Law; and (ix) Borrower shall immediately notify Lender in writing after it has become aware of (A) any presence or Release or threatened Releases of Hazardous Materials in, on, under, from or migrating towards the Real Property; (B) any non-compliance with any Environmental Laws related in any way to the Real Property; (C) any actual or potential Environmental Lien; (D) any required or proposed remediation of environmental conditions relating to the Real Property; and (E) any written or oral notice or other communication of which Borrower becomes aware from any source whatsoever (including but not limited to a Governmental Authority) relating in any way to Hazardous Materials in, on or under the Property in violation of any Environmental Law.

(b) Lender and any other Person designated by Lender, including but not limited to any representative of a Governmental Authority, and any environmental consultant on behalf of Lender or such other Person, and any receiver appointed by any court of competent jurisdiction, shall have the right, but not the obligation, to enter upon the Real Property at all reasonable times to assess any and all aspects of the environmental condition of the Real Property and its use, including but not limited to conducting any environmental assessment or audit (the scope of which shall be determined in Lender's sole and absolute discretion) and taking samples of soil, groundwater or other water, air, or building materials, and conducting other invasive testing at Lender's sole cost and expense except to the extent Borrower is responsible for payment of the same under Section 5.1.19(a). Borrower shall cooperate with and provide access to Lender and any such Person designated by Lender.

5.1.20 Alterations.

Borrower shall obtain Lender's prior written consent to any additions or alterations of the Property and any Improvements thereon (unless such additions or alterations are being performed pursuant to the terms of a Lease satisfying the leasing requirements set forth in Section 5.1.17) to the extent the cost of such addition or alteration exceeds \$2,000,000, which approval shall not be unreasonably withheld, conditioned or delayed. If the total unpaid amounts with respect to alterations to the Improvements at the Property (other than such amounts to be paid or reimbursed by tenants under the Leases or for which unadvanced sums are allocated for the payment of the same) shall at any time exceed Two Million And 00/100 Dollars (\$2,000,000.00) (the "Threshold Amount"), Borrower shall promptly deliver to Lender as security for the payment of such amounts and as additional security for Borrower's obligations under the Loan Documents any of the following: (A) Cash, (B) U.S. Obligations, (C) other securities having a rating acceptable to Lender and that the applicable Rating Agencies have confirmed in writing will not, in and of itself, result in a downgrade, withdrawal or qualification of the initial, or, if higher, then current ratings assigned in connection with any Securitization, or (D) a completion bond or letter of credit issued by a financial institution having a rating by S&P

of not less than A-1+ if the term of such bond or letter of credit is no longer than three (3) months or, if such term is in excess of three (3) months, issued by a financial institution having a rating that is acceptable to Lender and that the applicable Rating Agencies have confirmed in writing will not, in and of itself, result in a downgrade, withdrawal or qualification of the initial, or, if higher, then current ratings assigned in connection with any Securitization. Such security shall be in an amount equal to the excess of the total unpaid amounts with respect to alterations to the Improvements on the Property (other than such amounts to be paid or reimbursed by tenants under the Leases) over the Threshold Amount and applied from time to time at the option of Lender to pay for such alterations or to terminate any of the alterations and restore the Property to the extent necessary to prevent any material adverse effect on the value of the Property.

Notwithstanding the foregoing, in the event that Lender fails to respond within seven (7) Business Days of any request for consent required under this Section 5.1.20, such failure shall be deemed to be the consent and approval of the such proposed request for consent by Lender if (I) Borrower has delivered to Lender all required documents and information necessary to adequately and completely evaluate the proposed request for consent (including, but not limited to, any material information or documentation reasonably requested by Lender), (II) Borrower has resubmitted the proposed request for consent with the notation "IMMEDIATE RESPONSE REQUIRED, FAILURE TO RESPOND TO THIS APPROVAL REQUEST WITHIN SEVEN (7) BUSINESS DAYS FROM RECEIPT SHALL BE DEEMED TO BE LENDER'S APPROVAL " prominently displayed in bold, all caps and fourteen (14) point or larger font at the top of the first page of the proposed request for consent and the envelope containing such proposed request for consent and (III) Lender does not approve or reject the proposed request for consent within seven (7) Business Days from the date Lender receives the resubmitted request.

5.1.21 Reciprocal Easement Agreements.

Borrower shall not enter into, terminate or modify any REA in any material respect without Lender's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed) other than modifications, with respect to the Master REA, solely to give effect to changes in the legal descriptions attached thereto, so long as, after giving effect to such changes, (i) the Retail Parcel (as defined in the Master REA) shall be no less than 283,000 square feet, (ii) there shall be no adverse impact on the access and egress to the Property, taken as a whole and (iii) the Property is not otherwise materially and adversely impacted. Borrower shall enforce, comply with, and cause each of the parties to the REA to comply with all of the material economic terms and conditions contained in the REA. Borrower shall not consent to any (i) changes to the Plans and Specifications (for the purposes of this Section 5.1.21 only, as defined in the Master REA) pursuant to Article 3 of the Master REA or (ii) unless permitted pursuant to Section 5.1.20, alterations pursuant to Section 8.3 of the Master REA, in either case, without obtaining the prior written consent of Lender (which consent shall not be unreasonably withheld, conditioned or delayed).

5.1.22 Leasing Agreement.

(a) Other than the Approved Leasing Agreement in effect on the Closing Date, Borrower shall not enter into a Leasing Agreement for the Property without Lender's prior written consent.

(b) All leasing fees under any Leasing Agreement shall be market and customary. Borrower shall (i) diligently perform and observe all of the terms, covenants and conditions of any Leasing Agreement, on the part of Borrower to be performed and observed to the end that all things shall be done which are necessary to keep unimpaired the rights of Borrower under any Leasing Agreement and (ii) promptly notify Lender of the giving of any notice by any Leasing Agent to Borrower of any default by Borrower in the performance or observance of any of the terms, covenants or conditions of any Leasing Agreement on the part of Borrower to be performed and observed and deliver to Lender a true copy of each such notice. Borrower shall not surrender any Leasing Agreement, consent to the assignment by any Leasing Agent of its interest under any Leasing Agreement, or terminate or cancel any Leasing Agreement, or modify, change, supplement, alter or amend any Leasing Agreement, in any material respect, either orally or in writing. Borrower hereby assigns to Lender as further security for the payment of the Debt and for the performance and observance of the terms, covenants and conditions of this Agreement, all the rights, privileges and prerogatives of Borrower to surrender any Leasing Agreement, or to terminate, cancel, modify, change, supplement, alter or amend any Leasing Agreement, in any respect (provided that Lender shall not exercise such rights except during the continuance of an Event of Default or as otherwise expressly permitted under the Loan Documents), and any such surrender of any Leasing Agreement, or termination, cancellation, modification, change, supplement, alteration or amendment of any Leasing Agreement in any material respect, without the prior consent of Lender shall be void and of no force and effect. Notwithstanding the foregoing, Borrower shall have the right to terminate the Leasing Agreement without Lender's prior written consent upon satisfaction of the following conditions: (i) Borrower delivers to Lender written notice of its intention to terminate the Leasing Agreement at ten (10) Business Days prior to such termination; (ii) Borrower replaces the Leasing Agent within thirty (30) days after the termination of the Leasing Agreement with a Qualified Leasing Agent pursuant to a Replacement Leasing Agreement; and (iii) such Qualified Leasing Agent delivers to Lender an Assignment of Leasing Agreement which is also executed by the Borrower. If Borrower shall default in the performance or observance of any material term, covenant or condition of any Leasing Agreement on the part of Borrower to be performed or observed, then, without limiting the generality of the other provisions of this Agreement, and without waiving or releasing Borrower from any of its obligations hereunder, Lender shall have the right, but shall be under no obligation, to pay any sums and to perform any act or take any action as may be appropriate to cause all the terms, covenants and conditions of any Leasing Agreement on the part of Borrower to be performed or observed to be promptly performed or observed on behalf of Borrower, to the end that the rights of Borrower in, to and under any Leasing Agreement shall be kept unimpaired and free from default. Lender and any Person designated by Lender shall have, and are hereby granted, the right to enter upon the Property at any time and from time to time for the purpose of taking any such action. If any Leasing Agent shall deliver to Lender a copy of any notice sent to Borrower of default under any Leasing Agreement, such notice shall constitute full protection to Lender for any action taken or omitted to be

taken by Lender in good faith, in reliance thereon. Borrower shall not, and shall not permit any Leasing Agent to, sub-contract any or all of its leasing responsibilities under any Leasing Agreement to a third-party without the prior written consent of Lender, which consent shall not be unreasonably withheld. Borrower shall, from time to time, obtain from any Leasing Agent such certificates of estoppel with respect to compliance by Borrower with the terms of any Leasing Agreement as may be requested by Lender (which request may be made no more often than once per calendar year unless (i) in connection with a Syndication or Securitization or (ii) an Event of Default then exists). During the continuance of an Event of Default, Borrower shall exercise each individual option, if any, to extend or renew the term of any Leasing Agreement upon demand by Lender made at any time within one (1) year of the last day upon which any such option may be exercised, and Borrower hereby expressly authorizes and appoints Lender its attorney-in-fact to exercise any such option in the name of and upon behalf of Borrower, which power of attorney shall be irrevocable and shall be deemed to be coupled with an interest. Any sums expended by Lender pursuant to this paragraph (i) shall bear interest at the Default Rate from the date such cost is incurred to the date of payment to Lender, (ii) shall be deemed to constitute a portion of the Debt, (iii) shall be secured by the lien of the Security Instrument and the other Loan Documents and (iv) shall be immediately due and payable upon demand by Lender therefor.

(c) Without limitation of the foregoing, Borrower, upon the request of Lender, shall terminate any Leasing Agreement (whether in writing or verbal) and replace any Leasing Agent, without penalty or fee, if at any time during the Loan: (a) any Leasing Agent shall become insolvent or a debtor in any bankruptcy or insolvency proceeding, (b) there exists an Event of Default or (c) there exists a default by Leasing Agent under any Leasing Agreement beyond any applicable notice and cure periods. Within thirty (30) days after any such removal, a Qualified Leasing Agent shall assume leasing duties of the Property pursuant to a Replacement Leasing Agreement.

(d) Notwithstanding anything to the contrary contained in this Agreement, Borrower shall not be required to maintain the Leasing Agreement and Borrower shall have the right to terminate the Leasing Agreement without Lender's consent in the event that the Management Agreement or Replacement Management Agreement shall provide for leasing services (in addition to management services) at the Property in a manner reasonably satisfactory to Lender.

5.1.23 [Reserved].

5.1.24 The Air Rights Lease.

With respect to the Air Rights Lease,

(a) Borrower shall (i) pay all Air Rights Rent required to be paid by Borrower, as tenant under and pursuant to the provisions of the Air Rights Lease, (ii) diligently perform and observe all of the material terms, covenants and conditions of the Air Rights Lease on the part of Borrower, as tenant thereunder, (iii) promptly notify Lender of the giving of any notice by the Fee Owner under the Air Rights Lease to

Borrower of any default by Borrower, as tenant thereunder, and deliver to Lender a true copy of each such notice within seven (7) Business Days of receipt and (iv) promptly notify Lender of any bankruptcy, reorganization or insolvency of the Fee Owner under the Air Rights Lease or of any notice thereof, and deliver to Lender a true copy of such notice within five (5) Business Days of Borrower's receipt, together with copies of all notices, pleadings, schedules and similar matters received by Borrower in connection with such bankruptcy, reorganization or insolvency within five (5) Business Days after receipt. Borrower shall not, without the prior consent of Lender, surrender the leasehold estate created by the Air Rights Lease or terminate or cancel the Air Rights Lease or modify, change, supplement, alter or amend the Air Rights Lease, either orally or in writing, or (y) consent to, acquiesce in, or fail to object to, any attempt by the Fee Owner, as debtor in possession or by a trustee for such Fee Owner, to sell or transfer the Fee Estate free and clear of the Air Rights Lease under section 363(f) of the Bankruptcy Code or otherwise. Borrower shall object to any such attempt by the Fee Owner, as debtor in possession or by a trustee for the Fee Owner, to sell or transfer the Fee Estate free and clear of the Air Rights Lease under section 363(f) of the Bankruptcy Code or otherwise, and in such event shall affirmatively assert and pursue its right to adequate protection under section 363(e) of the Bankruptcy Code. Borrower hereby assigns to Lender all of its rights under Section 363 of the Bankruptcy Code to consent or object to any sale or transfer of the Fee Estate free and clear of the Air Rights Lease, and grants to Lender the right to object to any such sale or transfer on behalf of Borrower, and Borrower shall not contest any pleadings, motions documents or other actions filed or taken on Lender's or Borrower's behalf by Lender in the event that any Person, as debtor in possession or by a trustee for the Fee Owner, attempts to sell or transfer the Fee Estate free and clear of the Air Rights Lease under section 363(f) of the Bankruptcy Code or otherwise.

(b) If Borrower shall default in the performance or observance of any term, covenant or condition of the Air Rights Lease on the part of Borrower, as tenant thereunder, and shall fail to cure the same prior to the expiration of any applicable cure period provided thereunder, Lender shall have the right, but shall be under no obligation, to pay any sums and to perform any act or take any action as may be appropriate to cause all of the terms, covenants and conditions of the Air Rights Lease on the part of Borrower to be performed or observed on behalf of Borrower, to the end that the rights of Borrower in, to and under the Air Rights Lease shall be kept unimpaired and free from default. If the landlord under the Air Rights Lease shall deliver to Lender a copy of any notice of default under the Air Rights Lease, such notice shall constitute full protection to Lender for any action taken or omitted to be taken by Lender, in good faith, in reliance thereon. Borrower shall exercise each individual option, if any, to extend or renew the term of the Air Rights Lease upon demand by Lender made at any time within one (1) year prior to the last day upon which any such option may be exercised, and Borrower hereby expressly authorizes and appoints Lender its attorney-in-fact to exercise any such option in the name of and upon behalf of Borrower, which power of attorney shall be irrevocable and shall be deemed to be coupled with an interest.

(c) Subleases. Notwithstanding anything contained in the Air Rights Lease to the contrary, Borrower shall not further sublet any portion of the Property (other than as permitted pursuant to Section 5.1.17 hereof) without prior written consent of Lender.

Each sublease hereafter made shall provide that, (a) in the event of the termination of the Air Rights Lease, the sublease shall not terminate or be terminable by the lessee thereunder; (b) in the event of any action for the foreclosure of the Security Instrument, the sublease shall not terminate or be terminable by the lessee thereunder by reason of the termination of the Air Rights Lease unless such lessee is specifically named and joined in any such action and unless a judgment is obtained therein against such lessee; and (c) in the event that the Air Rights Lease is terminated as aforesaid, the lessee under the sublease shall attorn to the lessor under the Air Rights Lease or to the purchaser at the sale of the Property on such foreclosure, as the case may be. In the event that any portion of the Property shall be sublet pursuant to the terms of this subsection, such sublease shall be deemed to be included in the Property.

(d) Termination of Air Rights Lease. Notwithstanding anything to the contrary contained herein, provided no Event of Default exists, Borrower shall have the right to terminate the Air Rights Lease concurrently with a Fee Transfer Event.

(e) Separate Tax Lot. Within sixty days following a Fee Transfer Event, Borrower shall cause title company to deliver an endorsement to the Title Insurance Policy that the New Estate (together with the remainder of the Property) constitutes one or more separate tax lots or, if such an endorsement is not available in the State, a letter from the title insurance company issuing such Title Insurance Policy stating that the New Estate (together with the remainder of the Property) constitutes one or more separate tax lots.

5.1.25 OFAC.

At all times throughout the term of the Loan, Borrower, Guarantor and their respective Affiliates shall be in full compliance with all applicable orders, rules, regulations and recommendations of The Office of Foreign Assets Control of the U.S. Department of the Treasury.

5.1.26 [Reserved.]

5.1.27 Construction Responsibilities.

Borrower is solely responsible for the selection of its own contractor or contractors, all materials, supplies and equipment to be used in construction of the Future Improvements being constructed by Borrower (and not by any subtenant) and Lender assumes no responsibility for adequacy or sufficiency of materials, or design or engineering, or for the completion of the Future Improvements according to the Plans and Specifications and Applicable Laws.

5.1.28 Construction Budget.

Borrower shall not make any changes to the Construction Budget without the prior written approval of Lender, which consent shall not be unreasonably withheld.

5.1.29 Construction Schedule.

Borrower shall cause the Opening Date to occur prior to the Completion Date.

5.1.30 Preservation/Document Assignment.

Borrower shall not terminate, cancel, materially modify or amend the Plans and Specifications (except as provided in the immediately following Section hereof), the Architect's Contract, the Engineer's Contract or the Construction Contract without the prior written approval of Lender, which approval shall not be unreasonably withheld or delayed. Borrower shall notify Lender of any contractors, architects or engineers contracted with by Borrower as substitutes for Architect, Engineer or General Contractor or as additional general contractors, architects, engineers or project coordinators, and Lender shall have the right to approve or disapprove such substitution or addition (Lender agreeing not to unreasonably withhold or delay the approval of any such proposed substitution other than a proposed substitution for the General Contractor), and to require the submission of any additional Loan documentation (reasonably requested by Lender) regarding such substitutions or additions. In connection with entering into any Construction Documents, Borrower shall (i) assign the same to Lender and (ii) use commercially reasonable efforts to deliver to Lender letters from any Architect, Engineer or General Contractor in form substantially similar to those certain Consent and Agreement letters delivered on the Closing Date by the Project Architect and Project General Contractor (revised to reflect, among other applicable changes, the applicable Construction Agreement, the applicable parties and with the material benefits of such letters running to Lender) or such other form reasonably approved by Lender. Incident to any assignment of the Architect's Contract, Engineer's Contract, the Construction Contract and the Plans and Specifications, as such assignment is set forth in the applicable assignment documentation, Borrower shall fulfill the material obligations of Borrower thereunder, diligently enforce the performance thereof and all material rights and remedies set forth therein, and give immediate notice to Lender of any material default by Architect, Engineer or General Contractor thereunder. Borrower represents and warrants that the copy of the Construction Contract and any other Construction Document furnished or to be furnished to Lender is and shall be a true and complete copy thereof, that the copies of the Plans and Specifications delivered to Lender are and shall be true and complete copies of the Plans and Specifications, that there have been no modifications of any such Construction Documents which are not fully set forth in the copies delivered, and that Borrower's interest therein is not subject to any claim, setoff, or encumbrance. Upon the request of Lender, Borrower shall promptly deliver to Lender and its Construction Consultant copies of any Tenant Construction Deliverables previously received by Borrower. Furthermore, in no event shall Borrower permit Resort Borrower to terminate, cancel, modify or amend the Project Plans and Specifications, the Project Architect's Contract, the Project Construction Budget, the Project Engineer's Contract or the Project Construction Contract if such event would result in a Material Adverse Effect, without the prior written approval of Lender (in consultation with the Construction Consultant), which approval shall not be unreasonably withheld or delayed.

5.1.31 Change Orders.

Subject to Section 5.1.28 and Section 5.1.29 hereof, Borrower shall not change, alter or amend either the Plans and Specifications or the construction of the Future Improvements in any material respect without the prior written consent of Lender (which consent shall not be unreasonably withheld or delayed), and shall not permit any material deviations by any

contractor from the Plans and Specifications. Copies of all material change orders and evidence of any necessary approvals thereof shall be promptly delivered to Lender.

5.1.32 Construction Quality.

Borrower shall construct (or cause the construction of) the Future Improvements entirely on the Property such that the same (a) will not encroach upon or overhang any easement or right of way, nor upon the land of others (except as permitted pursuant to the Master REA), (b) shall be wholly within the building restriction lines, however established, (c) will not violate applicable use or other restrictions contained in applicable prior conveyances or applicable protective covenants or restrictions, and (d) shall comply in all material respects with the Plans and Specifications and all Applicable Laws.

5.1.33 Correction of Deficient Work.

If Lender reasonably determines that any portion of the Future Improvements to be constructed by Borrower is not being constructed in accordance with the Plans and Specifications in any material respect in a workmanlike manner, Lender may require work to be stopped and may withhold Loan disbursements until the material deficiencies are corrected. Borrower agrees that it will correct (or cause to be correct) any materially deficient work performed and replace any materials that do not comply with the Plans and Specifications (unless the materials actually applied are the same or better quality, as determined by Lender in its reasonable discretion), Applicable Laws, or accepted standards of quality and workmanship. The correction of deficient work or materials shall be at Borrower's expense unless Lender (in consultation with its Construction Consultant) determines that there adequate funds remaining in the applicable line items of the Construction Budget or in any "Contingency" line item of the Construction Budget to correct such deficient work or materials, in which case such corrections may be funded from such line items in accordance with the procedures set forth herein for requesting advances so long as the making of any such advance will not result insufficient funds in the applicable Construction Budget category to pay for all reasonably foreseeable items to be funded from such Construction Budget category.

5.1.34 Rebalancing

(a) Debt Service. If Lender at any time determines, in the exercise of its reasonable discretion, that (a) the sum of (i) the unadvanced portion of the Maximum Debt Service Advance Amount plus (ii) any amounts contained in the Debt Service Reserve Account (together with any interest expected to accrue thereon) is less than (b) all Debt Service arising under the Loan Documents from and after the time of such calculation (i) prior to the date that 65% of "Retail Lenders Shared Cost Commitment" (as defined in the Master Disbursement Agreement) has been funded by Lender in accordance with the terms of the Master Disbursement Agreement, by more than 5% of the amount of such Debt Service and (ii), thereafter, by any amount, Lender shall have the option of requiring Borrower to deposit with Lender additional funds in amounts sufficient to cover the resulting deficit (the "Additional Debt Service Deposit"). Borrower shall make any required Additional Debt Service Deposit within ten (10) days of written notice to Borrower from Lender of such requirement and any Additional Debt

Service Deposit shall be funded and disbursed in accordance with this Agreement before (except in the event Borrower has elected to deposit a Letter of Credit pursuant to Section 5.1.34(c) below) any additional Loan proceeds are disbursed.

(b) TI/LC. If Lender at any time determines, in the exercise of its reasonable discretion, that (a) the unadvanced portion of the Maximum Other Retail Cost Advance Amount is less than (b) the then current estimated cost of completing all Future Improvements to be completed or funded by Borrower (in accordance with the terms of the Loan Documents and the Master REA) and the leasing thereof anticipated to be completed from and after the time of such calculation (i) prior to the date that 65% of the Real Property (determined on the basis of square footage) has been leased to tenants pursuant to Leases entered into in accordance with Section 5.1.17, by more than 5% of the total estimated cost of completion and leasing for the Real Property, and (ii) thereafter, by any amount, Lender shall have the option of requiring Borrower to deposit with Lender additional funds in amounts sufficient to cover the resulting deficit (the "Additional TI/LC Deposit"). Borrower shall make any required Additional TI/LC Deposit within ten (10) days of written notice to Borrower from Lender of such requirement, provided that (x) no such Additional TI/LC Deposit shall be required prior to the date that is the earlier to occur of (1) ninety (90) days prior to the Completion Date and (2) the initial advance by Lender for Other Retail Costs (as defined in the Master Disbursement Agreement) pursuant to the terms of the Master Disbursement Agreement, and (y) unless otherwise approved by Lender in its sole discretion, any Additional TI/LC Deposit shall be funded and disbursed in accordance with this Agreement and the Master Disbursement Agreement before (except in the event Borrower has elected to deposit a Letter of Credit pursuant to Section 5.1.34(c) below) any additional Loan proceeds are disbursed.

(c) Letter of Credit Option. In lieu of depositing funds with Lender in connection with an Additional Debt Service Deposit and/or an Additional TI/LC Deposit, Borrower shall have the option of delivering to Lender a Letter of Credit in the applicable amount.

(d) Collateral. Each of the Additional Debt Service Deposit and the Additional TI/LC Deposit (whether in Cash or in the form of a Letter of Credit) is hereby pledged by Borrower as additional collateral for the Debt, and Borrower hereby grants and conveys to Lender a security interest in all funds so deposited with Lender as additional collateral for the Loan. Any interest earned on the Additional Debt Service Deposit and the Additional TI/LC Deposit (in the form of Cash) shall be credited to the account of Borrower but shall be subject to the foregoing security interest and shall be disbursed in accordance with this Agreement and the Master Disbursement Agreement before any additional Loan proceeds are disbursed.

(e) Provisions Regarding Letters of Credit.

(i) Lender shall be the beneficiary of any Letter of Credit and Borrower shall not be entitled to draw down any such Letter of Credit for any reason whatsoever. Each Letter of Credit delivered under this Agreement shall be additional security for the

payment of the Debt. Upon the occurrence and during the continuation of an Event of Default, Lender shall have the right, at its option, to draw on any Letter of Credit and to apply all or any part thereof to the payment of the items for which such Letter of Credit was established or to apply such Letter of Credit to payment of the Debt in such order, proportion or priority as Lender may determine. Any such application to the Debt shall be subject to the Prepayment Premium, if applicable. On the Maturity Date, if the Debt is not paid in full, any such Letter of Credit may be applied to reduce the Debt. Borrower shall pay to Lender all of Lender's reasonable out-of-pocket costs and expenses in connection with any Letter of Credit.

(ii) In addition to any other right Lender may have to draw upon a Letter of Credit pursuant to the terms and conditions of this Agreement, Lender shall have the additional rights to draw in full on any Letter of Credit: (i) if Lender has received a notice from the Issuing Bank that such Letter of Credit will not be renewed and either (y) a substitute Letter of Credit or (z) cash in the amount of the Letter of Credit is not provided at least twenty (20) days prior to the date on which the outstanding Letter of Credit is scheduled to expire; (ii) upon receipt of notice from the Issuing Bank that the Letter of Credit will be terminated (except if the termination of such Letter of Credit is permitted pursuant to the terms and conditions of this Agreement or a substitute Letter of Credit is provided); or (iii) if Lender has received notice that the Issuing Bank shall cease to meet the Minimum L/C Rating and Borrower has failed to deliver to Lender either (y) a substitute Letter of Credit or (z) cash in the amount of the Letter of Credit. Notwithstanding anything to the contrary contained in the above, Lender shall not be obligated to draw down on any Letter of Credit upon the happening of an event specified in clause (i), (ii) or (iii) above and shall not be liable for any losses sustained by Borrower due to the insolvency of the Issuing Bank if Lender has not drawn the Letter of Credit, and in the event of the insolvency of the Issuing Bank or if the Issuing Bank ceases to meet the Minimum L/C Rating, Borrower shall promptly provide to Lender either (y) a substitute Letter of Credit or (z) cash in the amount of the Letter of Credit.

5.1.35 Reappraisals.

After the date hereof, Borrower shall permit Lender (and Borrower hereby authorizes Lender) to commission, at Borrower's sole cost and expense not more once in any twelve month period, one new appraisal of the Project, prepared in accordance with Lender's then current appraisal requirements. Borrower shall cooperate with any additional appraisals commissioned by Lender at Lender's expense.

5.1.36 Consent to Assignment.

Upon Lender's request, Borrower shall obtain a consent to assignment from each party to each material contract assigned to Lender under the Loan Documents, including specifically the assigned material Construction Documents, in form and substance acceptable to Lender, evidencing such party's consent to the assignment of the contract and agreeing that Lender shall have the right and to enforce all rights of Borrower under such contract.

5.1.37 Net Worth Covenant. Until the Loan is paid in full, Guarantor shall maintain at all times an aggregate Net Worth (exclusive of any direct or indirect interest in the Property) at least equal to \$350,000,000, and, within ten (10) Business Days of Lender's request, Borrower shall demonstrate in writing and to Lender's reasonable satisfaction, compliance with this Section.

5.1.38 Liquidity Covenant. Until the Loan is paid in full, Guarantor shall maintain at all times an aggregate Liquidity (exclusive of any direct or indirect interest in the Property) at least equal to \$75,000,000, and, within ten (10) Business Days of Lender's request, Borrower shall demonstrate in writing and to Lender's reasonable satisfaction, compliance with this Section. Lender shall be entitled to receive demonstration of compliance with this Section no more than twice in every twelve (12) month period unless (A) in connection with a Securitization or Syndication, (B) an Event of Default has occurred and is continuing or (C) Lender has a reasonable belief that such Liquidity covenant is not being satisfied; provided, however, the foregoing shall not affect any financial reporting requirements set forth in Section 5.1.10 hereof.

5.1.39 Intentionally Omitted.

5.1.40 Additional Notices. Borrower shall give notice, or cause notice to be given, to Lender promptly upon the occurrence of any Resort Loan Event of Default.

5.1.41 Borrower Covenants Under Master Disbursement Agreement. Borrower shall comply with all obligations with which Borrower has covenanted to comply under the Master Disbursement Agreement.

5.1.42 Intentionally Omitted.

5.1.43 Development Agreement.

(a) The Property shall at all times be developed by a Qualified Developer; provided, however, the Borrower shall not enter into any Development Agreement for the Property without Lender's prior written consent.

(b) In no event shall the development fees under any Development Agreement exceed the greater of (i) the amount that is market and customary and (ii) three percent (3%) of the gross income derived from the Property. Borrower shall (i) diligently perform and observe all of the terms, covenants and conditions of any Development Agreement, on the part of Borrower to be performed and observed to the end that all things shall be done which are necessary to keep unimpaired the rights of Borrower under any Development Agreement and (ii) promptly notify Lender of the giving of any notice by the Developer to Borrower of any default by Borrower in the performance or observance of any of the terms, covenants or conditions of any Development Agreement on the part of Borrower to be performed and observed and deliver to Lender a true copy of each such notice. Borrower shall not surrender any Development Agreement, consent to the assignment by the Developer of its interest under any Development Agreement, or terminate or cancel any Development Agreement, or modify, change, supplement, alter or amend any Development Agreement, in any material respect, either orally or in writing. Borrower hereby assigns to Lender as further security for the payment of the Debt and for

the performance and observance of the terms, covenants and conditions of this Agreement, all the rights, privileges and prerogatives of Borrower (if any) to surrender any Development Agreement, or to terminate, cancel, modify, change, supplement, alter or amend any Development Agreement, in any respect, (provided that Lender shall not exercise such rights except during the continuance of an Event of Default or as otherwise expressly permitted under the Loan Documents), and any such surrender of any Development Agreement, or termination, cancellation, modification, change, supplement, alteration or amendment of any Development Agreement, without the prior consent of Lender shall be void and of no force and effect. Notwithstanding the foregoing, Borrower shall have the right to terminate the Development Agreement without Lender's prior written consent upon satisfaction of the following conditions: (i) Borrower delivers to Lender written notice of its intention to terminate the Development Agreement at least ten (10) Business Days prior to such termination; (ii) Borrower replaces the Developer within thirty (30) days of the termination of the Development Agreement with a Qualified Developer pursuant to a Replacement Development Agreement; and (iii) such Qualified Developer delivers to Lender an Assignment of Development Agreement which is also executed by the Borrower. If Borrower shall default in the performance or observance of any material term, covenant or condition of any Development Agreement on the part of Borrower to be performed or observed, then, without limiting the generality of the other provisions of this Agreement, and without waiving or releasing Borrower from any of its obligations hereunder, Lender shall have the right, but shall be under no obligation, to pay any sums and to perform any act or take any action as may be appropriate to cause all the terms, covenants and conditions of any Development Agreement on the part of Borrower to be performed or observed to be promptly performed or observed on behalf of Borrower, to the end that the rights of Borrower in, to and under any Development Agreement shall be kept unimpaired and free from default. Lender and any Person designated by Lender shall have, and are hereby granted, the right to enter upon the Property at any time and from time to time for the purpose of taking any such action. If the Developer shall deliver to Lender a copy of any notice sent to Borrower of default under any Development Agreement, such notice shall constitute full protection to Lender for any action taken or omitted to be taken by Lender in good faith, in reliance thereon. Borrower shall not, and shall not permit the Developer to, sub-contract any or all of its development responsibilities under any Development Agreement to a third-party without the prior written consent of Lender, which consent shall not be unreasonably withheld. Borrower shall, from time to time, obtain from the Developer such certificates of estoppel with respect to compliance by Borrower with the terms of any Development Agreement as may be requested by Lender (provided that Lender shall not exercise such rights except during the continuance of an Event of Default or as otherwise expressly permitted under the Loan Documents). During the continuance of an Event of Default, Borrower shall exercise each individual option, if any, to extend or renew the term of any Development Agreement upon demand by Lender made at any time within one (1) year of the last day upon which any such option may be exercised, and Borrower hereby expressly authorizes and appoints Lender its attorney-in-fact to exercise any such option in the name of and upon behalf of Borrower, which power of attorney shall be irrevocable and shall be deemed to be coupled with an interest. Any sums expended by Lender pursuant to this paragraph (i) shall bear interest at the Default

Rate from the date such cost is incurred to the date of payment to Lender, (ii) shall be deemed to constitute a portion of the Debt, (iii) shall be secured by the lien of the Security Instrument and the other Loan Documents and (iv) shall be immediately due and payable upon demand by Lender therefor.

(c) Without limitation of the foregoing, Borrower, upon the request of Lender, shall terminate any Development Agreement (whether in writing or verbal) and replace the Developer, without penalty or fee, if at any time during the Loan: (a) the Developer shall become insolvent or a debtor in any bankruptcy or insolvency proceeding, (b) there exists an Event of Default, or (c) there exists a default by Developer under any Development Agreement beyond any notice and cure periods. Within thirty (30) days after any such removal, a Qualified Developer shall assume development of the Property pursuant to a Replacement Development Agreement.

Section 5.2 Negative Covenants.

From the date hereof until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the Lien of the Security Instrument in accordance with the terms of this Agreement and the other Loan Documents, Borrower covenants and agrees with Lender that it will not do, directly or indirectly, any of the following:

5.2.1 Liens.

Borrower shall not create, incur, assume or suffer to exist any Lien on any portion of the Property or permit any such action to be taken, except for Permitted Encumbrances.

5.2.2 Dissolution.

Borrower shall not (a) engage in any dissolution, liquidation or consolidation or merger with or into any other business entity, (b) transfer, lease or sell, in one transaction or any combination of transactions, all or substantially all of the Property or assets of Borrower except to the extent expressly permitted by the Loan Documents, (c) except as expressly permitted under the Loan Documents, modify, amend, waive or terminate its organizational documents or its qualification and good standing in any jurisdiction in each case, without obtaining the prior written consent of Lender.

5.2.3 Change In Business.

Borrower shall not enter into any line of business other than the ownership, acquisition, development, operation, leasing and management of the Property (including providing services in connection therewith), or make any material change in the scope or nature of its business objectives, purposes or operations.

5.2.4 Debt Cancellation.

Borrower shall not cancel or otherwise forgive or release any material 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.

5.2.5 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 Real Property in any manner that could result in such use becoming a non-conforming use under any zoning ordinance or any other Applicable Law, without the prior written consent of Lender.

5.2.6 No Joint Assessment.

Except with respect to the existence of the Real Property constituting one or more tax lots together with the Resort Property from the date hereof until such time as a Separate Tax Lot Event has occurred, Borrower shall not suffer, permit or initiate the joint assessment of the Real Property with (a) any other real property constituting a tax lot separate from the Real Property, or (b) any portion of the Real 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 Real Property.

5.2.7 Name, Identity, Structure, or Principal Place of Business.

Borrower shall not change its name, identity (including its trade name or names), or principal place of business set forth in the introductory paragraph of this Agreement, without, in each case, first giving Lender thirty (30) days prior written notice. Borrower shall not change its corporate, partnership or other structure, or the place of its organization as set forth in Section 4.1.34, without, in each case, the consent of Lender. 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.

5.2.8 ERISA.

(a) During the term of the Loan or of any obligation or right hereunder, Borrower shall not be a Plan and none of the assets of Borrower shall constitute Plan Assets.

(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 reasonable discretion and represents and covenants that (A) Borrower is not and does not maintain an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title IV of ERISA, or a "governmental plan" within the meaning of Section 3(32) of ERISA; (B) Borrower is not subject to State statutes regulating investments and fiduciary obligations with respect to governmental plans; and (C) one or more of the following circumstances is true:

(i) Equity interests in Borrower are publicly offered securities, within the meaning of 29 C.F.R. §2510.3 101(b)(2);

(ii) None of the assets of Borrower are, by virtue of the application of 29 C.F.R. §2510.3 101(f) as modified by section 3(42) of ERISA, regarded as assets of any Plan; or

(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).

5.2.9 Affiliate Transactions.

Other than the Approved Affiliate Agreements, Borrower shall not enter into, or be a party to, any transaction with an Affiliate of Borrower or any of the members of Borrower except in the ordinary course of business and on terms which are fully disclosed to Lender in advance and are no less favorable to Borrower or such Affiliate than would be obtained in a comparable arm's-length transaction with an unrelated third party.

5.2.10 Transfers.

(a) Borrower shall not sell, convey, mortgage, grant, bargain, encumber, pledge, assign, grant options with respect to, or otherwise transfer or dispose of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record)(other than the disposal of Personal Property in the ordinary course of business) the Property or any part thereof or any legal or beneficial interest therein or permit a Sale or Pledge of an interest in any Restricted Party (collectively, a "Transfer"), other than in connection with a Permitted Encumbrance or pursuant to Leases of space in the Improvements to tenants in accordance with the provisions of Section 5.1.17 hereof, without (i) the prior written consent of Lender and (ii) if a Securitization has occurred, delivery to Lender of written confirmation from the Rating Agencies that the Transfer will not result in the downgrade, withdrawal or qualification of the then current ratings assigned to any Securities or the proposed rating of any Securities.

(b) A Transfer shall include, but not be limited to: (i) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments; (ii) an agreement by Borrower leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents; (iii) if a Restricted Party is a corporation, any merger, consolidation or Sale or Pledge of such corporation's stock or the creation or issuance of new stock; (iv) if a Restricted Party is a limited or general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the Sale or Pledge of the partnership interest of any general partner or any profits or proceeds relating to such partnership interest, or the Sale or Pledge of limited partnership interests or any profits or proceeds relating to such limited partnership interests or the creation or issuance of new limited partnership interests; (v) if a Restricted Party is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) or the Sale or Pledge

of the membership interest of a managing member (or if no managing member, any member) or any profits or proceeds relating to such membership interest, or the Sale or Pledge of non-managing membership interests or the creation or issuance of new non-managing membership interests; (vi) if a Restricted Party is a trust or nominee trust, any merger, consolidation or the Sale or Pledge of the legal or beneficial interest in a Restricted Party or the creation or issuance of new legal or beneficial interests; or (vii) the removal or the resignation of the Manager (including, without limitation, an Affiliated Manager) other than in accordance with Section 5.1.18 hereof.

(c) Notwithstanding the provisions of Sections 5.2.10(a) and (b), the following transfers shall not be deemed to be a Transfer: (i) a transfer by devise or descent or by operation of law upon the death of a member, partner or shareholder of a Restricted Party or a Restricted Party itself; (ii) the Sale or Pledge, in one or a series of transactions, of not more than forty nine percent (49%) of the stock in a Restricted Party (other than Borrower or Pledgor); provided, however, no such transfers shall result in the change of voting control in the Restricted Party, and as a condition to each such transfer, Lender shall receive not less than thirty (30) days prior written notice of such proposed transfer, (iii) the Sale or Pledge, in one or a series of transactions, of not more than forty nine percent (49%) of the limited partnership interests or non managing membership interests (as the case may be) in a Restricted Party (other than Borrower or Pledgor); provided, however, no such transfers shall result in the change of voting control in the Restricted Party, and as a condition to each such transfer, Lender shall receive not less than thirty (30) days prior written notice of such proposed transfer, (iv) the pledge of any interest in Borrower in connection with the Mezzanine Loan and the exercise of any rights or remedies Mezzanine Lender may have under the Mezzanine Loan Documents in accordance with and subject to the terms of the Intercreditor Agreement, as applicable, (v) the sale, transfer or issuance of shares of stock in a Restricted Party (other than Borrower or Pledgor) (the "Traded Entity") provided such shares of stock are listed on the New York Stock Exchange or such other nationally or internationally recognized stock exchange (including the Australian Stock Exchange) and provided the Traded Entity complies with the provisions of Section 5.3 hereof, (vi) a Fee Transfer Event, (vii) any change in any member of the board of managers or board of directors of Sponsor, any Sponsor Parent or any of their direct or indirect beneficial owners, (viii) any direct or indirect Transfer (including any change in any board of managers, board of directors, general partner, managing member or manager) of any interest in any Sponsor Parent or any of its direct or indirect beneficial owners; provided, however, as a condition to each such transfer of any interest to any Person, in one or a series of transactions, which is greater than or equal to ten percent of the interests in Sponsor, Pledgor or Borrower, Lender shall receive not less than ten (10) Business Days prior written notice of such proposed transfer; (ix) any direct or indirect Transfer of any interest in any Sponsor Parent held by Publishing and Broadcasting Limited (or its Affiliates) to (1) Publishing and Broadcasting Limited or any of its Affiliates, (2) any Traded Entity or (3) any other Person which is not an Affiliate of Publishing and Broadcasting Limited; provided that (A) following any such transfer in (ix)(1) or (ix)(2), Lender shall receive notice of such transfer within five (5) Business Days following such transfer, (B) following any such transfer in (ix)(3) which is less than forty-nine (49%) of the ownership interests, Lender shall receive notice of such transfer within five (5) Business Days following such transfer

and (C) following any such transfer in (ix)(3) to any Person, in one or a series of transactions, which is greater than forty-nine (49%) of the ownership interests in the aggregate, Lender shall receive notice of such transfer within ten (10) Business Days prior to such transfer and (x) any direct or indirect Transfer of Sponsor's PIK preferred units. Additionally, Lender acknowledges that Section 5.2.10(e)(b) shall not apply to any of the transactions set forth in Sections 5.2.10(c)(viii), (ix) and (x); provided, however, Lender reserves the right to request the information set forth in Section 5.2.10(e)(b) at any time after such transfer.

(d) Notwithstanding anything to the contrary contained in this Section 5.2.10, Jeffrey Soffer must continue to control Borrower and Sponsor and own, directly or indirectly, at least a 20% interest in Borrower and in Sponsor.

(e) 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 in violation of this Section 5.2.10. This provision shall apply to every Transfer regardless of whether voluntary or not, or whether or not Lender has consented to any previous Transfer. Notwithstanding anything to the contrary contained in this Section 5.2.10, (a) no transfer (whether or not such transfer shall constitute a Transfer) shall be made to any Prohibited Person, (b) in the event Borrower becomes aware of (or should have been aware of) any transfer (whether or not such transfer shall constitute a Transfer), results in (or will result in) any Person and its Affiliates owning in excess of ten percent (10%) of the ownership interest in a Restricted Party, Borrower shall provide to Lender, not less than thirty (30) days prior to such transfer, the name and identity of each proposed transferee, together with the names of its controlling principals, the social security number or employee identification number of such transferee and controlling principals, and such transferee's and controlling principal's home address or principal place of business, and home or business telephone number, and (c) in the event any transfer (whether or not such transfer shall constitute a Transfer) results in any Person and its Affiliates owning in excess of forty-nine percent (49%) of the ownership interest in a Sponsor Parent, Sponsor, Borrower or Pledgor, Borrower shall, prior to such transfer, deliver an updated Insolvency Opinion to Lender, which opinion shall be in form, scope and substance reasonably acceptable in all respects to Lender and the Rating Agencies. Within ten (10) days after request, Borrower shall deliver to Lender an updated organizational chart in the form of the organizational chart attached hereto as Schedule I.

(f) Death or Incapacity of Guarantor.

Within thirty (30) days after the death or incapacity of any Guarantor who is an individual, Borrower shall cause a substitute Guarantor approved by Lender in accordance with this Section 5.2.10(f) to deliver to Lender a substitute Guaranty and Environmental Indemnity in form and substance identical to the Guaranty and Environmental Indemnity delivered on the Closing Date and a legal opinion with respect to the enforceability of such Guaranty and Environmental Indemnity in form and substance similar to the enforceability opinion delivered on the Closing Date and otherwise satisfactory to Lender. Lender's approval of a substitute Guarantor shall not be unreasonably withheld provided such substitute Guarantor has a

comparable net worth and experience to the Guarantor. Lender's approval hereunder may be subject in Lender's discretion to the receipt of (i) after a Securitization, written confirmation that such substitution would not, in and of itself, result in a downgrade, qualification or withdrawal of the initial, or, if higher, then current ratings assigned to the Securities, (ii) satisfactory credit report and credit check and (iii) other due diligence with respect to the substitute Guarantor.

5.3 Traded Shares.

The Traded Entity shall cause its issued and outstanding shares of stock to be listed for trading on the New York Stock Exchange or such other nationally or internationally recognized stock exchange (including the Australian Stock Exchange) throughout the term of the Loan.

VI. INSURANCE; CASUALTY; CONDEMNATION

Section 6.1 Insurance.

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

(i) comprehensive all risk insurance, including the peril of wind (named storms) on the Improvements and the Personal Property, in each case, (A) in an amount equal to 100% of the "Full Replacement Cost," which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation, (B) containing an agreed amount endorsement with respect to the Improvements and Personal Property waiving all co-insurance provisions; (C) providing for no deductible in excess of \$10,000; and (D) providing coverage for contingent liability from Operation of Building Laws, Demolition Costs and Increased Cost of Construction Endorsements together with an "Ordinance or Law Coverage" or "Enforcement" endorsement if any of the Improvements or the use of the Property shall at any time constitute legal non-conforming structures or uses. The Full Replacement Cost shall be redetermined from time to time (but not more frequently than once in any twenty-four (24) calendar months) at the request of Lender by an appraiser or contractor designated and paid by Borrower and approved by Lender, or by an engineer or appraiser in the regular employ of the insurer. After the first appraisal, additional appraisals may be based on construction cost indices customarily employed in the trade. No omission on the part of Lender to request any such ascertainment shall relieve Borrower of any of its obligations under this Subsection;

(ii) commercial general liability insurance against 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 single limit of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate; (B) to continue at not less than the aforesaid limit until required to be changed by Lender in writing by reason of changed economic conditions making such protection inadequate; and (C) to cover at least the