THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2017-000180

U.S. Bank National Association, as Trustee, as Successor-in-Interest to Bank of America, N.A., as Successor by Merger to Lasalle Bank National Association, as Trustee for the Registered Holders of Bear Stearns Commercial Mortgage Securities, Inc., Commercial Mortgage Pass-Through Certificates, Series 2007-TOP26,	.....	Respondents,
	v.	
AW-MAGPIG, LLC; HW-MAGPIG, LLC; and MW-MAGPIG, LLC,	.....	Appellants
	v.	
Wells Fargo Bank, N.A., and Meridian Capital Group, LLC,		Third-Party Defendants.

RECORD ON APPEAL

VOLUME II

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CASH MANAGEMENT AGREEMENT

Dated: as of March 1, 2007

among

AW-MAGPIG, LLC, HW-MAGPIG, LLC and MW-MAGPIG, LLC
as Borrower

and

BEAR STEARNS COMMERCIAL MORTGAGE, INC.,
as Lender

and

THE BANK OF NEW YORK TRUST COMPANY, N.A.,
as Agent

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CASH MANAGEMENT AGREEMENT

CASH MANAGEMENT AGREEMENT (this "**Agreement**"), dated as of March 1, 2007, among **AW-MAGPIG, LLC, HW-MAGPIG, LLC, and MW-MAGPIG, LLC**, each a Delaware limited liability company and each having its principal place of business at 11 East Hawthorne Avenue, Valley Stream, New York 11580 (collectively, "**Borrower**"), **BEAR STEARNS COMMERCIAL MORTGAGE, INC.**, a New York corporation, having an address at 383 Madison Avenue, New York, New York 10179 ("**Lender**"), and **THE BANK OF NEW YORK TRUST COMPANY, N.A.**, a national banking association, having an address at 2 North La Salle Street, Suite 1020, Chicago, Illinois 60602, acting in its capacity as a depository bank ("**Agent**").

W I T N E S S E T H:

WHEREAS, Borrower by its promissory note of even date herewith given to Lender is indebted to Lender in the principal sum of FOUR MILLION FIVE HUNDRED THOUSAND AND 00/100 DOLLARS ($4,500,000.00) (together with all extensions, renewals, modifications, substitutions and amendments thereof, the "**Note**"), made by Borrower, as maker, to Lender, as payee, and secured by (i) that certain Mortgage, Fixture Filing and Security Agreement, dated as of the date hereof (the "**Security Instrument**"), made by Borrower, as mortgagor, to (or for the benefit of) Mortgage Electronic Registration Systems, Inc., a Delaware stock corporation, as Lender's nominee, having an address at 1595 Spring Hill Road, Suite 310, Vienna, Virginia 22182 covering that certain property known as Magnolia Pointe Shopping Center in Columbia, South Carolina, (ii) that certain Assignment of Leases and Rents, dated as of the date hereof, made by Borrower, as assignor, to Lender, as assignee (the "**Assignment of Leases**") and (iii) the Other Security Documents (as defined in the Security Instrument);

WHEREAS, pursuant to the Security Instrument and the Assignment of Leases, Borrower has granted to Lender a security interest in all of Borrower's right, title and interest in, to and under the Rents (as hereinafter defined) and has assigned and conveyed to Lender all of Borrower's right, title and interest in, to and under the Rents due and to become due to Borrower;

WHEREAS, in order to fulfill all of its obligations under the Security Instrument and the Other Security Documents, Borrower has agreed that all Rents and other revenues from the Property will be deposited directly into a certain Clearing Account (as hereinafter defined) established by Borrower with Clearing Bank (as hereinafter defined); and

WHEREAS, upon the occurrence of a Cash Management Event (as hereinafter defined) and until the occurrence of a Cash Management Termination Event, all Rents and other revenues from the Property shall be transferred from the Clearing Account by the Clearing Bank on each Business Day into the Cash Management Account and shall be applied as hereinafter set forth.

NOW, THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 **General**. As used herein, the following terms shall have the following definitions:

"**Affiliate**": shall mean, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by or is under common control with such Person or is a director or officer of such Person or of an Affiliate of such Person.

"**Agent**": as defined in the preamble hereof, together with its successors and assigns.

"**Agent Subaccount**": as defined in Section 2.1(b)(ii) hereof.

"**Agreement**": as defined in the preamble hereof, as amended, supplemented or otherwise modified from time to time.

"**Approved Annual Budget**": as defined in Section 2.6 hereof..

"**Assignment of Leases**": as defined in the Recitals hereto.

"**Borrower**": as defined in the preamble hereof, together with its successors and permitted assigns.

"**Business Day**" shall have the meaning set forth in the Security Instrument.

"**Cash Management Account**": as defined in Section 2.1(b) hereof.

"**Cash Management Event**" shall mean (a) the occurrence of an Event of Default, (b) Borrower is or becomes Insolvent, (c) Whatfor, LLC or the then current manager of the Property is or becomes Insolvent, (d) the date Piggly Wiggly ceases operations at the Property, vacates the Property or otherwise "goes dark," or terminates its lease, or (e) the Debt Service Coverage Ratio, based on the greater of the actual debt service constant or 7.12%, is less than 1.25 to 1.0.

"**Cash Management Period**" shall mean the period commencing upon the giving by Lender to the Agent and Borrower of a notice stating that a Cash Management Event has occurred, and terminating upon receipt by Agent of a notice of Cash Management Termination Event.

"**Cash Management Termination Event**" shall mean:

(i) if following a Cash Management Event based on (d) of the definition thereof, (A) a Tenant Replacement Event has occurred, and (B) the Debt Service Coverage Ratio, based on the greater of the actual debt service constant or 7.12%, is equal to or greater than 1.25 to 1.0;

(ii) if following a Cash Management Event based on (e) of the definition thereof, the Debt Service Coverage Ratio, based on the greater of the actual debt service constant or 7.12%, is equal to or greater than 1.25 to 1.0 for two (2) consecutive calendar quarters ; or

(iii) the Borrower's depositing of an amount equal to six (6) months of Monthly Payments under the Note into the Excess Cash Flow Reserve Fund (as defined in Section 3.15 of the Security Instrument).

"**Clearing Account**": as defined in Section 2.1(a) hereof.

"**Clearing Account Agreement**": as defined in Section 2.1(a) hereof.

"**Clearing Bank**": shall mean that certain bank selected by Borrower and reasonably approved by Lender (or any successor or permitted assigns thereof) pursuant to the Clearing Account Agreement executed in connection with the Loan.

"**Collateral**": as defined in Section 5.1(a) hereof.

"**Debt Service Coverage Ratio**" shall mean a ratio based on a trailing six (6) month period as determined by Lender in which the numerator is the Net Cash Flow for each month annualized, and the denominator is the aggregate amount of interest and principal due and payable on the Note for each month during such period annualized.

"**Debt Service Subaccount**": as defined in Section 2.1(b)(iii) hereof.

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

"**Eligible Institution**": shall mean a depository institution or trust company insured by the Federal Deposit Insurance Corporation the short term unsecured debt obligations or commercial paper of which are rated at least A-1 by S&P (as defined below), P-1 by Moody's (as defined below), and F-1+ by Fitch (as defined below) in the case of accounts in which funds are held for 30 days or less (or, in the case of accounts in which funds are held for more than 30 days, the long term unsecured debt obligations of which are rated at least "A" by Fitch and S&P, and "Aa" by Moody's), or such other rating as may then be required by any of Fitch, S&P, or Moody's respectively.

"**Event of Default**": as defined in the Security Instrument.

"**Excess Cash Flow**": as defined in Section 3.4(h) hereof.

"**Excess Cash Flow Subaccount**": as defined in Section 2.1(b)(vii) hereof.

"**Extraordinary Expense Subaccount**": as defined in Section 2.1(b)(vi) hereof.

"**Extraordinary Expenses**": as defined in Section 2.6 hereof..

"**Fee Agreement**": as defined in Section 8.4(a) hereof.

"**Insolvent**" shall have the meaning set forth in Section 101(31) of Title 11 of the United States Code, as the same may be amended from time to time.

"**Insurance Premiums**": as defined in the Security Instrument.

"**Lease**": as defined in the Security Instrument.

"**Lender**": as defined in the preamble hereof, together with its successors and assigns; it being agreed that Servicer may act for and on behalf of Lender under this Agreement.

"**Loan**": as defined in the Recitals hereto.

"**Monthly Payment Date**": as defined in the Note.

"**Net Cash Flow**" shall mean sustainable rents based on a then-current rent roll adjusted for the lesser of 95% vacancy, actual vacancy or market rate vacancy and other collections ("Gross Income"), less (i) Operating Expenses (as defined below), including a management fee of not greater than four percent (4%) of Gross Income and (ii) contributions to the Replacement Reserve pursuant to the Replacement Reserve and Security Agreement dated as of the date hereof between Lender and Borrower (the "Replacement Reserve Agreement"), normalized tenant improvements and leasing commissions.

"**Note**": as defined in the Recitals hereto.

"**Obligations**": as defined in Section 5.1(a) hereof.

"**Operating Expenses**": shall mean the total of all expenditures, computed in accordance with GAAP of whatever kind relating to the operation, maintenance and management of the Property that are incurred on a regular monthly or other periodic basis, including without limitation, utilities, repairs and maintenance, insurance, license fees, property taxes and assessments, advertising expenses, management fees, payroll and related taxes, computer processing charges, operational equipment or other lease payments as reasonably approved by Lender, and other similar costs, but excluding depreciation, debt service, capital expenditures and contributions to the Replacement Reserve Subaccount.

"**Operating Expense Subaccount**": as defined in Section 2.1(b)(v) hereof.

"**Permitted Investments**": shall mean any one or more of the following obligations or securities with maturities of not more than three hundred sixty-five (365) days

acquired at a purchase price of not greater than par, including those issued by any servicer, the trustee under any securitization or any of their respective Affiliates, payable on demand or having a maturity date not later than the Business Day immediately prior to the first Monthly Payment Date following the date of acquiring such investment and meeting one of the appropriate standards set forth below:

(i) obligations of, or obligations fully guaranteed as to payment of principal and interest by, the United States or any agency or instrumentality thereof provided such obligations are backed by the full faith and credit of the United States of America including, without limitation, obligations of: the U.S. Treasury (all direct or fully guaranteed obligations), the Farmers Home Administration (certificate of beneficial ownership), the General Services Administration (participation certificates), the U.S. Maritime Administration (guaranteed Title XI financing), the Small Business Administration (guaranteed participation certificates and guaranteed pool certificates), the U.S. Department of Housing and Urban Development (local authority bonds) and the Washington Metropolitan Area Transit Authority (guaranteed transit bonds); provided, however, that the investments described in this clause must (A) have a predetermined fixed dollar of principal due at maturity that cannot vary or change, (B) if such investments have a variable rate of interest, such interest rate must be tied to a single interest rate index plus a fixed spread (if any) and must move proportionately with that index and (C) such investments must not be subject to liquidation prior to their maturity;

(ii) Federal Housing Administration debentures;

(iii) obligations of the following United States government sponsored agencies: Federal Home Loan Mortgage Corp. (debt obligations), the Farm Credit System (consolidated systemwide bonds and notes), the Federal Home Loan Banks (consolidated debt obligations), the Federal National Mortgage Association (debt obligations), the Student Loan Marketing Association (debt obligations), the Financing Corp. (debt obligations), and the Resolution Funding Corp. (debt obligations); provided, however, that the investments described in this clause must (A) have a predetermined fixed dollar of principal due at maturity that cannot vary or change, (B) if such investments have a variable rate of interest, such interest rate must be tied to a single interest rate index plus a fixed spread (if any) and must move proportionately with that index and (C) such investments must not be subject to liquidation prior to their maturity;

(iv) federal funds, unsecured certificates of deposit, time deposits, money market funds, bankers' acceptances and repurchase agreements with maturities of not more than three hundred sixty-five (365) days of any bank, the short term obligations of which at all times are rated in the highest short term rating category by two (2) of the Rating Agencies (or, if not rated by all Rating Agencies, rated by at least one (1) Rating Agency in the highest short term rating category and otherwise acceptable to each other Rating Agency, as confirmed in writing that such investment would not, in and of itself, result in a downgrade,

qualification or withdrawal of the then current ratings assigned to the Securities); provided, however, that the investments described in this clause must (A) have a predetermined fixed dollar of principal due at maturity that cannot vary or change, (B) if such investments have a variable rate of interest, such interest rate must be tied to a single interest rate index plus a fixed spread (if any) and must move proportionately with that index and (C) such investments must not be subject to liquidation prior to their maturity;

(v) fully Federal Deposit Insurance Corporation-insured demand and time deposits in, or certificates of deposit of, or bankers' acceptances issued by, any bank or trust company, savings and loan association or savings bank, the short term obligations of which at all times are rated in the highest short term rating category by each Rating Agency (or, if not rated by all Rating Agencies, rated by at least one (1) Rating Agency in the highest short term rating category and otherwise acceptable to each other Rating Agency, as confirmed in writing that such investment would not, in and of itself, result in a downgrade, qualification or withdrawal of the then current ratings assigned to the Securities); provided, however, that the investments described in this clause must (A) have a predetermined fixed dollar of principal due at maturity that cannot vary or change, (B) if such investments have a variable rate of interest, such interest rate must be tied to a single interest rate index plus a fixed spread (if any) and must move proportionately with that index and (C) such investments must not be subject to liquidation prior to their maturity;

(vi) debt obligations with maturities of not more than three hundred sixty-five (365) days and at all times rated by each Rating Agency (or, if not rated by all Rating Agencies, rated by at least one (1) Rating Agency and otherwise acceptable to each other Rating Agency, as confirmed in writing that such investments would not, in and of itself, result in a downgrade, qualification or withdrawal of the then current ratings assigned to the Securities) in its highest long-term unsecured debt rating category; provided, however, that the investments described in this clause must (A) have a predetermined fixed dollar of principal due at maturity that cannot vary or change, (B) if such investments have a variable rate of interest, such interest rate must be tied to a single interest rate index plus a fixed spread (if any) and must move proportionately with that index and (C) such investments must not be subject to liquidation prior to their maturity;

(vii) commercial paper (including both non-interest-bearing discount obligations and interest-bearing obligations payable on demand or on a specified date not more than one (1) year after the date of issuance thereof) with maturities of not more than three hundred sixty-five (365) days and that at all times is rated by each Rating Agency (or, if not rated by all Rating Agencies, rated by at least one (1) Rating Agency and otherwise acceptable to each other Rating Agency, as confirmed in writing that such investment would not, in and of itself, result in a downgrade, qualification or withdrawal of the then current ratings assigned to the Securities) in its highest short-term unsecured debt rating; provided, however, that the investments described in this clause must (A) have a predetermined fixed

dollar of principal due at maturity that cannot vary or change, (B) if such investments have a variable rate of interest, such interest rate must be tied to a single interest rate index plus a fixed spread (if any) and must move proportionately with that index and (C) such investments must not be subject to liquidation prior to their maturity;

(viii) units of taxable money market funds, which funds are regulated investment companies, seek to maintain a constant net asset value per share and invest solely in obligations backed by the full faith and credit of the United States, which funds have the highest rating available from each Rating Agency (or, if not rated by all Rating Agencies, rated by at least one (1) Rating Agency and otherwise acceptable to each other Rating Agency, as confirmed in writing that such investment would not, in and of itself, result in a downgrade, qualification or withdrawal of the then current ratings assigned to the Securities) for money market funds; and

(ix) any other security, obligation or investment which has been approved as a Permitted Investment in writing by (a) Lender and (b) each Rating Agency, as evidenced by a written confirmation that the designation of such security, obligation or investment as a Permitted Investment will 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 by such Rating Agency;

provided, however, that such instrument continues to qualify as a "cash flow investment" pursuant to Code Section 860G(a)(6) earning a passive return in the nature of interest and no obligation or security shall be a Permitted Investment if (A) such obligation or security evidences a right to receive only interest payments or (B) the right to receive principal and interest payments on such obligation or security are derived from an underlying investment that provides a yield to maturity in excess of one hundred twenty percent (120%) of the yield to maturity at par of such underlying investment.

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

"**Piggly Wiggly**": shall mean Piggly Wiggly Carolina Company, Inc., tenant under the Piggly Wiggly Lease.

"**Piggly Wiggly Lease**": shall mean that certain lease dated October 9, 1996, as amended, between Borrower's predecessor in interest and Piggly Wiggly Carolina Company, Inc. for premises located at Magnolia Pointe Shopping Center, Columbia, South Carolina.

"**Piggly Wiggly Space**": shall mean the space leased to Piggly Wiggly pursuant to the Piggly Wiggly Lease.

"**Property**": as defined in the Security Instrument.

"**Rating Agencies**": shall mean each of Standard & Poor's Ratings Group, a division of McGraw-Hill, Inc., Moody's Investors Service, Inc and Fitch, Inc., or any other nationally-recognized statistical rating agency which has been approved by Lender.

"**Rents**": as defined in the Security Instrument.

"**Rents**": as defined in the Security Instrument.

"**Replacement Reserve Monthly Deposit**": shall mean the Monthly Deposit as such term in defined in the Replacement Reserve and Security Agreement executed by Borrower dated the same date as the Note.

"**Replacement Reserve Subaccount**": as defined in Section 2.1(b)(v) hereof.

"**Securities**": shall mean rated single- or multi-class securities secured by or evidencing ownership interests in all or any portion of the Loan and the Note, the Security Instrument and the Other Security Documents.

"**Servicer**": shall mean a servicer/trustee that services the Loan.

"**Subaccount**": as defined in Section 2.1(b) hereof.

"**Tax and Insurance Escrow Subaccount**": as defined in Section 2.1(b)(i) hereof.

"**Taxes**": as defined in the Security Instrument.

"**Tenant Direction Letter**": as defined in Section 3.1(a) hereof.

"**Tenant Replacement Event**": shall mean Borrower enters into a Lease of the Piggly Wiggly Space with Piggly Wiggly or a replacement tenant, provided that both the lease and replacement tenant are pre-approved by the Lender in its reasonable discretion based on Lender's then current underwriting criteria, and Piggly Wiggly or the replacement tenant is occupying the total Piggly Wiggly Space, paying rent and has provided an estoppel in form and substance reasonably satisfactory to Lender

"**Tenants**": as defined in Section 3.1(a) hereof.

"**UCC**": as defined in Section 5.1(a)(iv) hereof.

Section 1.2 Other Capitalized Terms. All other capitalized terms set forth in this Agreement not defined herein shall have the meaning set forth in the Security Instrument.

ARTICLE II

THE ACCOUNTS

Section 2.1 Establishment of the Cash Management Account.

(a) Borrower (i) shall, simultaneously herewith, establish an account having Account No. _____ (the "**Clearing Account**") in the name of Borrower with Clearing Bank into which Borrower shall deposit, or cause to be deposited, all Rents and other revenue from the Property and (ii) shall, simultaneously herewith (or within such time after the date hereof as permitted by Lender pursuant to that certain Post-Closing Agreement executed by Borrower dated of even date herewith), execute an agreement with Lender and the Clearing Bank providing for the control of the Clearing Account substantially in the form of Exhibit A attached hereto (the "**Clearing Account Agreement**").

(b) Upon the occurrence of a Cash Management Event, Borrower and Agent shall establish an Eligible Account with Agent (the "**Cash Management Account**"). Upon the occurrence of a Cash Management Event and continuing until the occurrence of a Cash Management Termination Event, Borrower shall deposit, or cause to be deposited into the Cash Management Account, all sums on deposit in the Clearing Account and all sums required to be deposited into the Cash Management Account. The following subaccounts (each a "**Subaccount**") of the Cash Management Account shall be maintained on a ledger-entry basis:

(i) A Subaccount into which amounts are to be deposited with Lender pursuant to Section 3.5 of the Security Instrument (the "**Tax and Insurance Escrow Subaccount**").

(ii) A Subaccount into which amounts are to be deposited in accordance with Section 3.4(b) hereof (the "**Agent Subaccount**").

(iii) A Subaccount into which debt service payments required pursuant to the Note are to be deposited with Lender (the "**Debt Service Subaccount**").

(iv) A Subaccount into which sums required to be deposited with Lender pursuant the Replacement Reserve and Security Agreement (the "**Replacement Reserve Subaccount**").

(v) A Subaccount into which amounts are to be deposited with Lender pursuant to Section 3.4(f) hereof (the "**Operating Expense Subaccount**").

(vi) A Subaccount into which amounts are to be deposited with Lender pursuant to Section 3.4(g) hereof (the "**Extraordinary Expense Subaccount**").

(vii) A Subaccount into which all Excess Cash is to be deposited with Lender in accordance with Section 3.4(h) hereof (the "**Excess Cash Subaccount**").

Section 2.2 **Account Name**. The Cash Management Account shall be entitled "AW-MAGPIG, LLC, HW-MAGPIG, LLC, and MW-MAGPIG, LLC, as Borrower, and Bear Stearns Commercial Mortgage, Inc., as Lender, pursuant to the Mortgage, Fixture Filing and Security Agreement dated as of March 1, 2007 - Cash Management Account." In the event Lender transfers or assigns the Loan, Agent, at Lender's request, shall change the name of the Cash Management Account to the name of the transferee or assignee. In the event Lender retains a Servicer to service the Loan, which Servicer shall be (i) any Servicer listed on Schedule 1 hereto or (ii) any Servicer selected by Lender in its sole discretion upon notice to Agent, Agent,

at Lender's request, shall change the name of the Cash Management Account to the name of Servicer, as agent for Lender.

Section 2.3 **Eligible Account**. Borrower and Agent shall maintain the Cash Management Account as an Eligible Account. The Cash Management Account is and shall be treated as a "securities account" as such term is defined in Section 8-501(a) of the UCC and control of the Cash Management Account shall be vested in Lender in accordance with Section 9-104 of the UCC. The Clearing Account is and shall be a "deposit account" as such term is defined in Section 9-102(a) of the UCC. Agent hereby agrees that each item of property (whether investment property, financial asset, securities, instrument, cash or other property) credited to the Cash Management Account shall be treated as a "financial asset" within the meaning of Section 8-102(a)(9) of the UCC. Agent shall, subject to the terms of this Agreement, treat Lender as entitled to exercise the rights that comprise any financial asset credited to the Cash Management Account. All securities or other property underlying any financial assets credited to the Cash Management Account shall be registered in the name of Agent, endorsed to Agent or in blank, or credited to another securities account maintained in the name of Agent, and in no case will any financial asset credited to the Cash Management Account be registered in the name of Borrower, payable to the order of Borrower or specially endorsed to Borrower.

Section 2.4 **Permitted Investments**. Sums on deposit in the Cash Management Account shall not be invested except in Permitted Investments. Account balances shall be invested in money market funds, if available, or other investments suitable for investment of escrows and reserves established under mortgage loans included in a Securitization in which some or all of the Securities are rated "AAA" (or the equivalent) by the Rating Agencies as directed by Lender. Interest accruing on the Cash Management Account shall be periodically added to the principal amount of the Cash Management Account and/or the respective subaccounts and shall be held, disbursed and applied in accordance with the provisions of this Agreement. Borrower hereby irrevocably authorizes and directs Agent to apply any income earned from Permitted Investments to the respective Subaccount. Notwithstanding any actual losses sustained on a liquidation of a Permitted Investment the proceeds of such Permitted Investment shall be deposited into the Cash Management Account by Borrower no later than three (3) Business Days following such liquidation. Borrower shall be responsible for payment of any federal, state or local income or other tax applicable to income paid or credited to Borrower from Permitted Investments. The Cash Management Account shall be assigned the federal tax identification number of Borrower, which number is 20-8511426.

Section 2.5 **Lender to Notify**. Lender shall notify Borrower and Agent promptly upon its determination that (i) a Cash Management Period has commenced and (ii) a Cash Management Termination Event has occurred.

Section 2.6 **Approval of Annual Budget**. Within thirty (30) days after Borrower receives notice of Lender's determination that a Cash Management Period has commenced, Borrower shall submit to Lender an Annual Budget in form reasonably satisfactory to Lender. The Annual Budget shall be subject to Lender's written approval, which shall not be unreasonably withheld (each such Annual Budget, 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 real estate taxes, insurance premiums and utilities expenses. In the event that Borrower must incur an extraordinary operating expense or capital expense not set forth in the Approved Annual Budget (each an "**Extraordinary Expense**"), then Borrower shall promptly deliver to Lender a reasonably detailed explanation of such proposed Extraordinary Expense for Lender's approval, which approval shall not unreasonably be withheld, conditioned or delayed.

Section 2.7 Excess Cash Flow Reserve Fund. Lender shall maintain an account (the "**Excess Cash Flow Reserve Fund**") in which Lender shall hold funds received in accordance with Section 4.1(g) of this Agreement. Interest thereon shall accrue for the benefit of Borrower, but shall remain in and constitute part of the Excess Cash Flow Reserve Fund. The funds in such account shall be held as additional collateral for the Loan and may be applied by Lender in any manner as Lender may so elect. The balance of such account shall be promptly disbursed to Borrower (i) upon the payment in full of the Debt, (ii) upon the defeasance of the Loan, or (iii) within fourteen (14) Business Days of Agent's confirmation that Agent has received notification from Lender of the occurrence of a Cash Management Termination Event.

ARTICLE III

DEPOSITS

Section 3.1 Deposits into Clearing Account. Borrower represents, warrants and covenants that:

(a) Borrower shall cause all Rents from the Property to be deposited directly into the Clearing Account. Without limitation of the foregoing, Borrower shall notify and advise each tenant of the Property (collectively, the "**Tenants**") under each Lease (whether such Lease is presently effective or executed after the date hereof) to send directly to the Clearing Account all payments of Rent payable to Borrower under such Leases pursuant to an instruction letter in the form of Exhibit B attached hereto (a "**Tenant Direction Letter**").

(b) Upon the occurrence of a Cash Management Event, Borrower shall instruct all Persons that maintain open accounts with Borrower with whom Borrower does business on an "accounts receivable" basis with respect to the Property to deliver all payments due under such accounts to the Clearing Account. Borrower shall not direct any such Person to make payments due under such accounts in any other manner.

(c) If, notwithstanding the other provisions of this Section 3.1, Borrower receives any Rents from the Property, then (i) such amounts shall be deemed to be Collateral and shall be held in trust for the benefit, and as the property, of Lender in accordance with the terms

of this Agreement, (ii) such amounts shall not be commingled with any other funds or property of Borrower and (iii) Borrower shall deposit such amounts in the Clearing Account within one (1) Business Day of the receipt thereof.

(d) Without the prior written consent of Lender, Borrower shall not (i) terminate, amend, revoke or modify any Tenant Direction Letter in any manner whatsoever or (ii) direct or cause any Tenant to pay any amount in any manner other than as provided in the related Tenant Direction Letter.

(e) There are no other accounts maintained by Borrower or any other Person into which Rents from the Property are initially deposited. So long as the Debt shall be outstanding no Person shall open any other such account for the deposit of Rents from the Property prior to the deposit of such Rents in the Clearing Account.

Section 3.2 **Additional Deposits**. Borrower shall make such additional deposits into the Cash Management Account as may be required by the Security Instrument.

Section 3.3 **Transfers to the Cash Management Account**. Commencing on the first Business Day following the occurrence of a Cash Management Event and on each Business Day thereafter, Clearing Bank shall transfer all funds on deposit in the Clearing Account to the Cash Management Account.

Section 3.4 **Application of Cash Management Account Funds to Subaccounts**. Provided no Event of Default shall have occurred and is continuing, commencing on the first Business Day following the date hereof and on each Business Day thereafter, Agent shall apply all funds on deposit in the Cash Management Account to the following Subaccounts in the following amounts and order of priority as per Lender's or its designee's written instructions:

(a) First, funds, if any, sufficient to pay the monthly deposit to the Tax and Insurance Escrow Fund if such a deposit is then required pursuant to the terms and provisions of Section 3.5 of the Security Instrument, which amounts shall be deposited in the Tax and Insurance Escrow Subaccount;

(b) Second, funds sufficient to pay the fees and expenses of Agent then due and payable pursuant to the Fee Agreement, which amount shall be deposited into the Agent Subaccount;

(c) Third, funds sufficient to pay the next Monthly Payment under the Note shall be deposited into the Debt Service Subaccount;

(d) Fourth, funds sufficient to pay the Replacement Reserve Monthly Deposit as required and limited in amount pursuant to the terms and provisions of the Replacement Reserve and Security Agreement shall be deposited into the Replacement Reserve Subaccount;

(e) Fifth, funds sufficient to pay any interest then accruing at the Default Rate (less amounts already paid pursuant to clause (c) above), late payment charges and any other

amounts then due under the Note, the Security Instrument or the Other Security Documents, if any, which amounts shall be deposited into the Debt Service Subaccount;

(f) Sixth, funds sufficient to pay the monthly Operating Expenses for the applicable period in accordance with the related Approved Annual Budget shall be deposited into the Operating Expense Subaccount;

(g) Seventh, funds sufficient to pay the Extraordinary Expenses for the applicable period approved by Lender, if any, shall be deposited into the Extraordinary Expense Subaccount; and

(h) Lastly, all amounts remaining in the Cash Management Account ("**Excess Cash Flow**") shall be deposited into the Excess Cash Subaccount.

ARTICLE IV

DISBURSEMENTS

Section 4.1 Withdrawals. On each Monthly Payment Date during a Cash Management Period, Agent shall withdraw all funds on deposit in the Cash Management Account and in the Subaccounts and disburse such funds as follows:

(a) Disbursements from Tax and Insurance Escrow Subaccount. Agent shall disburse funds on deposit in the Tax and Insurance Escrow Subaccount to Lender for the payment of Taxes and Insurance Premiums in accordance with Section 3.5 of the Security Instrument.

(b) Disbursements from Agent Subaccount. Agent shall disburse funds on deposit in the Agent Subaccount and apply such amounts to Agent's fees and expenses in accordance with the Fee Agreement.

(c) Disbursements from Debt Service Subaccount. Agent shall disburse funds on deposit in the Debt Service Subaccount to Lender for the payments set forth in the Note.

(d) Disbursements from the Replacement Reserve Subaccount. Agent shall disburse funds on deposit in the Replacement Reserve Subaccount to Lender for the purposes set forth in the Replacement Reserve and Security Agreement.

(e) Disbursements from the Operating Expense Subaccount. Agent shall disburse funds on deposit in the Operating Expense Subaccount to Borrower for Operating Expenses approved by Lender for the applicable period pursuant to the Approved Annual Budget.

(f) Disbursements from the Extraordinary Expense Subaccount. Agent shall disburse funds on deposit in the Extraordinary Expense Subaccount to Borrower for Extraordinary Expenses approved by Lender for the applicable period pursuant to a written request for payment submitted by Borrower to Lender specifying the individual Extraordinary Expenses in a form reasonably acceptable to Lender.

(g) Disbursements from the Excess Cash Flow Subaccount. Agent shall disburse funds on deposit in the Excess Cash Flow Subaccount to the Excess Cash Flow Reserve Fund for the purposes set forth in Section 2.7 hereof.

Section 4.2 Sole Dominion and Control of Cash Management Account and Subaccounts. Borrower and Agent acknowledge and agree that the Cash Management Account and any and all Subaccounts are subject to the sole dominion, control and discretion of Lender, its authorized agents or designees, including Agent, subject to the terms hereof. Borrower shall not have the right of withdrawal with respect to the Cash Management Account. Agent shall have the right and agrees to comply with the instructions of Lender with respect to the Cash Management Account without the further consent of Borrower. Agent shall comply with all "entitlement orders" (as defined in Section 8-102(a)(8) of the UCC) and instructions originated by Lender without further consent by Borrower or any other person. Both this Agreement and the Cash Management Account (as well as the securities entitlement related thereto) shall be governed by the laws of the State of New York. Regardless of any provision of any other agreement, for purposes of the Uniform Commercial Code, New York shall be deemed the jurisdiction of the Agent, as securities intermediary.

ARTICLE V

PLEDGE OF ACCOUNTS

Section 5.1 Security for Obligations.

(a) To secure the full and punctual payment and performance of all obligations of Borrower now or hereafter existing with respect to the Note, whether for principal, interest, fees, expenses or otherwise, and all obligations of Borrower now or hereafter existing under the Security Instrument, this Agreement and the Other Security Documents (all such obligations, collectively, the "**Obligations**"), Borrower hereby grants to Lender a first priority continuing security interest in and to the following property of Borrower, whether now owned or existing or hereafter acquired or arising and regardless of where located (all of the same, collectively, the "**Collateral**"):

(i) the Cash Management Account and all cash, checks, drafts, certificates, and instruments, if any, from time to time deposited or held in the Cash Management Account from time to time including, without limitation, all deposits or wire transfers made to the Cash Management Account;

(ii) any and all amounts invested in Permitted Investments;

(iii) all interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise payable in respect of, or in exchange for, any or all of the foregoing; and

(iv) to the extent not covered by clauses (i), (ii) or (iii) above, all "proceeds" (as defined under the Uniform Commercial Code as in effect in the State in which the Cash Management Account is located (the "**UCC**")) of any or all of the foregoing.

(b) Lender, its authorized agents or designees, including Agent, shall have with respect to the Collateral, in addition to the rights and remedies herein set forth, all of the rights and remedies available to a secured party under the UCC, as if such rights and remedies were fully set forth herein.

Section 5.2 **Rights on Default**. Upon the occurrence and during the continuance of an Event of Default, Lender shall promptly notify Agent in writing of such Event of Default and, without notice from Agent or Lender, (a) Borrower shall have no further right in respect of (including, without limitation, the right to instruct Lender or Agent to transfer from) the Cash Management Account or Subaccount, (b) Lender may direct Agent to liquidate and transfer any amounts then invested in Permitted Investments to the Cash Management Account or reinvest such amounts in other Permitted Investments as Lender may reasonably determine is necessary to perfect or protect any security interest granted or purported to be granted hereby or to enable Agent, as agent for Lender, or Lender, to exercise and enforce Lender's rights and remedies hereunder with respect to any Collateral and (c) Lender may apply any funds in the Cash Management Account to any Obligations in such order of priority as Lender may determine in its sole discretion.

Section 5.3 **Financing Statement; Further Assurances**. Simultaneously herewith, Borrower shall deliver to Lender for filing a financing statement or statements in connection with the Collateral in the form reasonably required by Lender to properly perfect Lender's security interest therein. Borrower agrees that at any time and from time to time, at the expense of Borrower, Borrower will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that Agent or Lender may reasonably request, in order to perfect and protect any security interest granted or purported to be granted hereby (including, without limitation, any security interest in and to any Permitted Investments) or to enable Agent or Lender to exercise and enforce its rights and remedies hereunder with respect to any Collateral.

Section 5.4 **Termination of Agreement**. This Agreement shall create a continuing security interest in the Collateral and shall remain in full force and effect until payment in full of the Obligations. Upon payment and performance in full of the Obligations, this Agreement shall terminate and Borrower shall be entitled to the prompt return, at its expense, of such of the Collateral as shall not have been sold or otherwise applied pursuant to the terms hereof, and Lender shall authorize the release to Borrower of all funds remaining on deposit under this Agreement, including without any limitation, any amounts invested in the Permitted Investments, and Agent and/or Lender shall execute such instruments and documents as may be reasonably requested by Borrower to permit such release of funds and evidence such termination and the release of the lien hereof.

ARTICLE VI

RIGHTS AND DUTIES OF LENDER AND AGENT

Section 6.1 **Reasonable Care**. Beyond the exercise of reasonable care in the custody thereof or as otherwise expressly provided herein, neither Agent nor Lender shall have any duty as to any Collateral in its possession or control as agent therefor or bailee thereof or any

income thereon or the preservation of rights against any person or otherwise with respect thereto. Agent and Lender each shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which Agent or Lender accords its own property, it being understood that Lender shall not be liable or responsible for any loss or damage to any of the Collateral, or for any diminution in value thereof, by reason of the act or omission of Agent or Lender, its Affiliates, agents, employees or bailees, except to the extent that such loss or damage results from Agent's or Lender's gross negligence or willful misconduct, provided that nothing in this Article VI shall be deemed to relieve Agent from the duties and standard of care which, as a commercial bank, it generally owes to depositors. Neither Lender nor Agent shall have any liability for any loss resulting from the investment of funds in Permitted Investments in accordance with the terms and conditions of this Agreement.

Section 6.2 **Indemnity**. Agent, in its capacity as agent hereunder, shall be responsible for the performance only of such duties as are specifically set forth herein, and no duty shall be implied from any provision hereof. Agent shall not be under any obligation or duty to perform any act which would involve it in expense or liability or to institute or defend any suit in respect hereof, or to advance any of its own monies. Lender shall indemnify and hold Agent, its respective employees and officers harmless from and against any loss, cost or damage (including, without limitation, reasonable attorneys' fees and disbursements) incurred in connection with Agent complying with any instruction or request of Lender in connection with the transactions contemplated hereby, except to the extent that such loss or damage results from Agent's gross negligence or willful misconduct. Borrower shall indemnify and hold Agent and Lender, their respective employees and officers harmless from and against any loss, cost or damage (including, without limitation, reasonable attorneys' fees and disbursements) incurred by Agent or Lender in connection with the transactions contemplated hereby, except to the extent that such loss or damage results from Agent's or Lender's gross negligence or willful misconduct.

Section 6.3 **Reliance**. Agent shall be protected in acting upon any notice, resolution, request, consent, order, certificate, report, opinion, bond or other paper, document or signature reasonably believed by it to be genuine, and it may be assumed that any person purporting to act on behalf of Borrower giving any of the foregoing in connection with the provisions hereof has been duly authorized to do so. Agent may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder and in good faith in accordance therewith. Agent shall not be liable to Borrower for any act or omission done or omitted to be done by Agent in reliance upon any instruction, direction or certification received by Agent and without gross negligence or willful or reckless misconduct.

Section 6.4 **Resignation or Termination of Agent**. Agent shall have the right to resign as Agent hereunder upon thirty (30) days' prior written notice to Borrower and Lender, and in the event of such resignation, Lender shall appoint a successor agent which must be an Eligible Institution. No such resignation by Agent shall become effective until a successor agent shall have accepted such appointment and executed an instrument by which it shall have assumed all of the rights and obligations of Agent hereunder. If no such successor agent is appointed within sixty (60) days after receipt of the resigning Agent's notice of resignation, the

resigning Agent may petition a court of competent jurisdiction for the appointment of a successor agent.

(a) In connection with any resignation by Agent, (i) the resigning Agent shall, at the sole cost of Borrower, (A) duly assign, transfer and deliver to the successor agent this Agreement and all cash and Permitted Investments held by it hereunder, (B) execute such financing statements and other instruments as may be necessary to assign to the successor agent the security interest in the Collateral existing in favor of the retiring Agent hereunder and to otherwise give effect to such succession and (C) take such other actions as may be reasonably required by Borrower or the successor agent in connection with the foregoing and (ii) the successor agent shall establish in its name, as secured party, cash collateral accounts, which shall become the Cash Management Account for purposes of this Agreement upon the succession of such agent.

(b) Lender at its sole discretion shall have the right, upon thirty (30) days' notice to Borrower and Agent, to terminate this Agreement and/or Agent and/or to replace substitute Agent with a successor agent that satisfies the requirements of an Eligible Institution or to have the Cash Management Account held by another Eligible Institution, provided that such successor agent shall become a party to, and perform the duties of Agent pursuant to the terms of, this Agreement or execute and deliver a replacement Cash Management Agreement having terms and provisions substantially similar to this Agreement.

Section 6.5 **Agent Appointed Attorney-In-Fact**. Borrower hereby irrevocably constitutes and appoints Lender as Borrower's true and lawful attorney-in-fact, with full power of substitution, to execute, acknowledge and deliver any instruments and to exercise and enforce every right, power, remedy, option and privilege of Borrower with respect to the Collateral, and do in the name, place and stead of Borrower, all such acts, things and deeds for and on behalf of and in the name of Borrower, which Borrower could or might do or which Lender or Agent (as agent of Lender) may deem necessary or desirable to more fully vest in Lender and Agent (as agent of Lender), the rights and remedies provided for herein. The foregoing powers of attorney are irrevocable and coupled with an interest; provided however, same shall not be exercised by Lender or Agent (as agent of Lender) unless Borrower fails to perform any agreement herein and such failure shall continue for five (5) Business Days after written notice of such failure is given to Borrower. Any reasonable expenses of Lender and Agent in connection therewith shall be paid by Borrower.

Section 6.6 **Agent as Eligible Institution**. In the event that Agent is not an Eligible Institution or each of the Cash Management Account or Subaccounts are not Eligible Accounts, Agent shall promptly notify Lender thereof.

ARTICLE VII

REMEDIES

Section 7.1 **Remedies**. Upon the occurrence and during the continuance of an Event of Default, Lender or Agent, as agent for Lender, may:

(a) without notice to Borrower, except as required by law, and at any time or from time to time, charge, set-off and otherwise apply all or any part of the Collateral against the Obligations or any part thereof;

(b) in its sole discretion, at any time and from time to time, exercise any and all rights and remedies available to it under this Agreement, and/or as a secured party under the UCC and/or under any applicable law; and

(c) demand, collect, take possession of, receipt for, settle, compromise, adjust, sue for, foreclose or realize upon the Collateral (or any portion thereof) as Lender may determine in its sole discretion.

Section 7.2 **Waiver**. Borrower hereby expressly waives, to the fullest extent permitted by law, presentment, demand, protest or any notice of any kind in connection with this Agreement or the Collateral. Borrower acknowledges and agrees that ten (10) days' prior written notice of the time and place of any public sale of the Collateral or any other intended disposition thereof shall be reasonable and sufficient notice to Borrower within the meaning of the UCC.

ARTICLE VIII

MISCELLANEOUS

Section 8.1 **Transfers and Other Liens**. Except as otherwise expressly permitted by the Security Instrument or the Other Security Documents, Borrower agrees that it will not (a) sell or otherwise dispose of any of the Collateral or (b) create or permit to exist any Lien upon or with respect to all or any of the Collateral, except for the Lien granted to Agent, as agent for Lender, under this Agreement.

Section 8.2 **Lender's Right to Perform Borrower's Obligations; No Liability of Lender**. If Borrower fails to perform any of the covenants or obligations contained herein, and such failure shall continue for a period five (5) Business Days after Borrower's receipt of written notice thereof from Lender, Lender may itself perform, or cause performance of, such covenants or obligations, and the reasonable expenses of Lender incurred in connection therewith shall be payable by Borrower to Lender. Notwithstanding Lender's right to perform certain obligations of Borrower, it is acknowledged and agreed that Borrower retains control of the Property and operation thereof and notwithstanding anything contained herein or Agent's or Lender's exercise of any of its rights or remedies hereunder, under the Note, the Security Instrument and the Other Security Documents or otherwise at law or in equity, neither Agent nor Lender shall be deemed to be a mortgagee-in-possession nor shall Lender be subject to any liability with respect to the Property or otherwise based upon any claim of lender liability.

Section 8.3 **No Waiver**. The rights and remedies provided in this Agreement and the Note, the Security Instrument and the Other Security Documents are cumulative and may be exercised independently or concurrently, and are not exclusive of any other right or remedy provided at law or in equity. No failure to exercise or delay by Agent or Lender in exercising any right or remedy hereunder or under the Note, the Security Instrument and the Other Security

Documents shall impair or prohibit the exercise of any such rights or remedies in the future or be deemed to constitute a waiver or limitation of any such right or remedy or acquiescence therein. Every right and remedy granted to Agent and/or Lender hereunder or by law may be exercised by Agent and/or Lender at any time and from time to time, and as often as Agent and/or Lender may deem it reasonably expedient. Any and all of Agent's and/or Lender's rights with respect to the lien and security interest granted hereunder shall continue unimpaired, and Borrower shall be and remain obligated in accordance with the terms hereof, notwithstanding (a) any proceeding of Borrower under the Federal Bankruptcy Code or any bankruptcy, insolvency or reorganization laws or statutes of any state, (b) the release or substitution of Collateral at any time, or of any rights or interests therein or (c) any delay, extension of time, renewal, compromise or other indulgence granted by the Agent and/or Lender in the event of any default, with respect to the Collateral or otherwise hereunder. No delay or extension of time by Agent and/or Lender in exercising any power of sale, option or other right or remedy hereunder, and no notice or demand which may be given to or made upon Borrower by Agent and/or Lender, shall constitute a waiver thereof, or limit, impair or prejudice Agent's and/or Lender's right, without notice or demand, to take any action against Borrower or to exercise any other power of sale, option or any other right or remedy. No waiver of any term or condition of this Agreement, whether by delay, omission or otherwise, shall be effective unless in writing and signed by the party sought to be charged, and then such waiver shall be effective only in the specific instance and for the purpose for which given.

Section 8.4 **Expenses**. (a) The Collateral shall secure, and Borrower shall pay to Agent and Lender and/or Agent's and Lender's counsel on demand, from time to time, all reasonable costs and expenses (including, but not limited to, reasonable attorneys' fees and disbursements, and transfer, recording and filing fees, taxes and other charges) of, or incidental to, the creation or perfection of any lien or security interest granted or intended to be granted hereby, the custody, care, sale, transfer, administration, collection of or realization on the Collateral, or in any way relating to the enforcement, protection or preservation of the rights or remedies of Agent and/or Lender under this Agreement, the Note, the Security Instrument, or the the Other Security Documents . Such fees and charges shall be paid to Agent pursuant to Section 3.4(b) hereof and Agent shall be entitled to charge the Cash Management Account for such fees and charges pursuant to a separate Fee Agreement between Borrower and Agent (the "**Fee Agreement**"), a form of which is attached hereto as Exhibit C. Notwithstanding the foregoing, Agent shall have no right to charge, set-off or otherwise apply any portion of the Collateral against any amounts owed Agent by Borrower or Lender other than Agent's right to collect fees and expenses owed to Agent pursuant to the Fee Agreement in accordance with the terms and provisions of this Agreement.

(b) Agent shall be entitled to charge the Cash Management Account for all items deposited in and credited to the Cash Management Account and subsequently returned unpaid or with respect to which Agent fails to reserve final settlement. In the event of insufficient funds in the Cash Management Account, Lender shall repay Agent for such returned unpaid items to the extent that Lender received funds for such items. In the event that Lender repays such funds to Agent, Agent shall disburse funds hereafter received in the Cash Management Account to Lender within one (1) Business Day of the same day that such funds are available until such funds disbursed to Lender equal the amount returned to Agent by Lender pursuant to this Section 8.4(b), together with any applicable interest thereon.

Section 8.5 **Intentionally Omitted**.

Section 8.6 **Entire Agreement**. This Agreement constitutes the entire and final agreement between the parties with respect to the subject matter hereof and may not be changed, terminated or otherwise varied, except by a writing duly executed by the parties.

Section 8.7 **Intentionally Omitted**.

Section 8.8 **Successors and Assigns**. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors and permitted assigns.

Section 8.9 **Notices**. All notices, demands, requests, consents, approvals and other communications (any of the foregoing, a "**Notice**") required, permitted, or desired to be given hereunder shall be in writing sent by facsimile or by any other electronic means or by registered or certified mail, postage prepaid, return receipt requested or delivered by hand or reputable overnight courier addressed to the party to be so notified at its address hereinafter set forth, or to such other address as such party may hereafter specify in accordance with the provisions of this Section 8.9. Any such Notice shall be deemed to have been received three (3) days after the date such Notice is mailed or on the date of sending by facsimile with confirmed receipt of delivery or delivery by hand or the next day if sent by an overnight commercial courier addressed to the parties with confirmed receipt of delivery as follows:

If to Lender:

Bear Stearns Commercial Mortgage, Inc.
383 Madison Avenue
New York, York 10179
Attention: J. Christopher Hoeffel
Facsimile No.: (212) 272-7047

If to Borrower:

AW-MAGPIG, LLC, HW-MAGPIG, LLC,
and MW-MAGPIG, LLC
11 East Hawthorne Avenue
Valley Stream, New York 11580
Attention: Mike Wasserman

With a copy to:

Ellis, Lawhorne & Sims, P.A.
1501 Main Street, 5th Floor
P.O. Box 2285 (29202)
Columbia, South Carolina 29201
Attention: William P. McElveen, Jr., Esq.

If to Agent:

The Bank of New York Trust Company, N.A.
2 North LaSalle Street, Suite 1020
Chicago, Illinois 60602
Attention: CML
Facsimile No.: (312) 827 8562

Section 8.10 Captions. All captions in this Agreement are included herein for convenience of reference only and shall not constitute part of this Agreement for any other purpose.

Section 8.11 Governing Law. **THE LOAN WAS MADE BY LENDER IN THE STATE OF NEW YORK AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT, THE NOTE AND THE OTHER SECURITY DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND THE OTHER SECURITY DOCUMENTS, AND THIS AGREEMENT, THE NOTE AND THE OTHER SECURITY DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.**

ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER SECURITY DOCUMENTS MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING.

Section 8.12 Counterparts. This Agreement may be executed in any number of counterparts each of which shall be deemed an original and all of which, taken together, shall constitute this Agreement.

Section 8.13 Interpleader. If Agent, at any time in good faith is in doubt as to the action it should take under this Agreement, it shall have the right to commence, at Borrower's expense, an interpleader action in any United States district court in the State of New York and to take no further action except in accordance with joint instructions from Borrower and Lender or in accordance with the final order of the court in such action.

Section 8.14 Conflicts. In the event of any conflict between the provisions of this Agreement and the Security Instrument, the provisions of the Security Instrument shall control.

Section 8.15 Entire Agreement. This Agreement and the Fee Agreement constitutes the entire and final agreement between the parties with respect to the subject matter hereof and may not be changed, terminated or otherwise varied, except by a writing duly executed by the parties.

Section 8.16 Exculpation. The provisions of Article 15 of the Security Instrument are hereby incorporated by reference into this Agreement to the same extent and with the same force as if fully set forth herein.

(a) Notwithstanding anything to the contrary contained herein, as between Agent and Borrower only, (i) the covenants, agreements and obligations of Borrower under this Agreement shall bind only Borrower's interest in the Property and (ii) no personal liability or responsibility is assumed by, or shall be asserted by Agent against Borrower nor shall any recourse be had by Agent beyond Borrower's interest in the Property or be enforceable by Agent against Borrower on account of this Agreement or anything contained herein.

SECTION 8.17 TRIAL BY JURY. THE PARTIES HERETO HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE NOTE, SECURITY INSTRUMENT OR THE OTHER SECURITY DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY EACH PARTY HERETO, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH PARTY IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.

[NO FURTHER TEXT ON THIS PAGE]

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

BORROWER:

AW-MAGPIG, LLC, a Delaware limited liability company

By: AW-MAGPIG OWNER, LLC, a Delaware limited liability company, its sole member

By: _____
Name: Alan B. Wasserman
Title: Member

HW-MAGPIG, LLC, a Delaware limited liability company

By: HW-MAGPIG OWNER, LLC, a Delaware limited liability company, its sole member

By: _____
Name: Harold Wasserman
Title: Member

MW-MAGPIG, LLC, a Delaware limited liability company

By: MW-MAGPIG OWNER, LLC, a Delaware limited liability company, its sole member

By: _____
Name: Michael S. Wasserman
Title: Member

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

LENDER:

BEAR STEARNS COMMERCIAL MORTGAGE, INC., a New York corporation

By: _____
Michael A. Forastiere
Managing Director

AGENT:

THE BANK OF NEW YORK TRUST COMPANY, N.A.,
a New York banking corporation

By: _____
Name:
Title:

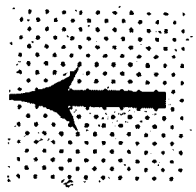


EXHIBIT A

CLEARING ACCOUNT AGREEMENT

MERS MIN: 8000101-0000004106-0

CLEARING ACCOUNT AGREEMENT

THIS CLEARING ACCOUNT AGREEMENT (this "**Agreement**") dated as of March 1st, 2007 by and among **NORTH FORK BANK,** a New York banking corporation, having an address at 195 Rockaway Avenue, Valley Stream, New York 11580 ("**Clearing Bank**"), **AW-MAGPIG, LLC, HW-MAGPIG, LLC, and MW-MAGPIG, LLC,** each a Delaware limited liability company, each having an address at 11 East Hawthorne Avenue, Valley Stream, New York 11580 (collectively, "**Borrower**"), and **BEAR STEARNS COMMERCIAL MORTGAGE, INC.,** a New York corporation, whose address is 383 Madison Avenue, New York, New York 10179, (together with its successors and assigns, "**Lender**").

RECITALS:

A. Pursuant to that certain commitment letter dated September 27, 2006 between Lender and Borrower, Lender has agreed to provide a loan (the "**Loan**") to Borrower secured by a Mortgage, Fixture Filing and Security Agreement (the "**Security Instrument**") dated as of the date hereof, on certain real property owned by Borrower and situated in Columbia, South Carolina as more particularly described in the Security Instrument (the "**Property**");

B. Borrower maintains an account with respect to the Property which account bears Account No. _____ (the "**Property Account**") with Clearing Bank into which all Rents (as defined in the Cash Management Agreement dated as of the date hereof, among Borrower, Lender and Deposit Bank (as defined in Section 14)) are deposited;

C. Lender and Borrower desire to retain Clearing Bank to provide services described herein.

NOW THEREFORE, in consideration of the mutual premises contained herein and for other good and valuable consideration the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Duties of Clearing Bank.

(a) Clearing Bank shall receive and process any deposits presented by Borrower or its agent in accordance with the terms of this Agreement. The receipts described in this Section 1(a) are collectively referred to herein as the "Receipts". Clearing Bank shall deposit all Receipts received by it with respect to the Property into the Property Account. Clearing Bank shall maintain a microfilm or other record of each Receipt which is processed by Clearing Bank for a period of at least one year from the date of processing and in accordance with Clearing Bank's standard procedures. No items shall be deemed a Receipt until full and final settlement or payment has been made to Clearing Bank. Items received for deposit in the Property Accounts shall be deemed to bear the valid and legally binding endorsement of the payee and to comply with all of Clearing Bank's requirements for the supplying of missing

endorsements, now or hereafter in effect. Clearing Bank shall not be responsible for nor bear any liability for the processing of any check or other instrument bearing a legend.

(b) Items deposited with Clearing Bank which are returned for insufficient or uncollected funds will be re-deposited the first time. Items returned unpaid the second time for whatever reason shall be debited to the Property Account under advice and returned to Borrower. Borrower shall be liable to Clearing Bank for the amount of any exchange or collection charges incurred by Clearing Bank. Return item fees will be charged directly to the Property Account.

(c)

(i) During any period other than a Cash Management Period (as hereinafter defined), the Property Account shall be maintained under Borrower's sole dominion, control and directions.

(ii) During a Cash Management Period, upon delivery by Lender to Clearing Bank and receipt by Clearing Bank of a Clearing Bank Instruction Letter in form attached hereto as Exhibit A, Clearing Bank shall disburse all collected and available funds as determined by Clearing Bank's then-current availability schedule in effect from time to time (the "Funds") that are then in the Property Account by wire transfer (or transfer via the ACH system) on a daily basis to the Deposit Account at Deposit Bank. Borrower hereby irrevocably instructs and authorizes Clearing Bank to make transfers into the Deposit Account in accordance with this Section 1(c). Clearing Bank shall have no responsibility to verify the accuracy of Lender's notice that a Cash Management Period exists. The foregoing instructions are irrevocable and not subject to modification in any manner, except that Lender, or its successor or servicer, may by written notice to Clearing Bank during a Cash Management Period, amend or rescind such instructions. Upon the request of any party hereto, Clearing Bank shall send to such party, Deposit Bank, Lender and Borrower, via telecopy or by providing access to Clearing Bank's internet banking system, a notice of wire transfer or ACH system advice setting forth the amount transferred. Any sums or items for which credit has been given and such sums paid to Lender, shall be promptly repayable by Lender within ten (10) days of written request by Clearing Bank, if full and final settlement is revoked or otherwise legally rescinded.

2. Fees. To compensate Clearing Bank for performing the services described herein, Borrower authorizes Clearing Bank to charge the Property Account for all compensation fees, charges and expenses with respect to the Property Account which Clearing Bank may be entitled for servicing and maintaining the Clearing Account, including reasonable attorneys' fees and disbursements, incurred by Clearing Bank in the preparation, negotiation and administration of this Agreement (including any amendments hereto or additional instruments or agreements required hereunder) and for the amount of any exchange, collection, processing, transfer, wire, postage or other out-of-pocket expenses incurred by Clearing Bank (collectively, the "Charges"). In the event that the Property Account does not contain sufficient collected funds for payment of the Charges, Borrower authorizes Clearing Bank to charge any of Borrower's other accounts maintained with Clearing Bank or, in the event Borrower's other accounts do not contain sufficient collected funds for the payment of the Charges, Borrower agrees to pay Clearing Bank

the amount of the Charges upon demand. Clearing Bank shall debit the Property Account under advice on a monthly basis or shall include its fees in an account analysis statement, in accordance with the particular arrangements between Clearing Bank and Borrower.

3. Termination.

(a) Clearing Bank may resign from all of its obligations under this Agreement at any time after 30 days prior written notice to the other parties hereto. With respect to the appointment of a successor to Clearing Bank, Borrower and Lender shall use reasonable efforts to designate such a bank promptly after receipt of notice of resignation by Clearing Bank and shall take all reasonable actions necessary to cause such designated successor promptly to assume the obligations of Clearing Bank hereunder.

(b) Lender may terminate this Agreement at any time upon 30 days prior written notice to the other parties hereto.

(c) Borrower may not unilaterally terminate this Agreement or close the Property Account established hereunder, without the prior written consent of Lender.

(d) This Agreement shall create a continuing security interest in the Property Account and shall remain in full force and effect until payment in full of the Obligations (as hereinafter defined). Upon payment and performance in full of the Obligations, this Agreement shall terminate and Lender shall promptly authorize the release to Borrower of all funds remaining on deposit in the Property Account and Clearing Bank and/or Lender shall execute such instruments and documents as may be reasonably requested by Borrower and/or Clearing Bank to permit such release of funds and evidence such termination and the release of the lien hereof.

4. Matters Concerning Borrower. Borrower hereby agrees to deposit with Clearing Bank within two business days of receipt, all Rents received by Borrower with respect to the Property.

5. [Intentionally omitted]

6. Indemnification. Clearing Bank shall not be liable for any claims, suits, actions, costs, damages, liabilities, losses, attorneys fees or expenses or for any interruption of services, or incidental, direct (except if caused by Clearing Bank's gross negligence or willful misconduct) consequential, special or punitive damages ("Liabilities") in connection with the subject matter of this Agreement even if advised of the possibility or likelihood of such damages, other than Liabilities caused by the gross negligence or willful misconduct of Clearing Bank as determined by a court of competent jurisdiction and Borrower hereby agrees to indemnify and hold harmless Clearing Bank and the directors, officers, employees and agents of Clearing Bank and the successors and assigns of Clearing Bank, from and against any and all Liabilities arising from or in connection with any acts or omissions taken by Clearing Bank or any director, officer, employee or agent of any of them, as applicable, in connection with this Agreement, other than those Liabilities caused by the gross negligence or willful misconduct of Clearing Bank. So long as Clearing Bank acts in accordance with standard banking practices, its actions shall be deemed approved. The parties hereto agree that Clearing Bank's sole responsibility to Lender or Borrower or any third party for errors made by Clearing Bank in processing any Receipts shall

be to process a correcting entry in the next regularly scheduled processing of the work after receipt of notification from Lender or Borrower or any third party of such error or after discovery of such error by Clearing Bank, as the case may be, unless such error was due to Clearing Bank's gross negligence or willful misconduct. Clearing Bank shall not be liable for any damage or loss resulting from any delay or failure of performance arising out of the acts or omissions of any third parties, including, but not limited to, various communication services, courier services, the Federal Reserve System, any other bank or any third party who may be affected by funds transactions, fire, mechanical, computer or electrical failures or other unforeseen contingencies, strikes or other causes beyond the reasonable control of Clearing Bank.

7. Lender's Rights in Property Account.

(a) Borrower hereby pledges, transfers and assigns to Lender, and grants to Lender, as additional security for the Loan, a continuing perfected security interest in and to, and a general first lien upon, all of Borrower's right, title and interest in and to (i) the Property Account and all cash, property or rights transferred to or deposited in the Property Account from time to time, (ii) all earnings, investments and securities held in the Property Account and (iii) any and all proceeds of the foregoing. Borrower further agrees to execute, acknowledge, deliver, file or do, at its sole cost and expense, all other acts, assignments, notices, agreements or other instruments as Lender may reasonably require in order to effectuate, assure, secure, assign, transfer and convey unto Lender any of the rights granted by this section.

(b) Clearing Bank and Borrower each acknowledge and agree that during a Cash Management Period the Property Account will be subject to the sole dominion, control and discretion of Lender and its authorized agents or designees and Borrower shall have no right to close any such account or right of withdrawal with respect to the Property Account without the prior written consent of Lender. Borrower shall be entitled to receive information about the Property Account that it shall reasonably request from Clearing Bank. Clearing Bank waives any right to offset against the Property Account any claim which it may have against Borrower; *provided, however*, that Clearing Bank retains the right to charge the Property Account for (i) any of Clearing Bank's Charges provided for herein for which the Borrower is responsible and (ii) all items deposited in and credited to the Property Account and subsequently returned unpaid or with respect to which Clearing Bank fails to receive final settlement or for which any settlement or credit is revoked. The rights and liens of Clearing Bank shall have first priority only with respect to items set forth in clauses (b)(i) and (b)(ii) above.

8. Successors and Assigns; Assignments. This Agreement shall bind and inure to the benefit of and be enforceable by Clearing Bank, Borrower and Lender and their respective successors and assigns. Lender shall have the right to assign or transfer its rights under this Agreement without limitation. Any assignee or transferee shall be entitled to all the benefits afforded Lender under this Agreement; *provided, that* such assignee or transferee shall have delivered to the other parties hereto written confirmation that such assignee or transferee agrees to be bound by the terms of this Agreement and is also the assignee or transferee (or agent thereof) of the Security Instrument.

9. Amendments; Other Agreements. This Agreement may be amended from time to time in writing, but not otherwise, by all parties hereto. This Agreement is supplemented by the

terms of Clearing Bank's Property Account agreement with Borrower, and to the extent the terms of such agreement conflicts with this Agreement, the specific terms of this Agreement shall control.

10. Notices. Notices to Clearing Bank, Borrower and Lender shall be sent to the address first-above written or, in each case, to such other address as shall be designated in writing by the respective party to the other parties hereto. Unless otherwise expressly provided herein, all such notices, to be effective, shall be in writing and shall be deemed to have been duly given or made (a) when delivered by hand or by nationally recognized overnight carrier, or (b) upon receipt after being deposited in the mail, certified mail and postage prepaid.

11. Governing Law and Venue; Waiver of Jury Trial. This Agreement shall be governed by, and construed in accordance with, the law of the State of New York without regard to any conflict of laws principles. Borrower, Clearing Bank and Lender hereby submit to the exclusive jurisdiction of the state courts of the State of New York for the purposes of all legal proceedings arising out of or relating to this Agreement or the transactions contemplated hereby. Borrower, Clearing Bank and Lender irrevocably waive, to the fullest extent permitted by law, any objection which they may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum ANY ACTION OR PROCEEDING ARISING OUT OF OR CONCERNING THIS AGREEMENT SHALL BE HEARD BY A JUDGE SITTING WITHOUT A JURY.

12. Certain Matters Affecting Clearing Bank. Clearing Bank may rely and shall be protected in acting or refraining from acting upon any notice believed by it to be genuine and to have been signed or presented by the proper party or parties. The duties and obligations of Clearing Bank set forth in this Agreement shall be determined solely by the express provisions of this Agreement, Clearing Bank shall not be liable except for the performance of such party's duties and obligations as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against Clearing Bank.

13. Interpleader. If at any time Clearing Bank, in good faith, is in doubt as to the action it should take under this Agreement or a successor is not appointed within the notice period under Section 3, Clearing Bank shall have the right to commence an interpleader action, at Borrower's expense, in the United States District Court for the Eastern or Southern District of New York or the New York Supreme Court for the County of New York and to take no further action except in accordance with joint instructions from Lender and Borrower or in accordance with the final order of the court in such action.

14. Defined Terms. As used herein the following terms shall have the respective meanings set forth below:

(a) "**Cash Management Period**": shall have the meaning set forth in the Cash Management Agreement.

(b) "**Deposit Account**" shall mean such account at Deposit Bank as Lender shall have at the time in question most recently specified by notice to Clearing Bank.

(c) "**Deposit Bank**" shall mean Wells Fargo Bank, N.A. or such other bank or other depositary as Lender shall have at the time in question most recently specified by notice to Clearing Bank.

(d) "**Obligations**" shall mean the payment and performance of all obligations of Borrower now or hereafter existing with respect to the Loan, whether for principal, interest, fees, expenses or otherwise, and all obligations of Borrower now or hereafter existing under the Security Instrument, the Note (as defined in the Security Agreement), this Agreement and all Other Security Documents.

All other capitalized terms set forth in this Agreement not defined herein shall have the meaning set forth in the Security Instrument.

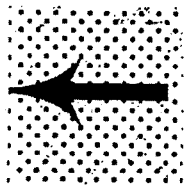
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[SIGNATURE PAGE TO CLEARING ACCOUNT AGREEMENT]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in several counterparts (each of which shall be deemed an original) as from the date first above written.

CLEARING BANK:

NORTH FORK BANK, a New York banking corporation



By: _____
Name:
Title:

[Borrower and Lender signatures on following page]

BORROWER:

AW-MAGPIG, LLC, a Delaware limited liability company

By: AW-MAGPIG OWNER, LLC, a Delaware limited liability company, its sole member

By: _____
Name: Alan B. Wasserman
Title: Member

HW-MAGPIG, LLC, a Delaware limited liability company

By: HW-MAGPIG OWNER, LLC, a Delaware limited liability company, its sole member

By: _____
Name: Harold Wasserman
Title: Member

MW-MAGPIG, LLC, a Delaware limited liability company

By: MW-MAGPIG OWNER, LLC, a Delaware limited liability company, its sole member

By: _____
Name: Michael S. Wasserman
Title: Member

LENDER:

BEAR STEARNS COMMERCIAL MORTGAGE, INC., a New York corporation

By: _____

Michael A. Forastiere
Managing Director

Exhibit A

CLEARING BANK INSTRUCTION LETTER

[_____], 200[__]

_____
_____
_____
_____

Re: Clearing Account Agreement by and [Bank], AW-MAGPIG, LLC, HW-MAGPIG, LLC, and MW-MAGPIG, LLC, each a Delaware limited liability company ("Borrower") and Bear Stearns Commercial Mortgage, Inc. (together with its successors and/or assigns, "Lender") dated _____ __, 2007 (the "Agreement")

Ladies and Gentlemen:

Currently, the Borrower maintains the following _____ account with you:

_____

The foregoing account(s) are collectively referred to as the "Property Account". The Lender hereby notifies you that a Cash Management Period, as defined in the Agreement, has occurred, and requests that you disburse all sums deposited in the Property Account from time to time in accordance with the terms and provisions in the Agreement. For purposes hereof, the "Deposit Account" (as that term is used in the Agreement) shall mean the following account:

Bank:
ABA No.:
Account No.:
Account Name:

The instructions set forth herein are irrevocable and are not subject to modification in any manner, except that the Lender. by written notice to you, may amend the instructions contained herein.

Please acknowledge receipt of this letter and your agreement to the terms described herein by executing and returning to Lender an acknowledgment in the form of Schedule 1 hereto.

[Lender]

By: _____
Name:
Title:

SCHEDULE 1

FORM OF ACKNOWLEDGMENT

[DATE]

_____
_____
_____
_____

Bear Stearns Commercial Mortgage, Inc.
383 Madison Avenue
New York, New York 10179

Ladies and Gentlemen:

Reference is made to that certain Clearing Bank Instruction Letter dated _____, 200[__] (the "Instruction Letter") from Bear Stearns Commercial Mortgage, Inc. (the "Lender"). I, _____, on behalf of [Bank] (the "Bank"), hereby acknowledge receipt of the instructions set forth in the Instruction Letter. The Bank hereby agrees to perform the instructions set forth in the Instruction Letter.

[BANK]

By: _____
Name:
Title:

EXHIBIT B

FORM OF TENANT DIRECTION LETTER

[BORROWER LETTERHEAD]

_____, 200__

[Tenants under Leases]

Re: Lease dated _____ between _____, as Landlord, and _____, as Tenant, concerning premises known as _____

Gentlemen:

This letter shall constitute notice to you that the undersigned has granted a lien and security interest in the captioned lease and all rents, additional rent and all other monetary obligations to landlord thereunder (collectively, "**Rent**") in favor of Bear Stearns Commercial Mortgage, Inc., as lender ("**Lender**"), to secure certain of the undersigned's obligations to Lender. The undersigned hereby irrevocably instructs and authorizes you to disregard any and all previous notices sent to you in connection with Rent and hereafter to deliver all Rent to the following address:

[Clearing Bank]
_____
_____
Account Name: _____ for the benefit of Bear Stearns Commercial Mortgage, Inc., as mortgagee - Clearing Account
Account No.: _____
Attention: _____
ABA# _____

The instructions set forth herein are irrevocable and are not subject to modification in any manner, except that Lender, or any successor lender so identified by Lender, may by written notice to you rescind the instructions contained herein.

Sincerely,

[Borrower]

ACKNOWLEDGMENT AND AGREEMENT

The undersigned acknowledges notice of the lien and security interest of Lender and hereby confirms that the undersigned has received no notice of any other pledge or assignment of the Rent and will honor the above instructions.

[Tenant]

By:_____
Name:
Title:
Dated as of: _____ ___, 200__

EXHIBIT C

FEE AGREEMENT

SCHEDULE 1

LIST OF SERVICERS

SERVICER

ARCap Servicing, Inc.
Williams Square
5221 N. O'Connor Blvd., Suite 600
Irving, TX 75039

Bank of America, N.A.
Capital Markets Servicing Group
NC1-026-06-01
900 West Trade Street, Suite 650
Charlotte, NC 28255

Cohen Financial (CFC Advisory Services Limited Partnership)
2 North La Salle St., Ste. 800
Chicago, IL 60602

GMAC Commercial Mortgage Corporation
200 Witmer Road
Horsham, PA 19044

L.J. Melody & Company of Texas, LP
1500 City West Boulevard, #200
Houston, TX 77042

ORIX Capital Markets, LLC / KeyCorp Real Estate Capital Markets, Inc.
1717 Main Street, 12th Floor
Dallas, TX 75201

Wells Fargo Bank, National Association
Commercial Mortgage Servicing
1320 Willow Pass Road, Suite 100
Concord, CA 94520

EXHIBIT E

Reserve Agreement

[attached hereto]

MERS MIN: 8000101-0000004106-0

REPLACEMENT RESERVE AND SECURITY AGREEMENT

THIS REPLACEMENT RESERVE AND SECURITY AGREEMENT ("Agreement") is made as of the 1st day of March, 2007, by AW-MAGPIG, LLC, HW-MAGPIG, LLC, and MW-MAGPIG, LLC, each a Delaware limited liability company and each having its principal place of business at 11 East Hawthorne Avenue, Valley Stream, New York 11580 (collectively, "Borrower"), and BEAR STEARNS COMMERCIAL MORTGAGE, INC., a New York corporation, having an address at 383 Madison Avenue, New York, New York 10179 ("Lender").

RECITALS:

A. Borrower by its promissory note of even date herewith given to Lender (the note together with all extensions, renewals, modifications, substitutions and amendments thereof shall collectively be referred to as the "Note") is indebted to Lender in the principal sum of FOUR MILLION FIVE HUNDRED THOUSAND AND 00/100 DOLLARS ($4,500,000.00) in lawful money of the United States of America, with interest from the date thereof at the rates set forth in the Note (the indebtedness evidenced by the Note, together with such interest accrued thereon, shall collectively be referred to as the "Loan"), principal and interest to be payable in accordance with the terms and conditions provided in the Note.

B. The Loan is secured by, among other things, a Mortgage, Fixture Filing and Security Agreement (the "Security Instrument") dated as of the date hereof in the principal sum of FOUR MILLION FIVE HUNDRED THOUSAND AND 00/100 DOLLARS ($4,500,000.00) given by Borrower to (or for the benefit of) Mortgage Electronic Registration Systems, Inc., a Delaware stock corporation, as Lender's nominee ("MERS"), having an address at 1595 Spring Hill Road, Suite 310, Vienna, Virginia 22182, which grants MERS, as nominee of Lender, a first lien on the property encumbered thereby (the "Property"). All and any of the documents other than the Note, the Security Instrument and this Agreement now or hereafter executed by Borrower and/or others and by or in favor of Lender or MERS, which wholly or partially secure or guarantee payment of the Note are referred to as the "Other Security Documents."

C. Lender requires as a condition to the making of the Loan that Borrower enter into this Agreement and make certain deposits with Lender as provided in this Agreement as additional security for all of Borrower's obligations under the Note, the Security Instrument and the Other Security Documents.

AGREEMENT:

For good and valuable consideration the parties hereto agree as follows:

1. Deposits to the Replacement Reserve.

(a) On the date hereof, Borrower shall deposit with Lender the sum of $690.00 (the "Initial Deposit"). The Initial Deposit represents one hundred fifteen percent (115%) of the estimated cost to complete the repairs and/or replacements described on Exhibit C

(the "Immediate Repairs"). Subject to the provisions of Section 8 of this Agreement, on each date that a regularly scheduled payment of principal or interest is due under the Note, and on the date hereof, Borrower shall deposit with Lender the applicable Monthly Deposit (as defined in Section 1(b) of this Agreement).

(b) The "Monthly Deposit" required to be made each month during the term of the Loan is $776.60 (which amount represents one-twelfth (1/12) of an annual amount equal to $0.15 per square foot of space at the Property). The amount of the Monthly Deposit may be increased by Lender, in Lender's reasonable discretion, at any time, including, without limitation, in accordance with Sections 4.1(d), 8 and 15 of this Agreement. Notwithstanding the foregoing, Borrower shall not be required to make Monthly Deposits, provided that: (i) no Event of Default (as hereinafter defined) shall then exist; and (ii) Borrower makes (or causes the Tenants to make, as the case may be) all necessary Replacements and otherwise maintains the Property in accordance with the Other Security Documents. Upon notice from Lender: (a) during the existence of an Event of Default; or (b) following the failure of Borrower to make (or cause the Tenants to make, as the case may be) necessary Replacements or otherwise maintain the Property in accordance with the Loan Documents, Borrower shall begin to deposit the Monthly Deposit into the Replacement Reserve beginning on the Monthly Payment Date (as defined in the Note) immediately following the date of such notice.

(c) Lender shall deposit the Initial Deposit and each Monthly Deposit (if any), as received, in an escrow account (the Initial Deposit, the Monthly Deposits and all other funds in the Replacement Reserve are referred to collectively as the "Replacement Reserve"). The Replacement Reserve shall not constitute a trust fund and may be commingled with other monies held by Lender. Lender or a designated representative of Lender shall have the sole right to make withdrawals from such account. Borrower shall not be entitled to any interest earned on the Replacement Reserve.

2. Replacement Reserve as Additional Security.

(a) Borrower assigns to Lender the Replacement Reserve as additional security for all of Borrower's obligations under the Note, the Security Instrument and the Other Security Documents; provided, however, that Lender shall make disbursements from the Replacement Reserve in accordance with the terms of this Agreement.

(b) Except as otherwise provided in this Agreement, including without limitation in Section 4.1(g) hereof, Lender shall make disbursements from the Replacement Reserve to reimburse Borrower for the costs described on Exhibit A attached hereto and made a part of this Agreement (such costs are hereinafter referred to collectively as the "Maintenance Repairs", together with the Immediate Repairs, the "Replacements") in accordance with the provisions of Section 3 hereof. Notwithstanding anything contained herein to the contrary, however, Lender shall not be obligated to make disbursements from the Replacement Reserve to reimburse Borrower for the costs described on Exhibit B hereto.

3. Disbursements from Replacement Reserve.

3.1 Request for Disbursement.

(a) Lender shall, upon written request from Borrower and satisfaction of the requirements set forth in Sections 3 and 4 of this Agreement, disburse to Borrower amounts from the Replacement Reserve necessary to reimburse Borrower for the actual costs of any approved Replacements upon satisfactory completion of such Replacements (or upon partial completion in the case of Replacements made pursuant to Section 3.1(e)), as determined by Lender. In no event shall Lender be obligated to disburse funds from the Replacement Reserve if an Event of Default exists under this Agreement.

(b) Each request for disbursement from the Replacement Reserve (a "Requisition") shall be in a form reasonably specified or approved by Lender and shall at a minimum set forth:

(i) Replacements for which such disbursement is requested,

(ii) the quantity and price of each item purchased, if the Replacement includes the purchase or replacement of specific items (such as appliances),

(iii) the price of all materials (grouped by type or category) used in any Replacement other than the purchase or replacement of specific items, and

(iv) the cost of all contracted labor or other services applicable to each Replacement for which such request for disbursement is made.

With each Requisition, Borrower shall certify that, to the best of Borrower's knowledge, all Replacements have been made in accordance with all applicable laws, ordinances, and regulations of any governmental office or authority having jurisdiction over the Property. Each Requisition shall include (i) to the extent the items set forth in such Requisition have been paid by Borrower, evidence of the payment of such items reasonably satisfactory to Lender, (ii) to the extent such items have not been paid by Borrower, copies of invoices for all items or materials purchased and all contracted labor or services in form reasonably satisfactory to Lender and (iii) unless previously delivered to Lender in accordance with the terms hereof, evidence reasonably satisfactory to Lender that all contractors and other persons who were the subject of previous disbursements from the Replacement Reserve have been paid in full.

(c) To the extent disbursements from the Replacement Reserve are intended to pay contractors and other persons who have not yet been paid by Borrower, such disbursements shall constitute a trust fund in the possession of Borrower for the benefit of such persons and shall be promptly applied by Borrower to the payment of such persons.

(d) Except as provided in Section 3.1(e), each request for disbursement from the Replacement Reserve shall be made only after completion of the Replacement for which such disbursement is requested. Borrower shall provide Lender evidence reasonably satisfactory to Lender, of completion, as provided in Sections 4.1 and 4.2 below.

(e) If (i) the time required to complete a Replacement exceeds one month, (ii) the contractor performing a Replacement requires periodic payments pursuant to terms of a written contract, (iii) the total cost of such Replacement exceeds $25,000, and (iv) Lender has approved in writing in advance such periodic payments, a request for reimbursement from the

Replacement Reserve may be made after completion of a portion of the work under such contract, provided (u) such contract requires payment upon completion of such portion of the work, (v) the materials for which the request is made are on site at the Property and are properly secured or have been installed in the Property, (w) all other conditions in this Agreement for disbursement have been satisfied (including but not limited to the limitations in Section 4.1(a)), (x) funds remaining in the Replacement Reserve are, in Lender's judgment, sufficient to complete such Replacement and the other Replacements when required, (y) the cost of the portion of the work completed under such contract exceeds $5,000, and (z) each contractor or subcontractor receiving payments under such contract shall provide a waiver of lien with respect to amounts which have been paid to that contractor or subcontractor.

(f) Borrower shall not make a request for disbursement from the Replacement Reserve more frequently than once in any calendar month.

(g) Borrower shall not make a request for disbursement from the Replacement Reserve in an amount less than the lesser of (i) $2,500, or (ii) the total cost of the Replacement for which the disbursement is requested.

(h) In connection with (i) any structural repair or improvement, or (ii) any replacement or repair of a major component or element of any part of the Property, Lender may require, at Lender's election (either as a condition to, or following, any disbursement from the Replacement Reserve) and at Borrower's expense, one or more inspections and/or certificates of completion by an appropriate independent, qualified professional (e.g., architect, engineer, consultant) approved by Lender.

(i) Notwithstanding anything to the contrary contained herein, (i) the Initial Deposit shall be used solely for the payment of the actual costs of the Immediate Repairs until such time as such Immediate Repairs are completed in accordance with the terms of this Agreement and (ii) Borrower shall not be entitled to receive disbursements from the Replacement Reserve in excess of the amounts budgeted for each Immediate Repair on Exhibit C, except to the extent that Borrower shall achieve cost savings with respect to other amounts budgeted for Immediate Repairs, in which event such cost savings may be applied to cost overruns with respect to other Immediate Repair items described on Exhibit C. Upon the completion of all Immediate Repairs in accordance with the terms of this Agreement, Lender shall disburse the balance of the Initial Deposit, if any, to Borrower.

4. Performance of Replacements.

4.1 Workmanlike Completion; Additional Replacements.

(a) Borrower shall make each Replacement when required in order to keep the Property in good order and repair and in a good marketable condition and to keep the Property or any portion thereof from deteriorating. Borrower shall complete all Replacements in a good and workmanlike manner as soon as practicable following the commencement of making each such Replacement.

(b) Lender shall have the right to approve all contracts or work orders with materialmen, mechanics, suppliers, subcontractors, contractors or other parties providing labor or

materials in connection with a Replacement or series of related Replacements costing in excess of $10,000, which approval shall not be unreasonably withheld or delayed. Upon Lender's request, Borrower shall assign any contract or subcontract to Lender.

(c) In the event Lender reasonably determines that any Replacement is not being performed in a workmanlike or timely manner or that any Replacement has not been completed in a workmanlike and timely manner and Borrower fails to correct such condition within ten (10) days of Lender's written notice to Borrower of such determination, Lender shall have the option to withhold disbursement for such unsatisfactory Replacement and to proceed under existing contracts or to contract with third parties to complete such Replacement and to apply the Replacement Reserve toward the labor and materials necessary to complete such Replacement, in each case without providing any prior notice to Borrower, and to exercise any and all other remedies available to Lender upon the occurrence of an Event of Default (as hereinafter defined).

(d) If at any time during the term of the Loan, Lender determines that replacements are advisable to keep the Property in good order and repair and in good marketable condition, or to prevent deterioration of the Property or if any major building systems or components (e.g., roof, HVAC system) will reach the end of its useful life within two (2) years of the date of any inspection by Lender, Lender may send Borrower written notice of the need for making such replacements (the "Designated Replacements"). Borrower shall promptly commence making such Designated Replacements in accordance with all the requirements of this Agreement. Additional sums from the Replacement Reserve shall be made available to Borrower to make such Designated Replacements only pursuant to the terms hereof. If Borrower fails to commence, within thirty (30) days after such notice or the commencement date specified in such notice, such Designated Replacements and/or fails to diligently pursue completion of such Designated Replacements, such failure shall be a default under this Agreement, and, in addition to all other rights Lender may have under this Agreement upon a default (including but not limited to Lender's rights under Sections 5.2 and 5.3 of this Agreement) and under the Note, the Security Instrument and the Other Security Documents, Lender may contract with third parties to make such Designated Replacements and may at its sole discretion (i) apply the funds in the Replacement Reserve toward the labor and materials necessary to complete such Designated Replacements, or (ii) demand payment of such Designated Replacements from Borrower. Except for Section 3.1, all references in this Agreement to "Replacements" shall include the "Designated Replacements", as applicable.

(e) In order to facilitate Lender's completion or making of the Replacements pursuant to Sections 4.1(c) and (d) above, Lender is granted the right, but not the obligation, to enter onto the Property and perform any and all work and labor necessary to complete or make the Replacements and/or employ watchmen to protect the Property from damage. All sums so expended by Lender shall be deemed to have been advanced under the Loan to Borrower and secured by the Security Instrument. For this purpose Borrower constitutes and appoints Lender its true and lawful attorney-in-fact with full power of substitution to complete or undertake the Replacements in the name of Borrower. Borrower empowers said attorney-in-fact as follows:

(i) to use any funds in the Replacement Reserve for the purpose of making or completing the Replacements;

(ii) to make such additions, changes and corrections to the Replacements as shall be necessary or desirable to complete the Replacements;

(iii) to employ such contractors, subcontractors, agents, architects, engineers and consultants as shall be required for such purposes;

(iv) to pay, settle or compromise all existing bills and claims which are or may become liens against the Property, or as may be necessary or desirable for the completion of the Replacements, or for clearance of title;

(v) to execute all applications and certificates in the name of Borrower which may be required by any of the contract documents;

(vi) to prosecute and defend all actions or proceedings in connection with the Property or the rehabilitation and repair of the Property; and

(vii) to do any and every act which Borrower might do in its own behalf to fulfill the terms of this Agreement.

It is further understood and agreed that this power of attorney, which shall be deemed to be a power coupled with an interest, cannot be revoked. Borrower specifically agrees that all power granted to Lender under this Agreement may be assigned by Lender to its successors or assigns as holder of the Note.

(f) Nothing in this Section 4.1 shall be construed in such a way as to:

(i) make Lender responsible for making or completing the Replacements;

(ii) require Lender to expend funds in addition to the Replacement Reserve to make or complete any Replacement;

(iii) obligate Lender to proceed with the Replacements; or

(iv) obligate Lender to demand from Borrower additional sums to make or complete any Replacement.

(g) Notwithstanding anything contained herein to the contrary, Borrower agrees to perform all Immediate Repairs within sixty (60) days after the date hereof, except to the extent a different time period with respect to the completion of any such Immediate Repair is expressly set forth on Exhibit C, in which case such Immediate Repair shall be performed within the time period so specified.

4.2 Entry Onto Property: Inspections.

(a) Borrower shall permit Lender or Lender's representatives (including an independent person such as an engineer, architect, or consultant) or third parties making Replacements pursuant to Section 4.1(c) or (d) of this Agreement to enter onto the Property during normal business hours (subject to the rights of tenants under their leases) (i) to inspect the

condition of the Property, (ii) inspect the progress of any Replacements and all materials being used in connection therewith, (iii) to examine all plans and shop drawings relating to such Replacements which are or may be kept at the Property, and (iv) to complete any Replacements made pursuant to Sections 4.1 (c) or (d). Borrower agrees to cause all contractors and subcontractors to cooperate with Lender or Lender's representatives or such other persons described above in connection with inspections described in this Section 4.2 or the completion of Replacements pursuant to Sections 4.1(c) or (d).

(b) Lender may inspect the Property in connection with any Replacement prior to disbursing funds from the Replacement Reserve for such Replacement. In addition to Lender's costs and expenses, Borrower shall pay Lender a reasonable inspection fee not exceeding $400.00 for each such inspection by Lender. Lender, at Borrower's expense, also may require an inspection by an appropriate independent qualified professional selected by Lender and/or a copy of a certificate of completion by an independent qualified professional reasonably acceptable to Lender prior to the disbursement of any amounts from the Replacement Reserve.

4.3 Lien-Free Completion.

(a) Borrower covenants and agrees that each of the Replacements and all materials, equipment, fixtures, or any other item comprising a part of any Replacement shall be constructed, installed or completed, as applicable, free and clear of all mechanic's, materialman's or other liens (except for those liens existing on the date of this Agreement which have been approved in writing by Lender).

(b) Prior to each disbursement from the Replacement Reserve, Lender may require Borrower to provide Lender with either (i) a search of title to the Property through the most recent date available for search under the records in the county where the Property is located, or (ii) an endorsement to the title insurance policy insuring Lender's interest in the Property which updates the effective date of the policy through the most recent date available for search under the records in the county where the Property is located, which search or title endorsement shows that no mechanic's or materialmen's liens or other liens of any nature have been placed against the Property since the date of recordation of the Security Instrument (other than liens which Borrower is diligently contesting in good faith and which have been bonded off to the satisfaction of Lender) and that title to the Property is free and clear of all liens (other than the lien of the Security Instrument and any other liens previously approved in writing by Lender, if any).

4.4 Compliance with Laws and Insurance Requirements.

(a) All Replacements shall comply with all applicable laws, ordinances, rules and regulations of all governmental authorities having jurisdiction over the Property and applicable insurance requirements including, without limitation, applicable building codes, special use permits, environmental regulations, and requirements of insurance underwriters. Borrower shall pay all applicable fees and charges of such authorities.

(b) In addition to any insurance required under the Security Instrument, Borrower shall provide or cause to be provided workmen's compensation insurance, builder's

risk, and public liability insurance and other insurance to the extent required under applicable law in connection with a particular Replacement. All such policies shall be in form and amount reasonably satisfactory to Lender. All such policies which can be endorsed with standard mortgagee clauses making loss payable to Lender or its assigns shall be so endorsed. The originals or certified copies of such policies shall be delivered to Lender.

5. Event of Default.

5.1 Event of Default Under this Agreement. An "Event of Default" shall occur under this Agreement if Borrower fails to comply with any provision of this Agreement and such failure is not cured within ten (10) days after notice from Lender or, if such failure is not susceptible to cure within such ten (10) day period, such longer period of time as is necessary for Borrower through the exercise of diligent efforts to cure same; provided, however, that in no event shall Borrower have more than thirty (30) days from such notice to effectuate such cure. Borrower understands that an Event of Default under this Agreement shall be deemed to be an Event of Default or default beyond applicable notice or cure periods under the terms of the Note, the Security Instrument and the Other Security Documents, and that in addition to the remedies specified in this Agreement, Lender shall be able to exercise all of its rights and remedies under the Note, the Security Instrument and the Other Security Documents upon an Event of Default. If a default beyond applicable notice or cure periods occurs under the Note, the Security Instrument or any of the Other Security Documents, such event shall be deemed an Event of Default hereunder.

5.2 Application of Replacement Reserve Upon Default.

(a) The funds held in the Replacement Reserve are pledged as additional security for the indebtedness evidenced by the Note and secured by the Security Instrument. Upon the occurrence of an Event of Default (i) Borrower shall immediately lose all of its rights to receive disbursements from the Replacement Reserve unless and until all amounts secured by the Security Instrument have been paid in full and the lien of the Security Instrument has been released or assigned by Lender, and (ii) Lender may in its sole and absolute discretion, use the Replacement Reserve (or any portion thereof) for any purpose, including but not limited to (l) repayment of any indebtedness secured by the Security Instrument, including but not limited to principal prepayments and the prepayment premium applicable to such full or partial prepayments (as applicable); provided, however, that such application of funds shall not cure or be deemed to cure any default; (2) reimbursement of Lender for all reasonable losses and expenses (including, without limitation, reasonable legal fees) suffered or incurred by Lender as a result of such default; (3) completion of the Replacements as provided in Section 4.1, or for any other repair or replacement to the Property; or (4) payment of any amount expended in exercising (and exercise) all rights and remedies available to Lender at law or in equity or under this Agreement or under the Note, the Security Instrument or any of the Other Security Documents.

(b) Nothing in this Agreement or the Security Instrument shall obligate Lender to apply all or any portion of the Replacement Reserve on account of any Event of Default by Borrower or to repayment of the indebtedness secured by the Security Instrument or in any specific order of priority.

5.3 Borrower's Other Obligations. Nothing contained in this Agreement shall in any manner whatsoever alter, impair or affect the obligations of Borrower, or relieve Borrower of any of its obligations to make payments and perform all of its other obligations required under the Note, the Security Instrument or the Other Security Documents.

6. Remedies Cumulative. None of the rights and remedies herein conferred upon or reserved to Lender under this Agreement is intended to be exclusive of any other rights, and each and every right shall be cumulative and concurrent, and may be enforced separately, successively or together, and may be exercised from time to time as often as may be deemed necessary by Lender.

7. Enforcement of Agreement. This Agreement is executed by Borrower and Lender for the benefit of Lender. Borrower understands and agrees that, in connection with any sale of the Loan to an Investor (as defined below), this Agreement may be assigned to such Investor.

8. Balance in the Replacement Reserve. The insufficiency of any balance in the Replacement Reserve shall not abrogate Borrower's agreement to fulfill all preservation and maintenance covenants in the Security Instrument. In the event that the balance of the Replacement Reserve is less than the current estimated cost to make the Replacements required by Lender, Borrower shall deposit the shortage within ten (10) days of request by Lender. In the event Lender reasonably determines from time to time based on Lender's inspections that the amount of the Monthly Deposit is insufficient to fund the cost of likely Replacements and related contingencies that may arise during the remaining term of the Loan, Lender may require an increase in the amount of the Monthly Deposits upon thirty (30) days prior written notice to Borrower.

9. Indemnification. Borrower agrees to indemnify Lender and to hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys' fees and expenses) arising from or in any way connected with the performance of the Replacements or the holding or investment of the Replacement Reserve. Borrower assigns to Lender all rights and claims Borrower may have against all persons or entities supplying labor or materials in connection with the Replacements; provided, however, that Lender may not pursue any such right or claim unless an Event of Default has occurred.

10. Borrower's Records. Borrower shall furnish such financial statements, invoices, records, papers and documents relating to the Property as Lender may reasonably require from time to time to make the determinations permitted or required to be made by Lender under this Agreement.

11. Fees and Expenses. In addition to any other fees payable by Borrower to Lender in connection with the Loan and this Agreement (including, but not limited to, the inspection fee set forth in Section 4.2(b)), Borrower shall pay within ten (10) days of request from Lender (i) all reasonable costs or expenses actually incurred by Lender in connection with collecting, holding and disbursing the Replacement Reserve pursuant to this Agreement, and (ii) subject to any limitations in this Agreement, all reasonable fees, charges, costs and expenses actually incurred

by Lender in connection with inspections made by Lender or Lender's representatives in carrying out Lender's responsibility to make certain determinations under this Agreement.

12. No Third Party Beneficiary. This Agreement is intended solely for the benefit of Borrower and Lender and their respective successors and assigns, and no third party shall have any rights or interest in the Replacement Reserve, this Agreement, the Note, the Security Instrument or any of the Other Security Documents. Nothing contained in this Agreement shall be deemed or construed to create an obligation on the part of Lender to any third party, nor shall any third party have a right to enforce against Lender any right that Borrower may have under this Agreement.

13. Completion of Replacements. Lender's approval of any plans for any Replacement, release of funds from the Replacement Reserve, inspection of the Property by Lender or Lender's agents, or other acknowledgment of completion of any Replacement in a manner satisfactory to Lender shall not be deemed an acknowledgment or warranty to any person that the Replacement has been completed in accordance with applicable building, zoning or other codes, ordinances, statutes, laws, regulations or requirements of any governmental agency.

14. No Agency or Partnership. Nothing contained in this Agreement shall constitute Lender as a joint venturer, partner or agent of Borrower, or render Lender liable for any debts, obligations, acts, omissions, representations, or contracts of Borrower.

15. Assumption of Loan; Transfer of Interests in Borrower; Subordinate Mortgage Lien.

(a) If, under the terms of the Security Instrument, Lender's consent is required in connection with (i) a transfer of all or part of the Property, or a transfer or pledge of beneficial interest in Borrower or (ii) the placing of a subordinate mortgage or deed of trust on the Property, Lender may review the amount of the Replacement Reserve, the amount of the Monthly Deposits and the likely repairs and replacements required by the Property and the related contingencies which may arise during the remaining term of the Loan. Based on that review, Lender may require an additional deposit to the Replacement Reserve and an increase in the amount of the Monthly Deposits as a condition to Lender's consent to such transfer or pledge, or the placing of such subordinate lien on the Property.

(b) If the Property is transferred in accordance with the provisions of the Security Instrument and the obligations of Borrower under the Note, the Security Instrument and the Other Security Documents are assumed by the transferee of the Property, that transferee shall be required to assume Borrower's duties and obligations under this Agreement and shall be required to execute and deliver to Lender such documents as Lender reasonably requires to effectuate such assumption of duties and obligations.

(c) If beneficial interests in Borrower are transferred such that Lender's consent is required under the Security Instrument, the purchasers of such interests shall be required to execute and deliver to Lender such documents as Lender reasonably requires to effectuate the continued obligations under this Agreement with respect to the new entity or persons constituting Borrower.

(d) In the event of any transfer described in Sections 15(b) or (c) above, such transfer and assumption shall not relieve the transferor of its obligations under this Agreement or under the Note, the Security Instrument or any of the Other Security Documents, unless either (i) Borrower has obtained the prior written consent of Lender to such transfer, or (ii) such transfer is not an event which would enable Lender to accelerate the indebtedness secured by the Security Instrument.

16. CHOICE OF LAW. THIS AGREEMENT SHALL BE DEEMED TO BE A CONTRACT ENTERED INTO PURSUANT TO THE LAWS OF THE STATE OF NEW YORK AND SHALL IN ALL RESPECTS BE GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, PROVIDED, HOWEVER, THAT WITH RESPECT TO THE CREATION, PERFECTION, PRIORITY AND ENFORCEMENT OF THE PLEDGE OF THIS AGREEMENT, THE LAWS OF THE STATE WHERE THE REPLACEMENT RESERVE ACCOUNT IS LOCATED SHALL APPLY.

17. Termination of Replacement Reserve. After (a) payment in full of all sums evidenced by the Note and secured by the Security Instrument and release or assignment by Lender of the lien of the Security Instrument, and (b) payment in full for all Replacements completed or contracted to be performed prior to the date of the payment described in (a), Lender shall disburse to Borrower all amounts remaining in the Replacement Reserve.

18. Notices. All notices or other written communications to Borrower, Lender or MERS hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person with receipt acknowledged by the recipient thereof, (ii) one (1) Business Day (hereinafter defined) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to Borrower, Lender or MERS at their addresses set forth in the Security Instrument or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Agreement, the term "Business Day" shall mean any day other than Saturday, Sunday or any other day on which banks are authorized or required to close in New York, New York. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

19. No Oral Change. This Agreement, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

20. Liability. If Borrower consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Agreement shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

21. Inapplicable Provisions. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision.

22. Headings, etc. The headings and captions of various paragraphs of this Agreement are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

23. Duplicate Originals; Counterparts. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

24. Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

25. Secondary Market/Servicing. Lender may, at any time, sell, transfer or assign this Agreement, the Note, the Security Instrument and the Other Security Documents, and any or all servicing rights with respect thereto, or grant participations therein or issue mortgage pass through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement (the "Securities"). Lender may forward to each purchaser, transferee, assignee, servicer, participant, investor in such Securities or any Rating Agency rating such Securities (collectively, the "Investor") and each prospective Investor, all documents and information which Lender now has or may hereafter acquire relating to the Debt and to Borrower and the Property, whether furnished by Borrower or otherwise, as Lender determines necessary or desirable. Borrower agrees to cooperate with Lender in connection with any transfer made or any Securities created pursuant to the Security Instrument, including, without limitation, the delivery of an estoppel certificate in accordance therewith, and such other documents as may be reasonably requested by Lender. Borrower shall also furnish and Borrower consents to Lender furnishing to such Investors or such prospective Investors or Rating Agency any and all information concerning the Property, the Leases and the financial condition of Borrower as may be requested by Lender, any Investor or any prospective Investor or Rating Agency in connection with any sale, transfer or participation interest. Lender may retain or assign responsibility for servicing the Loan, including the Note, the Security Instrument, this Agreement and the Other Security Documents, or may delegate some or all of such responsibility and/or obligations to a servicer including, but not limited to, any subservicer or master servicer. Lender may make such assignment or delegation on behalf of the Investors if the Note is sold or this Agreement or the Other Security Documents are assigned.

26. Definitions. The word "Lender" as used herein includes Lender and any and all of its agents including, without limitation, any servicer of the Loan.

27. Miscellaneous.

(a) Wherever pursuant to this Agreement (i) Lender exercises any right given to it to approve or disapprove, (ii) any arrangement or term is to be satisfactory to Lender, or (iii) any other decision or determination is to be made by Lender, the decision of Lender to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory and all other decisions and determinations made by Lender, shall be in the sole and absolute discretion of Lender and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

(b) Wherever pursuant to this Agreement it is provided that Borrower pay any costs and expenses, such costs and expenses shall include, but not be limited to, reasonable and actual legal fees and disbursements of Lender, whether retained firms, the reimbursement for the expenses of in-house staff or otherwise.

(c) At Lender's election, funds constituting the Replacement Reserve (including but not limited to the Initial Deposit) may be applied by Lender to the payment of reasonable and actual costs and expenses required to be paid by Borrower hereunder, including, without limitation, the cost of any inspections performed by Lender hereunder.

28. Exculpation. Borrower's obligations under this Agreement are subject to the provisions of Article 15 of the Security Instrument, and such provisions are incorporated herein by reference.

[remainder of page intentionally left blank; signature page follows]

[SIGNATURE PAGE TO REPLACEMENT RESERVE AND SECURITY AGREEMENT]

IN WITNESS WHEREOF the undersigned have executed this Agreement as of the date and year first written above.

BORROWER:

AW-MAGPIG, LLC, a Delaware limited liability company

By: AW-MAGPIG OWNER, LLC, a Delaware limited liability company, its sole member

By: _____
Name: Alan B. Wasserman
Title: Member

HW-MAGPIG, LLC, a Delaware limited liability company

By: HW-MAGPIG OWNER, LLC, a Delaware limited liability company, its sole member

By: _____
Name: Harold Wasserman
Title: Member

MW-MAGPIG, LLC, a Delaware limited liability company

By: MW-MAGPIG OWNER, LLC, a Delaware limited liability company, its sole member

By: _____
Name: Michael S. Wasserman
Title: Member

IN WITNESS WHEREOF the undersigned have executed this Agreement as of the date and year first written above.

LENDER:

BEAR STEARNS COMMERCIAL MORTGAGE, INC., a New York corporation

By: _____
Name: MICHAEL A. FORASTIERE
Title: Managing Director

EXHIBIT A

LIST OF REPLACEMENTS

Except as specifically excluded in Exhibit B hereof, Replacements shall consist of all capital repairs or replacements to the improvements or personal property located on the Property, including, but not limited to, (i) structural improvements and replacements, (ii) resurfacing, striping and sealing of parking lots, (iii) roofing, (iv) window, storefront and door replacements, (v) brick pointing, (vi) curbing, (vii) installation or replacement of HVAC systems, (viii) substantial improvement and replacement of plumbing, sprinkler and electrical systems, and (ix) the costs of any repairs, improvements, equipment, alterations, additions, changes, replacements and other items which, under generally accepted accounting principles, consistently applied, are properly classified as capital expenditures or capital improvements.

EXHIBIT B

EXCLUSIONS FROM REPLACEMENTS

Notwithstanding the provisions of Exhibit A hereto or anything else contained in this Agreement to the contrary, the following costs shall not constitute "Replacements" and Lender shall not be obligated to make disbursements from the Replacement Reserve to reimburse Borrower for such costs:

(a) costs of routine maintenance to the Property;

(b) the costs of salaries, benefits and administrative expenses related to the employment of (i) officers and executives of Borrower, and of employees of Borrower above the level of building manager, and (ii) employees of Borrower at or below the level of building manager except, in the case of (ii), those costs which Borrower can demonstrate to Lender's satisfaction to be properly allocable to the work performed by such employees in connection with Replacements;

(c) the cost of any items for which Borrower is reimbursed by insurance or otherwise;

(d) the cost of any landscaping work to the Property;

(e) the cost of any material additions or material alterations to the Property after the date hereof; and

(f) the cost of any alterations, additions, changes, replacements and improvements that are made primarily in order to prepare space for occupancy by a new tenant.

EXHIBIT C

IMMEDIATE REPAIRS

ADA Accessibility $600.00

EXHIBIT F

Guaranty

[attached hereto]

MERS MIN: 8000101-0000004106-0

INDEMNITY AGREEMENT

INDEMNITY AGREEMENT (the "Agreement") made as of the 1st day of March, 2007 by AW-MAGPIG, LLC, HW-MAGPIG, LLC, and MW-MAGPIG, LLC, each a Delaware limited liability company and each having an office at 11 East Hawthorne Avenue, Valley Stream, New York 11580 (collectively, "Borrower"), MICHAEL S. WASSERMAN, an individual, having an address at 11 East Hawthorne Avenue, Valley Stream, New York 11580, ALAN B. WASSERMAN, an individual, having an address at 11 East Hawthorne Avenue, Valley Stream, New York 11580, and HAROLD WASSERMAN, an individual, having an address at 11 East Hawthorne Avenue, Valley Stream, New York 11580 (Michael S. Wasserman, Alan B. Wasserman and Harold Wasserman hereinafter collectively referred to as the "Principal"; Borrower and Principal hereinafter collectively referred to as "Indemnitor", in favor of BEAR STEARNS COMMERCIAL MORTGAGE, INC. a New York corporation having an address at 383 Madison Avenue, New York, New York 10179 ("Lender").

RECITALS:

A. Lender is prepared to make a loan (the "Loan") to Borrower to be evidenced by a certain promissory note of even date herewith in the principal amount of $5,500,000.00 made by Borrower to Lender (the "Note"). The Loan is secured by, among other things, a Mortgage, Fixture Filing and Security Agreement (the "Security Instrument") dated as of the date hereof in the principal sum of FOUR MILLION FIVE HUNDRED THOUSAND AND 00/100 DOLLARS ($4,500,000.00) given by Borrower to (or for the benefit of) Mortgage Electronic Registration Systems, Inc., a Delaware stock corporation, as Lender's nominee ("MERS"), having an address at 1595 Spring Hill Road, Suite 310, Vienna, Virginia 22182, which grants MERS, as nominee of Lender, a first lien on the property encumbered thereby (the "Property"). All and any of the documents other than the Note, the Security Instrument and this Agreement now or hereafter executed by Borrower and/or others and by or in favor of Lender or MERS, which wholly or partially secure or guarantee payment of the Note are referred to as the "Other Security Documents."

B. Lender is unwilling to make the Loan unless Indemnitor agrees to provide the indemnification, representations and warranties and other matters described in this Agreement for the benefit of Lender.

C. Each Principal is a member of Borrower and thus will derive substantial benefit from the Loan. Indemnitor enters into this Agreement to induce Lender to make the Loan.

AGREEMENT

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Indemnitor hereby represents, warrants, covenants and agrees for the benefit of Lender as follows:

1. Indemnification. Indemnitor covenants and agrees at its sole cost and expense, to protect, defend, indemnify, release and hold Lender harmless from and against any and all Losses (defined below) imposed upon or incurred by or asserted against Lender and directly or indirectly arising out of or in any way relating to any one or more of the following: (i) fraud or misrepresentation by Borrower in connection with the Security Instrument, the Note or the Other Security Documents (as defined in the Security Instrument); (ii) the gross negligence or willful misconduct of Borrower; (iii) the removal or disposal of any portion of the Property (as defined in the Security Instrument) after default under the Note, the Security Instrument or the Other Security Documents; (iv) the misapplication or conversion by Borrower of (A) any insurance proceeds paid by reason of any loss, damage or destruction to the Property, (B) any awards or other amounts received in connection with the condemnation of all or a portion of the Property, or (C) any Rents (as defined in the Security Instrument) following default under the Security Instrument, the Note or the Other Security Documents; (v) the failure of Borrower to obtain Lender's prior written consent to any subordinate financing or other voluntary lien encumbering the Property; (vi) the failure of Borrower to obtain Lender's prior written consent to any assignment, transfer, or conveyance of the Property or any interest therein as required by the Security Instrument, (vii) any matters set forth in Section 13.4 of the Security Instrument; (viii) the Borrower's filing or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, or make an assignment for the benefit of creditors; and (ix) the bringing by Borrower or any of the tenants-in-common comprising Borrower of any action for partition, or other action of a similar nature, with respect to the Property. As used herein, the term "Losses" includes any and all claims, suits, liabilities, actions, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement, punitive damages, foreseeable and unforeseeable consequential damages, of whatever kind or nature (including but not limited to reasonable and actual attorneys' fees and other costs of defense).

2. Guaranty.

(a) Principal absolutely and unconditionally guarantees to Lender the prompt and full payment of the Debt (as defined in the Security Instrument) in the event that Borrower files or consents to the filing against Borrower of a petition, voluntary or involuntary, under the U. S. Bankruptcy Code or any other federal or state bankruptcy or insolvency law, or any partner, member or equivalent person of Borrower, or any person acting in concert with Borrower or any of the foregoing persons, files or joins in the filing against Borrower of an involuntary petition under the U.S. Bankruptcy Code or any other federal or state bankruptcy or insolvency law.

(b) This is a guaranty of payment and not of collection. The obligations of Principal hereunder are and shall be absolute under any and all circumstances, without regard to the validity, regularity or enforceability of the Note, the Security Instruments or the Other Security Documents. This Agreement shall remain in full force and effect as to any modification, extension or renewal of the Note, the Security Instrument or any of the Other Security Documents, and notwithstanding any release or forbearance granted by Lender with respect thereto, all of which may be made, done or suffered without notice to or further consent of Principal.

3. Unimpaired Liability. The liability of Indemnitor under this Agreement shall in no way be limited or impaired by, and Indemnitor hereby consents to and agrees to be bound by, any amendment or modification of the provisions of the Note, the Security Instrument or any of the Other Security Documents. In addition, the liability of Indemnitor under this Agreement shall in no way be limited or impaired by (i) any extensions of time for performance required by the Note, the Security Instrument or any of the Other Security Documents, (ii) any sale or transfer of all or part of the Property, (iii) any exculpatory provision in the Note, the Security Instrument, or any of the Other Security Documents limiting Lender's recourse to the Property or to any other security for the Note, or limiting Lender's rights to a deficiency judgment against Indemnitor, (iv) the accuracy or inaccuracy of the representations and warranties made by Indemnitor under the Note, the Security Instrument or any of the Other Security Documents or herein, (v) the release of Indemnitor or any other person from performance or observance of any of the agreements, covenants, terms or condition contained in the Security Instrument, the Note or the Other Security Documents by operation of law, Lender's voluntary act, or otherwise, (vi) the release or substitution in whole or in part of any security for the Note, or (vii) Lender's failure to record the Security Instrument or file any UCC financing statements (or Lender's improper recording or filing of any thereof) or to otherwise perfect, protect, secure or insure any security interest or lien given as security for the Note; and, in any such case, whether with or without notice to Indemnitors and with or without consideration.

4. Enforcement. Lender may enforce the obligations of Indemnitor without first resorting to or exhausting any security or collateral or without first having recourse to the Note, the Security Instrument, or any Other Security Documents or any of the Property, through foreclosure proceedings or otherwise; provided, however, that nothing herein shall inhibit or prevent Lender from suing on the Note, foreclosing, or exercising any power of sale under the Security Instrument, or exercising any other rights and remedies thereunder. This Agreement is not collateral or security for the debt of Borrower pursuant to the Loan, unless Lender expressly elects in writing to make this Agreement additional collateral or security for the debt of Borrower pursuant to the Loan, which Lender is entitled to do in its sole and absolute discretion. It is not necessary for an Event of Default (as defined in the Security Instrument) to have occurred for Lender to exercise its rights pursuant to this Agreement. Notwithstanding any provision of the Note, the Security Instrument, or any of the Other Security Documents, the obligations pursuant to this Agreement are exceptions to any non-recourse or exculpation provision contained therein. Indemnitor is fully and personally liable for such obligations, and its liability is not limited to the original or amortized principal balance of the Loan or the value of the Property.

5. Survival. The obligations and liabilities of Indemnitor under this Indemnity shall fully survive indefinitely notwithstanding any termination, satisfaction, assignment, entry of a judgment of foreclosure, exercise of any power of sale, or delivery of a deed in lieu of foreclosure of the Security Instrument.

6. Interest. Any amounts payable to any Lender under this Agreement shall become immediately due and payable on written demand and, if not paid within thirty (30) days of such demand therefor, shall bear interest at a per annum rate equal to the lesser of (a) 5% plus the Applicable Interest Rate (as such term is defined in the Note) or (b) the maximum interest rate which Indemnitor may by law pay or Lender may charge and collect, from the date payment was

due.

7. Waivers.

(a) Indemnitor hereby waives (i) any right or claim of right to cause a marshalling of any Indemnitor's assets or to cause Lender to proceed against any of the security for the Loan before proceeding under this Agreement against Indemnitor; (ii) and relinquishes all rights and remedies accorded by applicable law to Indemnitor, except any rights of subrogation which Indemnitor may have, provided that the indemnity provided for hereunder shall neither be contingent upon the existence of any such rights of subrogation nor subject to any claims or defenses whatsoever which may be asserted in connection with the enforcement or attempted enforcement of such subrogation rights including, without limitation, any claim that such subrogation rights were abrogated by any acts of Lender; (iii) the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against or by Lender; (iv) notice of acceptance hereof and of any action taken or omitted in reliance hereon; (v) presentment for payment, demand of payment, protest or notice of nonpayment or failure to perform or observe, or other proof, or notice or demand; and (vi) all homestead exemption rights against the obligations hereunder and the benefits of any statutes of limitations or repose. Notwithstanding anything to the contrary contained herein, Indemnitor hereby agrees to postpone the exercise of any rights of subrogation with respect to any collateral securing the Loan until the Loan shall have been paid in full.

(b) INDEMNITOR HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN, THE APPLICATION FOR THE LOAN, THE COMMITMENT FOR THE LOAN, THE SECURITY INSTRUMENT, THIS AGREEMENT OR ANY OF THE OTHER SECURITY DOCUMENTS OR ANY ACTS OR OMISSIONS OF ANY LENDER IN CONNECTION THEREWITH.

8. Indemnitor's Representations and Warranties. Indemnitor represents and warrants that:

(a) if Indemnitor is a corporation, partnership or limited liability company, it has the full corporate/partnership/limited liability company power and authority to execute and deliver this Agreement and to perform its obligations hereunder; the execution, delivery and performance of this Agreement by Indemnitor has been duly and validly authorized; and all requisite corporate/partnership/limited liability company action has been taken by Indemnitor to make this Agreement valid and binding upon Indemnitor, enforceable in accordance with its terms;

(b) if Indemnitor is an individual, he/she is acting in an individual capacity and has full power and authority to make this Agreement valid and binding upon Indemnitor, enforceable in accordance with its terms;

(c) if Indemnitor is a corporation, partnership or limited liability company, its execution of, and compliance with, this Agreement is in the ordinary course of business of that

Indemnitor and will not result in the breach of any term or provision of the charter, by-laws, partnership or trust agreement, articles of organization, operating agreement or other governing instrument of that Indemnitor or result in the breach of any term or provision of, or conflict with or constitute a default under or result in the acceleration of any obligation under any agreement, indenture or loan or credit agreement or other instrument to which the Indemnitor or the Property is subject, or result in the violation of any law, rule, regulation, order, judgment or decree to which the Indemnitor or the Property is subject;

(d) if Indemnitor is an individual, his/her execution of, and compliance with, this Agreement will not result in the breach of any term or provision of, or conflict with or constitute a default under or result in the acceleration of any obligation under any agreement, indenture or loan or credit agreement or other instrument to which Indemnitor or the Property is subject, or result in the violation of any law, rule, regulation, order, judgment or decree to which the Indemnitor or the Property is subject;

(e) there is no action, suit, proceeding or investigation pending or, to the best of Indemnitor's knowledge, threatened against it which, either in any one instance or in the aggregate, may result in any material adverse change in the business, operations, financial condition, properties or assets of Indemnitor, or in any material impairment of the right or ability of Indemnitor to carry on its business substantially as now conducted, or in any material liability on the part of Indemnitor, or which would draw into question the validity of this Agreement or of any action taken or to be taken in connection with the obligations of Indemnitor contemplated herein, or which would be likely to impair materially the ability of Indemnitor to perform under the terms of this Agreement;

(f) it does not believe, nor does it have any reason or cause to believe, that it cannot perform each and every covenant contained in this Agreement;

(g) no approval, authorization, order, license or consent of, or registration or filing with, any governmental authority or other person, and no approval, authorization or consent of any other party is required in connection with this Agreement;

(h) to the best of Indemnitor's knowledge, this Agreement constitutes a valid, legal and binding obligation of Indemnitor, enforceable against it in accordance with the terms hereof; and

(i) Indemnitor has filed all federal, state, county, municipal, and city income and other tax returns required to have been filed by it and has paid all taxes and related liabilities which have become due pursuant to such returns or pursuant to any assessments received by it; Indemnitor does not know of any basis for any additional assessment in respect of any such taxes and related liabilities for prior years.

9. No Waiver. No delay by any Indemnified Party in exercising any right, power or privilege under this Agreement shall operate as a waiver of any such privilege, power or right.

10. Transfer of Loan. (a) Lender may, at any time, sell, transfer or assign the Note, the Security Instrument, this Agreement and the Other Security Documents, and any or all servicing rights with respect thereto, or grant participations therein or issue mortgage pass-

through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement (the "Securities"). Lender may forward to each purchaser, transferee, assignee, servicer, participant or investor in such Securities or any credit rating agency rating such Securities (the foregoing entities hereinafter collectively referred to as the "Investor") and each prospective Investor, all documents and information (including financial information) but not limited to, which Lender now has or may hereafter acquire relating to Indemnitor and the Property, whether furnished by Indemnitor, any Guarantor (as defined in the Security Instrument), or otherwise, as Lender determines necessary or desirable.

(a) Upon any transfer or proposed transfer contemplated above and by the Security Instrument, at Lender's request, Indemnitor shall provide an estoppel certificate to the Investor or any prospective Investor in such form, substance and detail as Lender, such Investor or prospective Investor may reasonably require.

11. Notices. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person with receipt acknowledged by the recipient thereof, (ii) one (1) Business Day (hereinafter defined) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Indemnitor:

AW-MAGPIG, LLC, HW-MAGPIG, LLC, and MW-MAGPIG, LLC
11 East Hawthorne Avenue
Valley Stream, New York 11580
Attention: Mike Wasserman

Michael S. Wasserman
11 East Hawthorne Avenue
Valley Stream, New York 11580

Alan B. Wasserman
11 East Hawthorne Avenue
Valley Stream, New York 11580

Harold Wasserman
11 East Hawthorne Avenue
Valley Stream, New York 11580

If to Lender:

Bear Stearns Commercial Mortgage, Inc.
383 Madison Avenue
New York, New York 10179
Attention: J. Christopher Hoeffel

or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Agreement, the term "Business Day" shall mean any day other than Saturday, Sunday or any other day on which banks are required or authorized to close in New York, New York.

Any party by notice to the others may designate additional or different addresses for subsequent notices or communications.

12. Submission to Jurisdiction. With respect to any claim or action arising hereunder, Indemnitor (a) irrevocably submits to the nonexclusive jurisdiction of the courts of the State of New York and the United States District Court located in the County of New York, and appellate courts from any thereof, and (b) irrevocably waives any objection which it may have at any time to the laying on venue of any suit, action or proceeding arising out of or relating to this Agreement brought in any such court, and (c) irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

13. No Third-party Beneficiary. The terms of this Agreement are for the sole and exclusive protection and use of Lender. No party shall be a third-party beneficiary hereunder, and no provision hereof shall operate or inure to the use and benefit of any such third party.

14. Duplicate Originals; Counterparts. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

15. No Oral Change. This Agreement, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of any Indemnitor or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

16. Headings, etc. The headings and captions of various paragraphs of this Agreement are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

17. Number and Gender/Successors and Assigns. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons referred to may require. Without limiting the effect of specific references in any provision of this Agreement, the term "Indemnitor" shall be deemed to refer to each and every person or entity comprising an Indemnitor from time to time, as the sense of a particular provision may require, and to include the heirs, executors, administrators, legal representatives, successors and assigns of Indemnitor, all of whom shall be bound by the provisions of this Agreement, provided that no obligation of any Indemnitor may be assigned except with the written consent of Lender. Each reference herein to Lender shall be deemed to include its successors and assigns. This Agreement shall inure to the benefit of Lender and its

respective successors and assigns forever.

18. Joint and Several Liability. If Indemnitor consists of more than one person or entity, the obligations and liabilities of each such person hereunder are joint and several.

19. Release of Liability. Any one or more parties liable upon or in respect of this Agreement may be released without affecting the liability of any party not so released.

20. Rights Cumulative. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies which Lender has under the Note, the Security Instrument, or the Other Security Documents or would otherwise have at law or in equity.

21. Inapplicable Provisions. If any term, condition or covenant of this Agreement shall be held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision.

22. Governing Law. This Agreement shall be deemed to be a contract entered into pursuant to the laws of the State of New York and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of New York.

23. Miscellaneous. Wherever pursuant to this Agreement (i) Lender exercises any right given to it to approve or disapprove, (ii) any arrangement or term is to be satisfactory to Lender, or (iii) any other decision or determination is to be made by Lender, the decision of Lender to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory and all other decisions and determinations made by Lender, shall be in the sole and absolute discretion of Lender and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

[remainder of page intentionally left blank; signature page follows]

[SIGNATURE PAGE TO INDEMNITY AGREEMENT]

IN WITNESS WHEREOF, this Agreement has been executed by Indemnitor and is effective as of the day and year first above written.

INDEMNITOR: BORROWER

AW-MAGPIG, LLC, a Delaware limited liability company

By: AW-MAGPIG OWNER, LLC, a Delaware limited liability company, its sole member

By: _____
Name: Alan B. Wasserman
Title: Member

HW-MAGPIG, LLC, a Delaware limited liability company

By: HW-MAGPIG OWNER, LLC, a Delaware limited liability company, its sole member

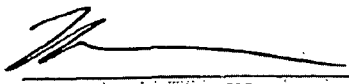
By: _____
Name: Harold Wasserman
Title: Member

MW-MAGPIG, LLC, a Delaware limited liability company

By: MW-MAGPIG OWNER, LLC, a Delaware limited liability company, its sole member

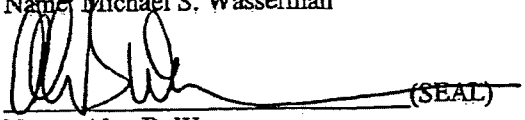
By: _____
Name: Michael S. Wasserman
Title: Member

INDEMNITOR: PRINCIPAL



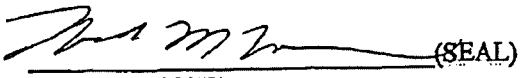
(SEAL)

Name: Michael S. Wasserman



(SEAL)

Name: Alan B. Wasserman



(SEAL)

Name: Harold Wasserman

EXHIBIT G

Assignments of Mortgage and ALR

[attached hereto]

Book 2121-43
2016043567 06/14/2016 10:07:26:497 Assignment of Mortgage
Fee: $9.00 County Tax: $0.00 State Tax: $0.00



2016043567 John T. Hopkins II Richland County R.O.D.

[above space for recording information only]

After recording, please return to:
Kilpatrick Townsend & Stockton LLP
214 N. Tryon Street, Suite 2500
Charlotte, NC 28202
Attn: Capital Markets (DS)

MERS MIN: 8000101-0000004106-0

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

ASSIGNMENT OF MORTGAGE, FIXTURE FILING AND SECURITY AGREEMENT

THIS ASSIGNMENT OF MORTGAGE, FIXTURE FILING AND SECURITY AGREEMENT is made by **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.**, a Delaware stock corporation, having a mailing address at MERS Commercial, P.O. Box 2300, Flint, Michigan 45801-2300 ("***Assignor***") to **U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, AS SUCCESSOR-IN-INTEREST TO BANK OF AMERICA, N.A., AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE, FOR BEAR STEARNS COMMERCIAL MORTGAGE SECURITIES INC., COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-TOP26,** having a mailing address of 190 South LaSalle Street, 7th Floor, Chicago, Illinois 60603 ("***Assignee***");

KNOW ALL MEN BY THESE PRESENTS, that in consideration of the sum of TEN DOLLARS ($10.00) lawful money of the United States and other good and valuable consideration, to it in hand paid at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, Assignor has granted, bargained, sold, assigned, transferred and set over, and by these presents does grant, bargain, sell, assign, transfer and set over unto Assignee all right, title and interest, of any kind whatsoever, in and to of Assignor in and to the following:

MORTGAGE, FIXTURE FILING AND SECURITY AGREEMENT made as of March 1, 2007 (as same may have been amended, restated, extended, supplemented or otherwise modified from time to time, herein the "***Mortgage***") by AW-MAGPIG, LLC, HW-MAGPIG, LLC and MW-MAGPIG, LLC, each a Delaware limited liability company, to Assignor, as nominee for Bear Stearns

Commercial Mortgage, Inc., a New York corporation, together with its successors and assigns, and recorded with the Office of the Register of Deeds for Richland County, South Carolina on March 6, 2007, in **Book 1288 at Page 3842.**

TOGETHER WITH the subject promissory note(s), loan documents, obligations and collateral described in said Mortgage, and the moneys due and to grow due thereon with the interest and other amounts accruing thereon, and any and all other related security instruments which secure the indebtedness and/or obligations secured by said Mortgage.

TO HAVE AND TO HOLD the same unto Assignee, its successors and assigns, forever.

[*the remainder of this page is intentionally left blank*]

IN WITNESS WHEREOF, Assignor has caused these presents to be duly executed as of _____, 2016.

ASSIGNOR:

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a Delaware stock corporation

_____
Witness #1

_____
Witness #2

By: _____
Name: Wayne Ventus, Jr. _____
Title: Vice President _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

COUNTY OF _____)

On April _____, 2016, before me, _____, personally appeared _____, who signed the above-referenced instrument in my presence and who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her respective authorized capacity, and that by his/her signature on the instrument that person, to the entity upon behalf of which that person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____ (Notary Seal)
Signature of Notary

CALIFORNIA ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Alameda

On June 8, 2016, before me **Heidi Vleisides**, Notary Public, personally appeared **Wayne Ventus, Jr.**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

HEIDI VLEISIDES
Commission # 2139611
Notary Public - California
Alameda County
My Comm. Expires Feb 5, 2020

Signature _____
Signature of Notary Public

Book 2121-47
2016043568 06/14/2016 10:07:26:580 Asgmt Lease Rent Profit
Fee: $10.00 County Tax: $0.00 State Tax: $0.00
2016043568 John T. Hopkins II Richland County R.O.D.

[above space for recording information only]

After recording, please return to:
Kilpatrick Townsend & Stockton LLP
214 N. Tryon Street, Suite 2500
Charlotte, NC 28202
Attn: Capital Markets (DS)

MERS MIN: 8000101-0000004106-0

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

ASSIGNMENT OF ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF ASSIGNMENT OF LEASES AND RENTS is made by **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.**, a Delaware stock corporation, having a mailing address at MERS Commercial, P.O. Box 2300, Flint, Michigan 45801-2300 ("***Assignor***") to **U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, AS SUCCESSOR-IN-INTEREST TO BANK OF AMERICA, N.A., AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE, FOR BEAR STEARNS COMMERCIAL MORTGAGE SECURITIES INC., COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-TOP26,** having a mailing address of 190 South LaSalle Street, 7th Floor, Chicago, Illinois 60603 ("***Assignee***");

KNOW ALL MEN BY THESE PRESENTS, that in consideration of the sum of TEN DOLLARS ($10.00) lawful money of the United States and other good and valuable consideration, to it in hand paid at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, Assignor has granted, bargained, sold, assigned, transferred and set over, and by these presents does grant, bargain, sell, assign, transfer and set over unto Assignee all right, title and interest, of any kind whatsoever, in and to of Assignor in and to the following:

ASSIGNMENT OF LEASES AND RENTS made as of March 1, 2007 (as the same may have been amended, restated, extended, supplemented or otherwise modified form time to time, herein the "***ALR***"), by AW-MAGPIG, LLC, HW-MAGPIG, LLC and MW-MAGPIG, LLC, each a Delaware limited liability

company, to Assignor, as nominee for Bear Stearns Commercial Mortgage, Inc., a New York corporation, together with its successors and assigns, recorded with the Office of the Register of Deeds for Richland County, South Carolina on March 6, 2007 in **Book 1288 at Page 3902**.

TOGETHER WITH the subject promissory note(s), loan documents and obligations described in said ALR, and the moneys due and to grow due thereon with the interest, and any and all other related security instruments which secure the indebtedness and/or obligations secured by said ALR.

TO HAVE AND TO HOLD the same unto Assignee, its successors and assigns, forever.

[the remainder of this page is intentionally left blank]

IN WITNESS WHEREOF, Assignor has caused these presents to be duly executed as of _____, 2016.

ASSIGNOR:

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a Delaware stock corporation

Witness #1

Witness #2

By: _____

Name: Wayne Ventus, Jr.

Title: Vice President

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

COUNTY OF Alameda)

On April ____, 2016, before me, _____, personally appeared _____, who signed the above-referenced instrument in my presence and who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her respective authorized capacity, and that by his/her signature on the instrument that person, to the entity upon behalf of which that person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____ (Notary Seal)

Signature of Notary

CALIFORNIA ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Alameda

On June 8, 2016, before me **Heidi Vleisides**, Notary Public, personally appeared **Wayne Ventus, Jr.**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

HEIDI VLEISIDES
Commission # 2139611
Notary Public - California
Alameda County
My Comm. Expires Feb 5, 2020

Signature _____
Signature of Notary Public

EXHIBIT H

Letter dated August 1, 2014

[attached hereto]

Commercial Mortgage Servicing
CMBS Asset Management
1901 Harrison Street, 2nd Floor
Oakland, CA 94612

August 1, 2014

VIA OVERNIGHT DELIVERY
and Email

AW-MAGPIG, LLC, HW-MAGPIG,
And MW-MAGPIG, LLC
11 East Hawthorne Avenue
Valley Stream, New York 11580
Attn: Mike Wasserman

Cc:

Ellis, Lawhorne & Sims, P.A.
1501 Main St., 5th Floor
PO Box 2285 (29202)
Columbia, SC 29201
Attn: William P. McElveen, Jr., Esq.

Re: **Loan #:** [redacted]0543
Borrower: AW-MAGPIG, LLC, HW-MAGPIG, and MW-MAGPIG, LLC
Lender: Wells Fargo Bank, N.A. as Master Servicer on behalf of U.S. BANK NATIONAL ASSOCIATION, as Trustee, successor-in-interest to BANK OF AMERICA, N.A., as Trustee, successor by merger to LASALLE BANK NATIONAL ASSOCIATION, as Trustee, for Bear Stearns Commercial Mortgage Securities Inc., Commercial Mortgage Pass-Through Certificates, Series 2007-TOP26

Dear Borrower:

Wells Fargo Bank, N.A., ("Wells"), is servicer of the Loan and authorized to take certain actions in connection with the Loan on behalf of Lender, the current holder of the Loan.

The Borrower's indebtedness is evidenced by a note and is secured by, among other things, the collateral described in a related security agreement. The note, the security instrument, and all other documents executed in connection with the Loan, as the same may have been amended, modified or assigned, are the "Loan Documents." Capitalized terms not defined in this letter have their respective meanings as defined in the Loan Documents.

This letter serves as notice to Borrower that an event has occurred which triggered the requirement that this Loan be cash managed, pursuant to the terms of the Loan Documents and specifically due to the Definition of a "Cash Management Event" subsection "(d) the date Piggly Wiggly ceases operations at the Property or otherwise "goes dark," or terminates its lease". Lender hereby demands that Borrower implement the required cash management arrangement and execute all necessary documents to do so within thirty (30) days of the date of this letter.

Additionally, in order to properly administer the cash management, Borrower must prepare and provide a budget for the property to Wells as soon as possible. Borrower will be required to provide such other financial information and further cooperation as Wells may request.

Borrower's failure to cooperate with Wells and its counsel in implementing the cash management arrangement and providing such information and cooperation as Lender may require will be an event of default under the Loan Documents.

You are further advised that neither this letter, nor any negotiations or communications which may ensue, shall constitute a waiver of, or any agreement to forbear from exercising, Lender's rights to exercise any and all remedies available to it pursuant to the Loan Documents or otherwise at law. No delay by Lender in exercising any rights or remedies shall operate as a waiver of any rights or remedies Lender may have. Any such waiver shall not be effective unless set forth in writing, duly executed by an authorized representative of Lender. You are not entitled to rely upon any oral statements made, or purported to be made, by or on behalf of Lender in connection with any alleged agreement by or on behalf of Lender to refrain from exercising any of its rights under the Loan Documents or otherwise pursuant to applicable law. Any and all rights and remedies available to Lender are cumulative and may be exercised separately, successively or concurrently at the sole discretion of Lender. Lender expressly reserves all of its rights and remedies under the Loan Documents, at law and in equity.

The Borrower must execute this letter where indicated below to indicate the Borrower's agreement to fully cooperate with Wells and Lender in establishing the required cash management arrangement.

Our Cash Management Servicing Team will be implementing these cash management requirements in your Loan Documents. Please contact Pauline Agan at 510-446-3105 or aganp@wellsfargo.com immediately upon receipt of this letter to begin the process. Thank you for your prompt attention to this matter.

Please return an executed copy of this letter to:

Jeremy Davis
Wells Fargo CMS
1901 Harrison St., 2nd Floor
Oakland, CA 94612
jeremy.r.davis@wellsfargo.com

Sincerely,

By: _____

Name: Jeremy Davis

Title: Assistant Vice President, Asset Management

ACKNOWLEDGED AND AGREED
THIS _____ DAY OF _____, 2014.

BORROWER:

AW-MAGPIG, LLC a Delaware limited liability company

By: AW-MAGPIG OWNER, LLC a Delaware Limited liability company, its sole member

By: _____
Name: Alan B. Wasserman
Title: Member

HW-MAGPIG, LLC a Delaware limited liability company

By: HW-MAGPIG OWNER, LLC a Delaware Limited liability company, its sole member

By: _____
Name: Harold. Wasserman
Title: Member

MW-MAGPIG, LLC a Delaware limited liability company

By: MW-MAGPIG OWNER, LLC a Delaware Limited liability company, its sole member

By: _____
Name: Michael S. Wasserman
Title: Member

EXHIBIT I

Letter dated December 18, 2014

[attached hereto]

KILPATRICK TOWNSEND
ATTORNEYS AT LAW

KILPATRICK TOWNSEND & STOCKTON LLP
www.kilpatricktownsend.com

Suite 2400, 214 North Tryon Street
Charlotte, NC 28202-2381
t 704 338 5000 f 704 338 5125

t 704 338 5008 f 704 371 8270
direct dial
starnower@kilpatricktownsend.com

December 18, 2014

Via Overnight Delivery and Electronic Mail

AW-MAGPIG, LLC, HW-MAGPIG, ("*Borrower & Guarantor*")
And MW-MAGPIG, LLC
11 East Hawthorne Avenue
Valley Stream, New York 11580
Attn: Mike Wasserman
Email: xcmac@aol.com

Michael S. Wasserman ("*Guarantor*")
11 East Hawthorne Ave.
Valley Stream, NY 11580
Email: xcmac@aol.com

Alan B. Wasserman ("*Guarantor*")
11 East Hawthorne Ave.
Valley Stream, NY 11580
Email: AWasserman@whatformgirl.com

Harold Wasserman ("*Guarantor*")
11 East Hawthorne Ave.
Valley Stream, NY 11580

Re: *That certain mortgage loan (the "Loan") evidenced by the Promissory Note (the "Note") dated March 1, 2007 in the original principal amount of $4,500,000.00 executed and delivered by Borrower, in favor of Bear Stearns Commercial Mortgage, Inc. ("Original Lender"); Loan Number [redacted]0543*

Ladies and Gentlemen:

Wells Fargo Bank, National Association, a national banking association is acting in its capacity as the master servicer of the Loan on behalf of U.S. Bank National Association, as Trustee, successor-in-interest to Bank of America, N.A., as Trustee, successor by merger to LaSalle Bank National Association, as Trustee, for the registered holders of Bear Stearns Commercial Mortgage Securities, Inc., Commercial Mortgage Pass-Through Certificates, Series 2007-TOP26 ("*Lender*"), the current holder of the Loan. The Loan is secured by, among other

things, the collateral described in that certain Mortgage, Fixture Filing and Security Agreement dated as of March 1, 2007 (the "***Mortgage***") made by Borrower to Mortgage Electronic Registration Systems, Inc., as Mortgagee. Lender is currently holder of the Mortgage. Original Lender and Borrower also entered into that certain Clearing Account Agreement and that certain Cash Management Agreement of even date therewith. The Note, the Mortgage, the Clearing Account Agreement and Cash Management Agreement and all other documents executed in connection with the Loan are referred to herein as the "Loan Documents." Capitalized terms not defined herein shall have their respective meanings as defined in the Loan Documents.

This letter constitutes notice to Borrower and Guarantors of Borrower's continuing Event of Default under the Loan Documents, specifically under Section 10.1(q) of the Mortgage, for its failure to abide by the terms of the Cash Management Agreement and the Clearing Account Agreement with regard to the events relating to the Lease with the tenant, Piggly Wiggly, which have created a Cash Management Event. Borrower has failed to comply with the letter sent to Borrower by Wells dated August 1, 2014 ("***Cash Management Event Letter***") for more than sixty (60) days. Borrower has also failed to pay Lender amounts due under the Note as required during the occurrence of a Cash Management Event. Other undeclared events of default may also exist. The foregoing is not meant to be an inclusive listing of all of Borrower's defaults.

Please be further advised that Article 4 of the Note provides that upon the occurrence of an Event of Default, Lender shall be entitled to receive, and Borrower shall pay, interest on the entire unpaid principal sum at the Default Rate as defined in the Note ("***Default Interest***"). Default Interest shall be computed upon the occurrence of the Event of Default from the date due, in this instance, sixty (60) days after the date of the Cash Management Event Letter, until the date credited.

Guarantors are hereby advised of their potential liability as set forth under the Loan Documents, including but not limited to, the Indemnity Agreement.

Neither this letter, nor any negotiations or communications which may ensue shall constitute a waiver of, or any agreement to forbear from exercising, Lender's rights to exercise any and all remedies which may be available pursuant to the Loan Documents or otherwise at law or in equity. No delay by Lender in exercising any rights or remedies shall operate as a waiver of any rights or remedies of Lender. Any such waiver shall not be effective unless set forth in writing, duly executed by an authorized representative of Lender. You shall not be entitled to rely upon any oral statements made or purported to be made by or on behalf of Lender in connection with any alleged agreement by or on behalf of Lender to refrain from exercising any of its rights under the Loan Documents or otherwise pursuant to applicable law. Any and all rights and remedies available to Lender shall be cumulative and may be exercised separately, successively or concurrently at the sole discretion of Lender. Lender expressly reserves all of its rights and remedies under the Loan Documents, at law and in equity.

This matter requires your immediate attention. Please contact me at 704-338-5008 with any questions.

Very truly yours,

Susan C. Tarnower

Susan C. Tarnower

SCT:adm

cc: Ellis, Lawhorne & Sims, P.A. (*via overnight delivery*)
1501 Main St., 5th Floor
PO Box 2285 (29202)
Columbia, SC 29201
Attn: William P. McElveen, Jr., Esq.

EXHIBIT J

2/24/16 Letter

[attached hereto]

KILPATRICK TOWNSEND
ATTORNEYS AT LAW

KILPATRICK TOWNSEND & STOCKTON LLP
www.kilpatricktownsend.com

Suite 2400, 214 North Tryon St.
Charlotte NC 28202-2381

James H. Pulliam
direct dial 704 338 5288
jpulliam@kilpatricktownsend.com

February 24, 2016

VIA U.P.S. OVERNIGHT DELIVERY
AW-MAGPIG, LLC, HW-MAGPIG, LLC
and MW-MAGPIG, LLC
11 East Hawthorne Avenue
Valley Stream, New York 11580
Attn: Mike Wasserman

RE: That certain loan (the "**Loan**") in the original principal amount of $4,500,000.00 made to AW-MAGPIG, LLC, HW-MAGPIG, LLC and MW-MAGPIG, LLC, each a Delaware limited liability company (individually or collectively, "**Borrower**"), by Bear Stearns Commercial Mortgage, Inc., a New York corporation ("**Original Lender**"), as evidenced by, among other documents, that certain Promissory Note dated March 1, 2007, executed by Borrower and payable to the order of Original Lender in the original principal amount of $4,500,000.00 (the "**Note**"); that certain Mortgage, Fixture Filing and Security Agreement March 1, 2007 (the "**Mortgage**"), given by Borrower for the benefit of Original Lender and recorded in the Richland County Register of Deeds (the "**Register**"); that certain Assignment of Leases, Rents, Income and Profits made as of March 1, 2007 by Borrower for the benefit of Original Lender and recorded in the Register (the "**ALR**"). The Note, the Mortgage, the ALR and all other documents executed or delivered in connection with the Loan are collectively referred to herein as the "**Loan Documents**."

Dear Borrower:

As you know from prior correspondence our firm is legal counsel to U.S. Bank National Association, as Trustee, successor-in-interest to Bank of America, N.A., as Trustee, successor by merger to LaSalle Bank National Association, as Trustee, for the registered holders of Bear Stearns Commercial Mortgage Securities, Inc., Commercial Mortgage Pass-Through Certificates, Series 2007-TOP26 ("**Noteholder**"), assignee of and successor to Original Lender, and the present owner and holder of the Note and all other Loan Documents. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed or referenced in the Mortgage.

As you were notified by prior correspondence, certain Events of Default occurred due to your failure to abide by the terms of the Clearing Account Agreement and the Cash Management Agreement upon and after the occurrence of a Cash Management Event. Additional Events of Default may have occurred, including without limitation the Borrowers' failure to pay

Noteholder amounts due under the Note and Loan Documents as required during the occurrence of a Cash Management Event. We hereby confirm that all of the foregoing Events of Default continue and have not been waived by the Noteholder.

Pursuant to the terms of the Mortgage, upon the occurrence of an Event of Default, Noteholder may, at its option, declare all amounts outstanding to be immediately due and payable. The obligations include, without limitation, the entire outstanding principal amount of the Note, together with all accrued and unpaid interest (including default interest), late charges, prepayment fees and all other amounts owed or chargeable under the Loan Documents. The Noteholder has exercised this option to accelerate the Loan and declare all outstanding amounts to be immediately due and payable. Demand is hereby made for immediate payment in full of all Secured Obligations. You may contact Mike Dickerson at 972-868-5304 or mdickerson@c3cp.com to obtain the total amount of the indebtedness.

Noteholder has received periodic payments from Borrower. Notwithstanding the Received Funds, Noteholder has waived no rights or remedies in regards to existing defaults or otherwise and all amounts due under the Loan Documents, including, without limitation, all accrued late charges and default interest, remains due and owing. Any payments received have been and will be applied in accordance with the Loan Documents. The receipt and application of any future payments by the Borrower should not be construed as a waiver nor an accord and satisfaction or as Noteholder's agreement to accept a lesser amounts than are due under the Loan Documents nor waive any existing defaults. Noteholder's acceptance of any endorsement or statement on any check evidencing a payment or letter accompanying a payment is not and shall not be construed as an accord and satisfaction and is not and shall not be deemed to be binding upon Noteholder. Noteholder may accept any such payment or check without waiver of any rights or remedies and without prejudice to its rights to receive all amounts due under the Loan Documents or to pursue its remedies.

You are further advised that neither this letter, nor any negotiations or communications which may ensue shall constitute a waiver of the Noteholder's rights to exercise any and all remedies which may be available to it pursuant to the Loan Documents or otherwise at law. No delay by the Noteholder in exercising any rights or remedies shall operate as a waiver of any rights or remedies the Noteholder may have. Any such waiver shall not be effective unless set forth in writing, duly executed by an authorized representative of the Noteholder. You shall not be entitled to rely upon any oral statements made or purported to be made by or on behalf of Noteholder in connection with any alleged agreement by or on behalf of Noteholder to refrain from exercising any of its rights under the Loan Documents or otherwise pursuant to applicable law. Any and all right and remedies available to the Noteholder shall be cumulative and may be exercised separately, successively or concurrently at the sole discretion of the Noteholder.

Pursuant to Section 3.11 of the Mortgage and on behalf of the Noteholder, we request the following documents be provided in connection with the Property:

(1) A current rent roll/current leases and any amendments. The rent roll should be signed, dated and certified by the Borrower;

(2) 2014 and 2015 Year-End Financial Statements (Annual Balance Sheet and Profit and Loss Statement of Borrower). In the event the 2015 Financial Statement is not available, then all Quarterly Financial Statements since September 30, 2014;

(3) January 2016 Monthly Operating Statement;

(4) A property management report, showing the rental inquiries and/or rental applications received from tenants or prospective tenants;

(5) A report detailing all security deposits held in connection with any Lease of any part of the Property, including the name and identification number of the accounts in which such security deposits are held, the name and address of the financial institution;

(6) The 2015 and 2016 Annual Operating Budgets; and

(7) Any property inspection reports prepared within the last three years.

You are hereby notified that Noteholder shall strictly enforce the Loan Documents in accordance with their respective terms. If you have any questions, contact me directly or have your counsel contact me.

Sincerely,

Kilpatrick Townsend & Stockton LLP

James H. Pulliam

cc: Michael S. Wasserman
11 East Hawthorne Avenue,
Valley Stream, New York 11580
(via U.S. Mail)

Alan B. Wasserman
11 East Hawthorne Avenue,
Valley Stream, New York 11580
(via U.S. Mail)

Harold Wasserman
11 East Hawthorne Avenue,
Valley Stream, New York 11580
(via U.S. Mail)

Robert D. Dodson, Esq.
Law Offices of Robert Dodson, P.A.
1722 Main Street, Suite 200
Columbia, SC 29201
(via U.S. Mail)

S. Michael Dickerson (via e-mail)

EXHIBIT K

10/11/16 Letter

[attached hereto]

KILPATRICK TOWNSEND
ATTORNEYS AT LAW

KILPATRICK TOWNSEND & STOCKTON LLP
www.kilpatricktownsend.com

Suite 2400, 214 North Tryon St.
Charlotte NC 28202-2381

James H. Pulliam
direct dial 704 338 5288
jpulliam@kilpatricktownsend.com

October 11, 2016

VIA U.P.S. OVERNIGHT DELIVERY
AW-MAGPIG, LLC, HW-MAGPIG, LLC
and MW-MAGPIG, LLC
11 East Hawthorne Avenue
Valley Stream, New York 11580
Attn: Mike Wasserman

VIA U.P.S. OVERNIGHT DELIVERY
Michael S. Wasserman
11 East Hawthorne Avenue
Valley Stream, New York 11580

VIA U.P.S. OVERNIGHT DELIVERY
Alan B. Wasserman
11 East Hawthorne Avenue
Valley Stream, New York 11580

VIA U.P.S. OVERNIGHT DELIVERY
Harold Wasserman
11 East Hawthorne Avenue
Valley Stream, New York 11580

RE: That certain loan in the original principal amount of $4,500,000.00 (the "**Loan**") made to AW-MAGPIG, LLC, HW-MAGPIG, LLC and MW-MAGPIG, LLC, each a Delaware limited liability company (collectively, "**Borrower**"), by Bear Stearns Commercial Mortgage, Inc., a New York corporation ("**Original Lender**"), as evidenced by, among other documents, that certain Promissory Note dated March 1, 2007, executed by Borrower and payable to the order of Original Lender in the original principal amount of the Loan (the "**Note**"); that certain Mortgage, Fixture Filing and Security Agreement and that certain Assignment of Leases and Rents, each dated as of March 1, 2007 and given by Borrower for the benefit of Original Lender (the "**Mortgage**" and the "**ALR**", respectively); that certain Replacement Reserve and Security Agreement dated as of March 1, 2007, between Borrower and Original Lender (the "**Reserve Agreement**"); that certain Cash Management Agreement dated as of March 1, 2007, between The Bank of New York Trust Company, N.A., Borrower and Original Lender (the "**Cash Management Agreement**"); that certain Indemnity Agreement dated as of March 1, 2007, executed by Michael S. Wasserman, Alan B. Wasserman and Harold Wasserman (each a "**Guarantor**" and collectively, "**Guarantors**") and Borrower (collectively, "**Indemnitor**") in favor of Original Lender (the "**Guaranty**"). The Note, the Mortgage, the ALR, the Reserve Agreement, the Cash Management Agreement, the Guaranty and all other documents executed or delivered in connection with the Loan are collectively referenced herein as the "**Loan Documents**."

FURTHER NOTICE OF CASH MANAGEMENT EVENTS AND DEFAULTS AND DEMANDS FOR PAYMENT AND COMPLIANCE

Dear Borrower and Guarantors:

As you are aware, our firm is legal counsel to U.S. Bank National Association, as Trustee, successor-in-interest to Bank of America, N.A., as Trustee, successor by merger to LaSalle Bank National Association, as Trustee, for the registered holders of Bear Stearns Commercial Mortgage Securities, Inc., Commercial Mortgage Pass-Through Certificates, Series 2007-TOP26 ("**Noteholder**"), assignee of and successor to Original Lender, and the present owner and holder of the Note and all other Loan Documents. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed in the Cash Management Agreement.

As Borrower was previously notified, a Cash Management Event occurred when Piggly Wiggly ceased operations at the Property, vacated the Property or otherwise went "dark" (the "**PW Event**"), and certain Events of Default occurred due to Borrower's failure to abide by the terms of the Cash Management Agreement, including, without limitation, by failing to establish a Cash Management Account, failing to deposit or cause to be deposited therein all sums required under the Cash Management Agreement, and failing to timely submit an annual budget to Noteholder. Thereafter, Noteholder, through counsel, notified Borrower that Borrower was required to begin remitting the Monthly Deposit (as defined in the Reserve Agreement) to Noteholder on each ensuing Monthly Payment Date. Borrower has failed to remit any Monthly Deposit within five (5) days of the date same was due or thereafter, and each such failure constituted an additional Event of Default.

As a result of Borrower's failure to comply with the Cash Management Agreement, all Excess Cash Flow following the PW Event (or any prior Cash Management Event) (collectively, "**Subject Excess Cash**"), which should have been disbursed to Noteholder for deposit into the Excess Cash Flow Reserve Fund (as defined in the Mortgage), has not been so disbursed, and Borrower has further failed to remit any Subject Excess Cash directly to Noteholder. As a result, additional Events of Default have occurred.

In addition to its failure to comply with the Cash Management Agreement, Borrower has also failed, after each prior notice of an Event of Default, to direct all Tenants and Lease Guarantors (as defined in the ALR) to remit to Noteholder all Rents and all sums due under any Lease Guaranties (as defined in the ALR), as required under Section 2.2 of the ALR. Each such failure constitutes a Default (as defined in the ALR) and an Event of Default.

Pursuant to Section 3.11 of the Mortgage, Borrower is required to deliver certain financial records and other documentation periodically or upon Noteholder's request (collectively, the "**Required Documentation**"). Borrower has failed to deliver certain Required Documentation required to be periodically delivered to Noteholder. In addition, pursuant to said Section 3.11 and on behalf of Noteholder, the undersigned has made multiple written requests of Borrower to provide certain Required Documentation (collectively, the "Requested

Documentation"). Despite said requests, Borrower has failed to provide any of the Requested Documentation, and said failures have resulted in additional Events of Default (each a "**Document Default**").

Further, Borrower has conveyed, assigned and/or transferred interests in certain Leases, Rents and/or other portions of the Property to Whatfor, LLC and/or Hardscrabble, LLC, as evidenced by, without limitation, the pleadings and judgments entered in Richland County Case No. 2015-CP-40-1371. Accordingly, Borrower violated or otherwise failed to comply with provisions of Sections 3.7 and 4.3 and Article 8 of the Mortgage, constituting additional Events of Default (each a "**Transfer Default**"). In addition, due to any Document Default or any Transfer Default, the Debt is fully recourse to Borrower pursuant to the applicable provisions of the Note and the Mortgage.

Borrower has been previously notified and is hereby further notified that Noteholder has exercised its option to declare the entire unpaid Debt (as defined in the Mortgage) to be immediately due and payable. Borrower has failed to pay the entire unpaid Debt, thereby resulting in an additional Event of Default (together with each Document Default, Transfer Default and each other Event of Default referenced hereinabove, collectively the "**Subject Defaults**", and each a "**Subject Default**"). Each Subject Default constituted an additional Cash Management Event (together with the PW Event, collectively the "**Subject CM Events**"). We hereby confirm on behalf of Noteholder that the Subject Defaults and the Subject CM Events are continuing and have not been waived by Noteholder or otherwise cured.

Demand is again made for immediate payment in full of the entire unpaid Debt. Borrower may contact the undersigned to obtain the total amount thereof. Further, Noteholder again demands that Borrower immediately comply with its obligations under the Cash Management Agreement, including, without limitation, by establishing a Cash Management Account, depositing or causing to be deposited all required amounts therein, submitting an annual budget to Noteholder for the remaining portion of 2016 and timely submitting annual budgets to Noteholder for each applicable calendar year thereafter.

Demand is further made, pursuant to Section 3.11 of the Mortgage, that Borrower provide to Noteholder the Requested Documentation and other Required Documentation described on Schedule 1 attached hereto and that Borrower also provide all other Required Documentation which Borrower is obligated to provide to Noteholder hereafter.

Pursuant to the terms of the Mortgage and the ALR, Borrower assigned to Noteholder, among other rights and collateral, all of Borrower's right, title and interest in and to any and all "Rents," as respectively defined therein, and Borrower was granted a revocable license to operate and manage the Property and collect, among other amounts, all Rents and other sums received pursuant to any Lease Guaranties (the "License"). Borrower is obligated to hold all such amounts in trust for the benefit of Noteholder for use in paying sums due on the Debt. Upon the first Subject Default, or any prior Event of Default, the License was automatically

revoked and Noteholder became immediately entitled to possession of all Rents and other applicable sums.

Demand is hereby made that all Rents and other applicable sums, whether in or coming into the possession, custody or control of Borrower, Whatfor, LLC, any other property manager, any Guarantor, or any employee, officer, agent, affiliate, member, manager, trustee or any other Person on behalf of any of the foregoing, be immediately remitted to Noteholder after paying the current (and not delinquent) operating costs and expenses incurred in connection with the Property. This demand is continuing and includes all Rents and other applicable sums held on the first Subject Default, or any prior Event of Default, as well as all Rents and other applicable sums which were or are collected thereafter. In furtherance of the foregoing, Noteholder hereby demands that Borrower comply with its obligations under Section 2.2 of the ALR by immediately directing all Tenants and Lease Guarantors to remit directly to Noteholder all Rents and all sums due under any Lease Guaranties. Please contact the undersigned to obtain the applicable payment instructions. This demand is and shall be continuing unless and until a Cash Management Account is established, as applicable, at which time Noteholder demands that Borrower immediately comply with its obligations under the Cash Management Agreement to direct all Tenants to send all Rents due from such Tenants directly to the Clearing Account.

Noteholder has received periodic payments from Borrower (collectively, the "Received Funds"). As Borrower has been previously notified, notwithstanding any Received Funds, Noteholder has waived no rights or remedies in regards to any Subject Default or otherwise and the entire unpaid Debt remains due and owing. Any Received Funds and any payments received hereafter have been and will be applied in accordance with the Loan Documents. The receipt and application of any future payments by Borrower is not and should not be construed as a waiver or an accord and satisfaction or as Noteholder's agreement to accept an amount less than the entire unpaid Debt or waive any of the Subject Defaults. Noteholder's acceptance of any endorsement or statement on any check evidencing a payment or letter accompanying a payment is not and shall not be construed as an accord and satisfaction and is not and shall not be deemed to be binding upon Noteholder. Noteholder may accept any such payment or check without waiver of any rights or remedies and without prejudice to its rights to receive all amounts due under the Loan Documents or to pursue its remedies.

This notice is also being sent to Guarantors to notify them of the Subject Defaults, the Subject CM Events and the foregoing demands. Further, notice is hereby provided that Noteholder has incurred and will likely continue to incur Losses (as defined in the Guaranty) in connection with one or more Subject Defaults and/or related circumstances or events (collectively, the "**Subject Losses**"), including, without limitation, Borrower's willful misconduct or gross negligence, Borrower's misapplication or conversion of Rents following any Subject Default (or any other Default or Event of Default), and/or Borrower's failure to obtain Noteholder's prior written consent to any assignment, transfer, or conveyance of the Property or any interest therein (including, without limitation, any Leases and/or Rents) as required by the Mortgage. Demand is hereby made upon Indemnitor for immediate payment in full of the Subject Losses, which include, without limitation, Noteholder's attorneys' fees and costs in

connection with the foregoing and all Subject Excess Cash. Indemnitor may contact the undersigned to obtain the total amount of Subject Losses which can currently be calculated.

Neither Borrower nor any Guarantor is or shall be entitled to expect notice in the future of Noteholder's elections or specifications of their respective obligations under any of the Loan Documents by reason of the notices and specifications set forth in this letter.

You are further advised that neither this letter, nor any negotiations or communications which may ensue shall constitute a waiver of the Noteholder's rights to exercise any and all remedies which may be available to it pursuant to the Loan Documents or otherwise at law. No delay by the Noteholder in exercising any rights or remedies shall operate as a waiver of any rights or remedies the Noteholder may have. Any such waiver shall not be effective unless set forth in writing, duly executed by an authorized representative of the Noteholder. You shall not be entitled to rely upon any oral statements made or purported to be made by or on behalf of Noteholder in connection with any alleged agreement by or on behalf of Noteholder to refrain from exercising any of its rights under the Loan Documents or otherwise pursuant to applicable law. Any and all right and remedies available to the Noteholder shall be cumulative and may be exercised separately, successively or concurrently at the sole discretion of the Noteholder.

Neither this letter nor any statement by or on behalf of Noteholder as to the amount due and owing under any of the Loan Documents shall constitute: (i) a waiver of any rights of Noteholder to collect any additional amounts to which Noteholder may be lawfully entitled, whether pursuant to the Loan Documents, at law, in equity or otherwise; or (ii) an offer to settle, waive or release any rights of Noteholder under any of the Loan Documents.

You are hereby notified that Noteholder shall strictly enforce the Loan Documents in accordance with their respective terms. We your compliance with the matters set forth herein. If you have any questions, contact me directly or have your counsel contact me.

Sincerely,

Kilpatrick, Townsend & Stockton LLP

James H. Pulliam by DHS

James H. Pulliam

cc: Robert D. Dodson, Esq.
Law Offices of Robert Dodson, P.A.
1722 Main Street, Suite 200
Columbia, SC 29201
(via overnight delivery)

Ellis, Lawhorne & Sims, P.A.
1501 Main Street, 5th Floor
Columbia, South Carolina 29201
Attention: William P. McElveen, Jr., Esq.
(via overnight delivery)

The Bank of New York Trust Company, N.A.
2 North LaSalle Street, Suite 1020
Chicago, Illinois 60602
Attention: CML
Facsimile No.: (312) 827-8562
(via facsimile and overnight delivery)

S. Michael Dickerson (via e-mail)

SCHEDULE 1

1. A current rent roll signed, dated and certified by or on behalf of Borrower and otherwise in compliance with the provisions of Section 3.11(a)(i) of the Mortgage.

2. Monthly operating statements for January 2016 and each month thereafter through and including August 2016, certified by or on behalf of Borrower and otherwise in compliance with the provisions of Section 3.11(a)(ii) of the Mortgage.

3. Annual balance sheets and profit and loss statements of Borrower for 2014 and 2015, prepared and certified by Borrower, and any financial statements prepared by an independent certified public accountant within ninety (90) days after the close of each fiscal year of Borrower.

4. A property management report certified by or on behalf of Borrower and otherwise in compliance with the provisions of Section 3.11(b)(i) of the Mortgage.

5. An accounting setting forth all security deposits held in connection with any Lease and which accounting otherwise complies with the provisions of Section 3.11(b)(ii) of the Mortgage.

6. Annual operating budgets for 2015 and 2016 which comply with the provisions of Section 3.11(b)(iii) of the Mortgage.

7. Copies of all current Leases and effective Lease Guaranties and any amendments, extensions, renewals, supplements, assumptions or modifications thereof.

8. All property inspection reports for the Property or any portion thereof prepared within the last three years.

EXHIBIT L

Letter dated December 19, 2014

[attached hereto]

KILPATRICK TOWNSEND
ATTORNEYS AT LAW

KILPATRICK TOWNSEND & STOCKTON LLP
www.kilpatricktownsend.com

Suite 2400, 214 North Tryon Street
Charlotte, NC 28202-2381
t 704 338 5000 f 704 338 5125

direct dial 704 338 5008
direct fax 704 371 8270
STarnower@kilpatricktownsend.com

December 19, 2014

Via Overnight Delivery and Electronic Mail

AW-MAGPIG, LLC, HW-MAGPIG, ("*Borrower*")
And MW-MAGPIG, LLC
11 East Hawthorne Avenue
Valley Stream, New York 11580
Attn: Mike Wasserman

Re: That certain mortgage loan (the "Loan") evidenced by the Promissory Note (the "Note") dated March 1, 2007 in the original principal amount of $4,500,000.00 executed and delivered by Borrower, in favor of Bear Stearns Commercial Mortgage, Inc. ("Original Lender");Loan Number [redacted]0543

Ladies and Gentlemen:

Wells Fargo Bank, National Association, a national banking association is sending this notice in its capacity as the master servicer of the Loan on behalf of U.S. Bank National Association, as Trustee, successor-in-interest to Bank of America, N.A., as Trustee, successor by merger to LaSalle Bank National Association, as Trustee, for the registered holders of Bear Stearns Commercial Mortgage Securities, Inc., Commercial Mortgage Pass-Through Certificates, Series 2007-TOP26 ("*Lender*"), the current holder of the Loan. The Loan is secured by, among other things, the collateral described in that certain Mortgage, Fixture Filing and Security Agreement dated as of March 1, 2007 (the "*Mortgage*") made by Borrower to Mortgage Electronic Registration Systems, Inc., as Mortgagee. Lender is currently holder of the Mortgage. Original Lender and Borrower also entered into that certain Replacement Reserve and Security Agreement of even date therewith (the "*Replacement Reserve Agreement*"). The Note, the Mortgage, the Replacement Reserve Agreement and all other documents executed in connection with the Loan are referred to herein as the "*Loan Documents*." Capitalized terms not defined herein shall have their respective meanings as defined in the Loan Documents.

We have previously notified you of an on-going Event of Default in that letter dated December 18, 2014. This letter constitutes notice to Borrower under Section 1(b) of the Replacement Reserve Agreement that Borrower is now required to make the current Monthly Deposit of $776.60 (the "*Monthly Deposit*") into the Replacement Reserve beginning on the Monthly Payment Date immediately following this notice, January 1, 2015.

Please note that under Section 1(b) of the Replacement Reserve Agreement, Lender may increase the Monthly Deposit, in Lender's reasonable discretion, pursuant to the terms of the Replacement Reserve Agreement.

Neither this letter, nor any negotiations or communications which may ensue shall constitute a waiver of, or any agreement to forbear from exercising, Lender's rights to exercise any and all remedies which may be available pursuant to the Loan Documents or otherwise at law or in equity. No delay by Lender in exercising any rights or remedies shall operate as a waiver of any rights or remedies of Lender. Any such waiver shall not be effective unless set forth in writing, duly executed by an authorized representative of Lender. You shall not be entitled to rely upon any oral statements made or purported to be made by or on behalf of Lender in connection with any alleged agreement by or on behalf of Lender to refrain from exercising any of its rights under the Loan Documents or otherwise pursuant to applicable law. Any and all rights and remedies available to Lender shall be cumulative and may be exercised separately, successively or concurrently at the sole discretion of Lender. Lender expressly reserves all of its rights and remedies under the Loan Documents, at law and in equity.

This matter requires your immediate attention. Please contact me at 704-338-5008 with any questions.

Very truly yours,

Susan C. Tarnower

Susan C. Tarnower

cc: Ellis, Lawhorne & Sims, P.A. (via overnight delivery)
1501 Main St., 5th Floor
PO Box 2285 (29202)
Columbia, SC 29201
Attn: William P. McElveen, Jr., Esq.

Michael S. Wasserman ("*Guarantor*")
11 East Hawthorne Ave.
Valley Stream, NY 11580

Alan B. Wasserman ("*Guarantor*")
11 East Hawthorne Ave.
Valley Stream, NY 11580

Harold Wasserman ("*Guarantor*")
11 East Hawthorne Ave.
Valley Stream, NY 11580

EXHIBIT M

Letter dated July 27, 2016

[attached hereto]

KILPATRICK TOWNSEND
ATTORNEYS AT LAW

KILPATRICK TOWNSEND & STOCKTON LLP
www.kilpatricktownsend.com

Suite 2400, 214 North Tryon St.
Charlotte NC 28202-2381
t 704 338 5000 f 704 338 5125

July 27, 2016

direct dial 704 338 5288
direct fax 704 371 8311
jpulliam@kilpatricktownsend.com

Via Email and U.S. First Class Mail

Robert Dodson, Esquire
Rdodson@rdodsonlaw.com
Law Offices of Robert Dodson, P.A.
1722 Main Street, Suite 200
Columbia, SC 29201

RE: U.S. Bank National Association, et al. v. AW-MAGPIG, LLC, HW-MAGPIG, LLC; and MW-MAGPIG, LLC; Richland County, SC Case No. 2016-CP-40-2470 ("Civil Action")

Dear Mr. Dodson:

In our communications you question the importance of the cash management requirements imposed by the parties' Loan Documents (as defined in the Complaint)[1]. Do the Borrowers' representatives deny that the Borrowers have failed to comply with the cash management provisions imposed by the Loan Documents? Will the Borrowers now comply? Will the Borrowers provide an accounting for the rents and other income collected by the Property since the occurrence of the Cash Management Event? Do the Borrowers deny the existence of a Cash Management Event? This letter shall renew the Plaintiff's request that the Borrower cooperate and take the necessary action to implement cash management. If I do not receive affirmative response to this cash management inquiry within five (5) business days then our client will assume that the Borrowers remain unwilling to voluntarily implement cash management.

Pursuant to a letter, dated February 24, 2016, we requested that the Borrowers provide certain documentation pursuant to Section 3.11 of the Mortgage. I have attached a copy of that letter for your reference. In addition to the documents requested therein, we request all financial statements for 2016. Will your client provide the documents requested? If I do not receive affirmative response to this renewed request for the documents as set forth in that letter as expanded herein within five (5) business days then our client will assume that the Borrowers remain unwilling to voluntarily produce the documents.

[1] Capitalized terms used but not defined herein shall have the meanings ascribed or referenced in the "Mortgage" as defined in paragraph 9 of the Complaint filed in the Civil Action.

Nothing in this letter constitutes an offer or counteroffer. Plaintiff has and continues to receive periodic payments from Borrower (the "**Borrower Payments**"). Notwithstanding the Borrower Payments, Plaintiff has waived no rights or remedies in regards to existing defaults or otherwise and all amounts due under the Loan Documents, including, without limitation, all accrued late charges and default interest, remains due and owing. Any Borrower Payments received have been and will be applied in accordance with the Loan Documents. The receipt and application of any future payments by the Borrower should not be construed as a waiver nor an accord and satisfaction or as Plaintiff's agreement to accept a lesser amounts than are due under the Loan Documents nor waive any existing defaults. Plaintiff's acceptance of any endorsement or statement on any check evidencing a payment or letter accompanying a payment is not and shall not be construed as an accord and satisfaction and is not and shall not be deemed to be binding upon Plaintiff. Plaintiff may accept any such payment or check without waiver of any rights or remedies and without prejudice to its rights to receive all amounts due under the Loan Documents or to pursue its remedies.

You are further advised that neither this letter, nor any negotiations or communications which may ensue shall constitute a waiver of the Plaintiff's rights to exercise any and all remedies which may be available to it pursuant to the Loan Documents or otherwise at law. No delay by the Plaintiff in exercising any rights or remedies shall operate as a waiver of any rights or remedies the Plaintiff may have. Any such waiver shall not be effective unless set forth in writing, duly executed by an authorized representative of the Plaintiff. You shall not be entitled to rely upon any oral statements made or purported to be made by or on behalf of Plaintiff in connection with any alleged agreement by or on behalf of Plaintiff to refrain from exercising any of its rights under the Loan Documents or otherwise pursuant to applicable law. Any and all right and remedies available to the Plaintiff shall be cumulative and may be exercised separately, successively or concurrently at the sole discretion of the Plaintiff.

We look forward to hearing from you. Please advise if you have any questions.

Sincerely,

Kilpatrick Townsend & Stockton LLP

By: James H. Pulliam

cc: Mike Dickerson, via email

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

RICHLAND COUNTY
FILED
2017 FEB -9 PM 2:12
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, AS SUCCESSOR-IN-INTEREST TO BANK OF AMERICA, N.A., AS SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE REGISTERED HOLDERS OF BEAR STEARNS COMMERCIAL MORTGAGE SECURITIES, INC., COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-TOP26,

Plaintiff,

vs.

ALAN B. WASSERMAN; HAROLD WASSERMAN, AND MICHAEL S. WASSERMAN,

Defendants/Third-Party Plaintiffs,

AW-MAGPG, LCC; HW-MAGPIG, LLC; and MW-MAGPIG, LLC,

Defendants/Third-Party Plaintiffs,

vs.

WELL FARGO BANK, N.A. and MERIDIAN CAPITAL GROUP, LLC,

Third-Party Defendants.

Civil Action No: 2016-40-02470

DEFENDANTS AND THIRD PARTY PLAINTIFFS' ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT, COUNTERCLAIMS AND THIRD-PARTY COMPLAINT

JURY TRIAL DEMANDED

Comes now the Defendants/Third-Party Plaintiffs, by and through undersigned counsel, who would Answer Plaintiff's First Amended Complaint, make Counterclaims against the Plaintiffs and who would bring a Third-Party Complaint as follows:

ANSWER

General Denial

1. Defendant/Third-Party Plaintiff denies each and every allegation of Plaintiff's Complaint not specifically admitted herein.

Specific Denial

2. The allegations in paragraph 1 are legal conclusions that do not require a responsive pleading. To the extent a responsive pleading is required, Defendant/Third-Party Plaintiffs admits so much of paragraph 1 as alleges Plaintiff has attempted to file a foreclosure action. Any remaining inferences or allegations are denied.
3. The allegations of paragraph 2 are denied as stated.
4. Defendants/Third-Party Plaintiffs admit so much of paragraph 3 as alleges the corporate Defendants are Delaware corporations. The remaining allegations of paragraph 3 are legal conclusions that do not require a responsive pleading. To the extent a responsive pleading is required, the allegations of paragraph 3 are denied as stated.
5. Defendants/Third-Party Plaintiffs admit so much of paragraph 4 as alleges that the individually named Plaintiffs are New York residents. The remaining allegations of paragraph 4 are denied as stated.
6. The allegations in paragraph 5 are legal conclusions that do not require a responsive pleading. To the extent a responsive pleading is required, these allegations are denied.
7. The allegations of paragraph 6 are legal conclusions that do not require a response. To the extent a response is required, the allegations of paragraph 6 are denied as stated.
8. The allegations of paragraphs 7 through 55 are denied as stated.

For a First Affirmative Defense
Failure to State a Claim

9. Plaintiffs' Complaint fails to state facts showing they are entitled to relief and the Complaint should be dismissed pursuant to Rule 12(b)(6) SCRCP.

For a Second Affirmative Defense
Lack of Jurisdiction

10. Jurisdiction is improperly asserted in this Court because the alleged loan documents which are attached to Plaintiffs' Complaint provide that the parties "submit to the exclusive jurisdiction of the state courts of the State of New York for the purposes of all legal proceedings arising out of or relating to this Agreement." Defendants/Third-Party Plaintiffs submit that the above captioned action should be dismissed since jurisdiction is not proper in this Court.

For a Third Affirmative Defense
Improper Venue

11. Venue is improperly asserted in this Court because the alleged loan documents provide multiple venue selection clauses which limit venue to the State of New York. Defendants/Third-Party Plaintiffs submit that the above captioned action should be dismissed since venue is not proper in this Court.

For a Fourth Affirmative Defense
Unclean Hands

12. Plaintiffs come to the Court with unclean hands and therefore their claims against the Defendants/Third-Party Plaintiff are barred. As outlined more fully below, Plaintiffs have committed numerous and repeated acts of malfeasance, misfeasance, wrong doing and unethical conduct which bar them from any recovery.

For a Fifth Affirmative Defense
Waiver

13. Plaintiffs' action and inaction constitutes a waiver and Defendants/Third-Party Plaintiffs plead the doctrine of waiver as absolute bar to this action.

For a Sixth Affirmative Defense
Fraud in the Inducement

14. As outlined and pleaded more fully below, Defendants/Third-Party Plaintiffs would show that Plaintiffs and the third-party Defendants committed fraud in the inducement of any contract and Defendants/Third-Party Plaintiffs pleads this as a complete or partial bar to this action.

For a Seventh Affirmative Defense
Accord and Satisfaction

15. Defendants/Third-Party Plaintiffs would show that they paid their monthly mortgage payments in full, up to and through the filing of this lawsuit and that Plaintiffs accepted these payments. Defendants/Third-Party Plaintiffs therefore plead accord and satisfaction as a complete or partial bar to this action.

For an Eighth Affirmative Defense
Breach of Contract Accompanied by a Fraudulent Act

16. As outlined and pleaded more fully above and below, Defendants/Third-Party Plaintiffs would show that Plaintiffs and the Third-Party Defendants committed fraudulent acts in breaching the contracts at issue and Defendant/Third-Party Plaintiffs pleads this as a complete or partial bar to this action.

For a Ninth Affirmative Defense
Insufficient Service of Process/Lack of Service of Process

17. Defendants/Third-Party Plaintiffs would show they were not served with the Verification to Plaintiffs' Complaint in accordance with the applicable Rules of Civil Procedure and/or statutory law and therefore Plaintiffs action should be dismissed.

For a Tenth Affirmative Defense
Improperly Named Plaintiff

18. Without waiving any other defenses or claims they may have, Defendants/Third-Party Plaintiffs would show that the Plaintiff is improperly named and is not a proper party to this action. More specifically, according to the mortgage documents attached to Plaintiffs' Complaint Bear Stearns Commercial Mortgage, Inc. is the mortgagor but the lawsuit does not list this entity as a Plaintiff and instead names Bear Stearns Commercial Mortgage Securities, Inc. Because the proper party is not named, Plaintiffs' action should be dismissed.

For an Eleventh Defense
Breach of Fiduciary Duty

19. As outlined and pleaded more fully above and below, Defendant/Third-Party Plaintiffs would show that Plaintiff and the Third-Party Defendant breached their fiduciary duty and the Defendant/Third-Party Plaintiffs plead this as a complete or partial bar to this action.

For a Twelfth Defense
Unconscionability

20. Defendants/Third-Party Plaintiffs would show that the terms and conditions claimed and sought to be enforced by Plaintiffs in this lawsuit are unreasonable and unconscionable and Defendants/Third-Party Plaintiffs plead the unconscionability doctrine as a complete and/or partial defense in this action.

For a Thirteenth Defense
Usury

21. Defendants/Third Party Plaintiffs would show that the terms and conditions claimed and sought to be enforced by the Plaintiffs would result in violation of South Carolina's

and/or New York usury laws and Defendants/Third-Party Plaintiffs plead usury as a complete and/or partial defense in this action.

For a Fourteenth Defense
Breach of Implied Term of Good Faith and Fair Dealing

22. Every contract has an implied term of good faith and fair dealing. Defendants/Third-Party Plaintiff would show that Plaintiffs have violated this provision, have acted in bad faith and their conduct should operate as a complete and/or partial bar to any recovery.

For a Fifteenth Defense
Offset

23. Defendants/Third Party Plaintiffs have asserts counterclaims and third party claims as outlined and pleaded more fully below. Defendants/Third Party Plaintiffs plead offset as a complete and/or partial defense in this action based upon the counterclaims and third party claims asserted below.

For a Sixteenth Defense
Application of New York State Law

24. Defendants/Third-Party Plaintiffs would show that documents attached to Plaintiffs' Complaint require application of New York State law to this action and New York State law should be applied.

For a Seventeenth Defense
Reservation of Other Affirmative Defenses

25. Defendants/Third-Party Plaintiffs specifically reserve and do not intend to waive any other affirmatives defenses available under common law or statutory law.

COUNTERCLAIMS AND THIRD-PARTY COMPLAINT

Factual Allegations

26. Toward the end of calendar year 2006 and at the beginning of calendar year 2007, AW-Magpig and the other Defendants/Third-Party Plaintiffs sought to finance commercial property located in or around Northeast Columbia, South Carolina commonly referred to as Magnolia Point Shopping Center.

27. Defendants/Third-Party Plaintiffs approached representatives of the Third-Party Defendant, Meridian Capital Group, LLC (hereinafter "Meridian") about the possibility of securing financing for them with a reputable lender.

28. In so doing, Defendants/Third-Party Plaintiffs explained to representatives of Meridian the potentially volatile nature of commercial shopping centers like Magnolia Point and specifically that tenants would come and go from the shopping center, break leases or otherwise vacate leased or rented space without prior notice.

29. In addition, Defendants/Third-Party Plaintiffs explained tenants at the shopping centers would often default on leases or simply not pay leases forcing the landlord to initiate eviction proceedings and collection actions in order to recover rental payments that were owed.

30. Representatives of the Defendants/Third-Party Plaintiffs sought commercially reasonable terms that would account for the volatile nature of commercial shopping centers like Magnolia Point and they explained they would continue paying their mortgage – principal, interest and taxes, even during volatile or economically depressed times.

31. During this same time period (end of calendar year 2006 and at the beginning of calendar year 2007) Meridian secured financing for the Defendants/Third-Party Plaintiffs with Bear Stearns Commercial Mortgage, Inc.

32. On information and belief and unbeknownst to Defendants/Third-Party Plaintiffs, Meridian unlawfully and illegally conspired with Bear Stearns Commercial Mortgage, Inc. in order to secure financing that took unfair advantage of Defendants/Third-Party Plaintiffs by incorporating numerous terms and conditions into the mortgage documents that were unsuitable, unfair, unconscionable and were against the directive and wishes of what the Defendants/Third-Party Plaintiffs had requested when they initially approached Meridian about financing.

33. By way of example, the Plaintiffs to this lawsuit contend that the mortgage documents at issue would require Defendants/Third-Party Plaintiffs to setup a lockbox if a tenant at shopping broke a lease and moved out of the shopping.

34. In fact, that event happened – Piggly Wiggly, the anchor tenant moved out of the shopping center and Plaintiffs insisted on additional money from Defendants/Third-Party Plaintiffs even though the Defendants/Third-Party Plaintiffs paid their mortgage in full (principal, interest and escrow) during all times relevant to this action including times they were not receiving rental income from Piggly Wiggly.

35. Defendants/Third-Party Plaintiffs were not aware of these terms and conditions because they were not provided with copies of the documents prior to closing or at closing.

36. Instead, representatives of Defendants/Third-Party Plaintiffs signed the mortgage documents at the insistence of and relying upon the false and misleading representations of Meridian and Bear Stearns Commercial Mortgage, Inc.

37. Thereafter, Defendants/Third-Party Plaintiffs made full, complete and timely mortgage payments to Plaintiffs and the Third-Party Defendant, Wells Fargo, and at all times

relevant to this action Defendants/Third-Party Plaintiffs paid their mortgage in full (principal, interest and escrow).

38. Around April, 2014 a tenant at the shopping, Piggly Wiggly, notified Defendants/Third-Party Plaintiffs of its intension to break its lease with Defendants/Third Party Plaintiffs and move out of the shopping center.

39. Shortly thereafter, Piggly Wiggly in fact broke its lease with Defendants/Third-Party Plaintiffs and moved out of the shopping center.

40. Nonetheless, Defendants/Third-Party Plaintiffs continued timely and fully pay their entire mortgage payment – principal, interest and escrow.

41. Thereafter, Plaintiff and the Third-Party Defendant, Wells Fargo, began to insist that in addition to the mortgage payments Defendant/Third-Party Plaintiffs had to also pay additional sums to the Plaintiffs and/or Wells Fargo because Piggly Wiggly had vacated the property.

42. Thereafter, Plaintiffs and/or Wells Fargo illegally and unlawfully converted the mortgage payments being made by Defendants/Third-Party Plaintiffs and applying them to a host of illegal and unlawful fees, charges, late charges and the like that Plaintiffs and Wells Fargo had devised as part of its illegal and unlawful scam and scheme to drain resources from the shopping center.

43. In furtherance of its scam and scheme, Plaintiffs then commenced this action which acted as a cloud upon the title of the property making it impossible for Defendants/Third-Party Plaintiffs to refinance the property, sell the property or locate and secure another anchor tenant to replace Piggly Wiggly.

44. In essence, Plaintiffs has initiated this lawsuit for nothing more than a technical default because Piggly Wiggly vacated the property as an anchor tenant.

45. In so doing, however, Plaintiffs have made it impossible for Defendants/Third-Party Plaintiffs to secure another anchor tenant to replace Piggly Wiggly.

46. This action is part of Plaintiffs' and Wells Fargo's illegal, unlawful and fraudulent scheme to seize control of the shopping center from Defendants/Third-Party Plaintiffs.

For a First Cause of Action Against Meridian Capital Group, LLC
Negligence

47. Defendants/Third-Party Plaintiffs re-allege the allegations above as if repeated herein verbatim.

48. In operating a commercial financing company, Meridian has a duty to place clients like the Defendants/Third-Party Plaintiffs and specifically including the Defendants/Third-Party Plaintiffs in commercially reasonable mortgages that meet the specific needs of clients specifically including the Defendants/Third-Party Plaintiffs.

49. Additionally, Meridian had a duty to follow the directives of clients like the Defendants/Third-Party Plaintiffs and specifically including the Defendants/Third-Party Plaintiffs in securing financing.

50. Meridian breached these duties to the Defendant/Third-Party Plaintiffs in one or more of the following particulars:

    a. In failing to secure commercially reasonable financing for the Defendants/Third Party Plaintiffs;

    b. Placing Defendants/Third-Party Plaintiffs into commercially unreasonable loans/mortgages that were unsuited for their specific needs;

c. Failing to follow the directives of Defendants/Third-Party Plaintiffs in securing financing for them;

d. Such additional and further particulars as may be learned during discovery and/or proven at trial during this matter.

51. As a direct and proximate result of Meridian's negligence, as outlined and pleaded more fully above, Defendants/Third-Party Plaintiff has suffered injuries and damages.

52. More specifically, because of the events pleaded and outlined more fully above, Defendants/Third Party Plaintiffs cannot re-finance the property; cannot lease space to other commercial tenants and have suffered other damages to be proven at trial.

53. Defendants/Third-Party Plaintiffs demand judgment against Meridian and seek all damages allowed by law including punitive damages in an appropriate amount.

For a Second Cause of Action Against Meridian
Breach of Fiduciary Duty

54. Defendants/Third-Party Plaintiffs re-allege the allegations above as if repeated herein verbatim.

55. Defendant/Third-Party Plaintiffs and Meridian had a fiduciary relationship that existed because of the special confidence Defendant/Third-Party Plaintiffs placed in Meridian to find financing for them that was commercially reasonable and suited their particular individual needs given the nature of their business.

56. As outlined and pleaded above, Meridian breached its fiduciary duties to Defendants/Third-Party Plaintiffs in one or more of the following particulars:

a. In failing to secure commercially reasonable financing for the Defendants/Third-Party Plaintiffs;

b. Placing Defendants/Third-Party Plaintiffs into commercially unreasonable loans/mortgages that were unsuited for their specific needs;

c. Failing to follow the directives of Defendants/Third-Party Plaintiffs in securing financing for them;

d. Such additional and further particulars as may be learned during discovery and/or proven at trial during this matter.

57. As a direct and proximate result of Meridian's breach of fiduciary duty, as outlined and pleaded more fully above, Defendants/Third-Party Plaintiff has suffered injuries and damages.

58. More specifically, because of the events pleaded and outlined more fully above, Defendants/Third Party Plaintiffs cannot re-finance the property; cannot lease space to other commercial tenants and have suffered other damages to be proven at trial.

59. Defendants/Third-Party Plaintiffs demand judgment against Meridian and seek all damages allowed by law including punitive damages in an appropriate amount.

For a Third Cause of Action Against Meridian
Negligent Misrepresentation

60. Defendants/Third-Party Plaintiffs re-allege the allegations above as if repeated herein verbatim.

61. As outlined and pleaded more fully above, Meridian made false and misleading representations to Defendants/Third-Party Plaintiffs about securing commercially reasonable terms and conditions and terms and conditions that met its specific financial needs given the unique nature of its business.

62. On information and belief, Meridian had a pecuniary interest in securing a loan under any terms and conditions because it was paid by Bear Stearns for securing the loan and mortgage at issue in this lawsuit.

63. Nonetheless, and as outlined and pleaded more fully above, Meridian also owed Defendants/Third-Party Plaintiffs a duty of care to convey truthful and honest information to the Defendants/Third-Party Plaintiffs.

64. As outlined and pleaded more fully above, Meridian breached its duties to Defendants/Third-Party Plaintiffs.

65. Defendants/Third-Party Plaintiffs justifiably relied upon the representations of Meridian because, among other things, and as outlined and pleaded more fully above, Meridian was not only being paid by Bear Stearns but was also acting in a fiduciary capacity to Defendants/Third-Party Plaintiffs.

66. As a direct and proximate result of Meridian's breach of fiduciary duty, as outlined and pleaded more fully above, Defendants/Third-Party Plaintiff has suffered injuries and damages.

67. More specifically, because of the events pleaded and outlined more fully above, Defendants/Third Party Plaintiffs cannot re-finance the property; cannot lease space to other commercial tenants and have suffered other damages to be proven at trial.

68. Defendants/Third-Party Plaintiffs demand judgment against Meridian and seek all damages allowed by law including punitive damages in an appropriate amount.

For a Fourth Cause of Action Against Meridian and Plaintiffs
Civil Conspiracy

69. Defendants/Third-Party Plaintiffs re-allege the allegations above as if repeated herein verbatim.

70. On information and belief, representatives of Meridian and Plaintiffs unlawfully and illegally conspired for the purpose of injuring and damaging the Defendants/Third-Party Plaintiffs.

71. More specifically and as outlined and pleaded more fully above, Defendants/Third-Party Plaintiffs explained to Meridian the nature of their business and specifically that tenants would frequently come and go from the shopping center at issue.

72. As outlined and pleaded more fully above, Defendants/Third-Party Plaintiffs retained Meridian to secure financing for them on terms that met their individual needs given the nature of their business that they explained to representatives of Meridian.

73. On information and belief, despite these directives Meridian and the Plaintiff, Bear Stearns, conspired to injure the Defendants/Third-Party Plaintiffs.

74. More specifically, on information and belief, and as outlined and pleaded more fully above, Meridian and Bear Stearns insisted on and included terms and conditions in the mortgage documents that they knew or reasonably should have known Defendants/Third-Party Plaintiffs could not meet according to their own myopic interpretation of those loan documents.

75. Even more specifically, Meridian and Bear Stearns knew or reasonably should have known that because of the nature commercial shopping centers, tenants would come and go, would break leases, etc.

76. Nonetheless and despite what Meridian and Bear Stearns knew or reasonably should have known, they included terms and conditions in the loan and mortgage documents for the

purpose of injuring the Defendants/Third-Party Defendants by effectively forcing them to give up the property at issue even when their monthly mortgage payments were timely made and fully made.

77. In fact and as outlined and pleaded more fully above, Meridian and Bear Stearns' unlawful and illegal civil conspiracy has injured the Defendants/Third-Party Plaintiffs because Defendants/Third-Party Plaintiffs cannot refinance the property at issue; cannot find another anchor tenant to replace Piggly Wiggly and have suffered other legally recognized damages.

78. Defendants/Third-Party Plaintiffs demand judgment against Meridian and Plaintiffs and seek all damages allowed by law including punitive damages in an appropriate amount.

For a Fifth Cause of Action Against Meridian and Plaintiffs
Fraud

79. Defendants/Third-Party Plaintiffs re-allege the allegations above as if repeated herein verbatim.

80. On information and belief, Meridian was acting as an agent for Plaintiff, Bear Stearns, in that it was being paid by Bear Stearns to secure loans for it including the loan and mortgage at issue in this lawsuit.

81. As outlined and pleaded more fully above, Meridian individually and on behalf of Bear Stearns, made representations to Defendants/Third-Party Plaintiffs regarding the suitability of the loan and mortgage documents and the terms and conditions contained therein.

82. As outlined and pleaded more fully above, these representations were false and misleading.

83. More specifically, and as outlined and pleaded more fully above, the terms and conditions were commercially unreasonable but even more significantly, the terms and conditions did not suit the individual needs the Defendants/Third-Party Plaintiffs had expressed to Meridian and Bear Stearns.

84. Meridian and Bear Stearns knew of the falsity of the representations being made to Defendants/Third-Party Plaintiffs.

85. The representations and misrepresentations were material in a number of respects.

86. First, Defendants/Third-Party Plaintiffs would not have entered into the loan and mortgage documents had they known of Bear Stearns intention to essentially swindle the property at issue out from underneath them by trying to hold them in technical even though their mortgage payments were timely and paid in full.

87. In addition, the representations were material because they are at the heart of this litigation now before this Court.

88. Meridian and Bear Stearns made material misrepresentations to Defendants/Third-Party Plaintiffs with the specific intent that they act and rely upon them by entering into the loan and mortgage documents at issue.

89. Defendants/Third-Party Plaintiffs were ignorant of the falsity and untruth in the statements and representations made to them by Meridian and Bear Stearns.

90. Defendants/Third-Party Plaintiffs relied upon the truth of the representations made to them by Meridian and Bear Stearns.

91. Defendants/Third-Party Plaintiffs had a right to rely upon the representations made by Meridian and Bear Stearns.

92. More specifically and as outlined and pleaded more fully above, Defendants/Third-Party Plaintiffs enjoyed a fiduciary relationship with Meridian and Defendants/Third-Party Plaintiffs had a right to rely on their fiduciary relationship even if that fiduciary was also acting as an agent for Bear Stearns.

93. As outlined and pleaded more fully above, Meridian and Bear Stearns fraud and misrepresentations has injured the Defendants/Third-Party Plaintiffs because Defendants/Third-Party Plaintiffs cannot refinance the property at issue; cannot find another anchor tenant to replace Piggly Wiggly and have suffered other legally recognized damages.

94. Defendants/Third-Party Plaintiffs demand judgment against Meridian and Plaintiffs and seek all damages allowed by law including punitive damages in an appropriate amount.

For a Sixth Cause of Action Against Meridian, Plaintiffs and Wells Fargo Violation of South Carolina Unfair Trade Practices Act

95. Defendants/Third-Party Plaintiffs re-allege the allegations above as if repeated herein verbatim.

96. As outlined and pleaded more fully above, Meridian and Plaintiffs (Bear Stearns) have engaged in unfair and deceptive practices in violation of the South Carolina Unfair Trade Practices Act (S.C. Code §§ 39-5-10 *et. seq.*).

97. As it pertains to the Third-Party Defendant, Wells Fargo, it has engaged in unfair and deceptive practices in violation of the South Carolina Unfair Trade Practices Act.

98. More specifically, and as outlined and pleaded more fully above, Wells Fargo took and accepted mortgage payments from Defendants/Third-Party Plaintiffs and on those

payments the Defendants/Third-Party Plaintiffs specifically designated which portion of payments were for principal, interest and escrow.

99. Despite this clear designation, Wells Fargo unlawfully and illegally ginned up various fees, service charges, penalties and the like in order to siphon off the money designated for principal, interest and escrow and in order to declare Defendants/Third-Party Plaintiffs in default.

100. All of the conduct alleged and pleaded above, is capable of repetition and it fact has been repeated by Bear Stearns and Wells Fargo on multiple occasions with Defendants/Third-Party Plaintiffs.

101. More specifically, Defendants/Third-Party Plaintiffs have had other loans on other properties and both Bear Stearns and Wells Fargo have repeated their unlawful and illegal conduct in regards to Defendants/Third-Party Plaintiffs on these loans and property as well.

102. As outlined and pleaded more fully above, Bear Stearns and Wells Fargo's violation of the Unfair Trade Practices Act has injured the Defendants/Third-Party Plaintiffs because Defendants/Third-Party Plaintiffs cannot refinance the property at issue; cannot find another anchor tenant to replace Piggly Wiggly and have suffered other legally recognized damages.

103. Defendants/Third-Party Plaintiffs demand judgment against these parties and seek all damages allowed by law including treble damages, costs and attorney's fees.

For a Seventh Cause of Action against Plaintiffs and Wells Fargo
Breach of Contract Accompanied by a Fraudulent Act

104. Defendants/Third-Party Plaintiffs re-allege the allegations above as if repeated herein verbatim.

105. As outlined and pleaded more fully above, Defendants/Third-Party Plaintiffs entered a contract with Bear Stearns.

106. An implied term in any contract requires that the parties act in good faith and fair dealing toward one another.

107. Bear Stearns and Wells Fargo have had a fraudulent intent in breaching the contract with Defendants/Third-Party Plaintiffs.

108. More specifically and despite the fact that Defendants/Third-Party Plaintiffs have always paid their mortgage payments in full and on time, Bear Stearns and Wells Fargo have committed numerous and repeated fraudulent acts in siphoning off money paid to them by Defendants/Third-Party Plaintiffs and by trying to unfairly, unlawfully and illegally take advantage of the Defendants/Third-Party Plaintiffs.

109. Even more specifically and as outlined and pleaded more fully above, Wells Fargo has taken mortgage payments from the Defendants/Third-Party Plaintiffs and has applied them to a series of junk fees, penalties, etc. in an effort to declare Defendants/Third-Party Plaintiffs in default and seize the property at issue from them.

110. As outlined and pleaded more fully above, Wells Fargo and Bear Stearns' fraudulent acts and misrepresentations has injured the Defendants/Third-Party Plaintiffs because Defendants/Third-Party Plaintiffs cannot refinance the property at issue; cannot find another anchor tenant to replace Piggly Wiggly and have suffered other legally recognized damages.

111. Defendants/Third-Party Plaintiffs demand judgment against Wells Fargo and Plaintiffs and seek all damages allowed by law including punitive damages in an appropriate amount.

For a Eighth Cause of Action Against Wells Fargo
Conversion

112. Defendants/Third-Party Plaintiffs re-allege the allegations above as if repeated herein verbatim.

113. As outlined and pleaded above, Defendants/Third-Party Plaintiffs made numerous monthly mortgage payments to Wells Fargo.

114. In making these monthly mortgage payments, Defendants/Third-Party Plaintiffs included on each payment the exact amount of principal, interest and escrow from the total being paid.

115. Despite this clear directive, Wells Fargo illegally and unlawfully stole and converted Defendants/Third-Party Plaintiffs' payments and did not apply the payments as directed.

116. Instead, and as outlined and pleaded more fully above, Wells Fargo devised an unlawful scam and scheme where they created a variety fraudulent charges, fees, penalties and the like and effectively stole the mortgage payments and converted those funds for their own use.

117. Defendants/Third-Party Plaintiffs demand judgment against Wells Fargo and seek all damages allowed by law including punitive damages in an appropriate amount.

For a Ninth Cause of Action Against Bear Stearns and Wells Fargo
Civil Conspiracy

118. Defendants/Third-Party Plaintiffs re-allege the allegations above as if repeated herein verbatim.

119. On information and belief, representatives of Bear Stearns and Wells Fargo have unlawfully and illegally conspired for the purpose of injuring and damaging the Defendants/Third-Party Plaintiffs.

120. More specifically, on information and belief and as outlined and pleaded more fully above, these parties colluded and conspired in such a way that mortgage payments that were made by Defendants/Third-Party Plaintiffs were not properly credited but were instead eaten up by the illegal, unlawful, improper and fraudulent fees charged by Wells Fargo at the direction of Bear Stearns.

121. More specifically, on information and belief and as outlined and pleaded more fully above, by effectively conspiring to re-direct mortgage payments into fraudulent fees and charges, Wells Fargo claimed this money for itself while Bear Stearns declared Defendants/Third-Party Plaintiffs in default and in so doing made it impossible for the Defendants/Third-Party Plaintiffs to refinance the property, sell the property or lease the property to another anchor tenant like Piggly Wiggly.

122. In fact and as outlined and pleaded more fully above, Bear Stearns and Wells Fargo's unlawful and illegal civil conspiracy has injured the Defendants/Third-Party Plaintiffs because Defendants/Third-Party Plaintiffs cannot refinance the property at issue; cannot find another anchor tenant to replace Piggly Wiggly and have suffered other legally recognized damages.

123. Defendants/Third-Party Plaintiffs demand judgment against Bear Stearns and Wells Fargo and seek all damages allowed by law including punitive damages in an appropriate amount.

For a Tenth Cause of Action Against Plaintiff, Bear Stearns and Wells Fargo
Slander of Title

124. Defendants/Third-Party Plaintiffs re-allege the allegations above as if repeated herein verbatim.

125. Bear Stearns and Wells Fargo have published false and defamatory statements to the effect that Defendants/Third-Party Plaintiffs have not paid their mortgage and are in default on their mortgage.

126. In fact, these statements are false and were made by Bear Stearns and Wells Fargo based upon their own fraudulent and malicious conduct as outlined and pleaded more fully above.

127. More specifically, in misappropriating mortgage payments as outlined and pleaded more fully above and in commencing this lawsuit which is based upon the fraudulent scam and scheme of Bear Stearns and Wells Fargo, these parties have made it impossible for the Defendants/Third-Party Plaintiffs to refinance their property, lease their property to another anchor tenant like Piggly Wiggly or payoff the principal mortgage.

128. In essence, Bear Stearns commenced this action based on the fact that the anchor tenant, Piggly Wiggly, broke its lease and vacated shopping center.

129. Based upon the mortgage documents it fraudulently obtained (see above) it then filed the present action thus ensuring Defendants/Third-Party Plaintiffs could not

refinance the property, lease the property to another anchor tenant or payoff the principal mortgage.

130. Bear Stearns and Wells Fargo took this action for the improper, unlawful and illegal purpose of effectively taking title to the property at issue despite the fact that at all times relevant Defendants/Third-Party Plaintiffs had paid their mortgage on time and in full.

131. In so doing, Bear Stearns and Wells Fargo have harmed, injured and damaged the Defendants/Third-Party Plaintiffs.

132. Defendants/Third-Party Plaintiffs demand judgment against these parties and seek all damages allowed by law including punitive damages in an appropriate amount.

WHEREFORE, having fully Answered Plaintiff's Complaint and asserted Counterclaims and a Third-Party Complaint, Defendant/Third-Party Plaintiff prays for the following relief:

A. That Plaintiff's Complaint be dismissed with prejudice;

B. That Defendants/Third-Party Plaintiffs be awarded all taxable costs;

C. That Defendants/Third-Party Plaintiffs be awarded attorney's fees pursuant to S.C. Code §15-36 et. seq.;

D. That judgment be rendered against the Plaintiff and Third-Party Defendants (jointly and severally) and in favor of the Defendants/Third-Party Plaintiffs and that the Defendants/Third-Party Plaintiffs be awarded all actual, special, consequential and punitive damages in an appropriate amount (as determined by a jury);

E. That Defendants/Third-Party Plaintiffs be awarded treble damages where provided by statute; and

F. That the Court award such additional and further relief that the Court deems just and proper.

In accordance with the United States Constitution and South Carolina State Constitution, Defendants/Third-Party Plaintiffs demands a trial by jury.

Respectfully submitted,

LAW OFFICES OF ROBERT D. DODSON, P.A.

Robert D. Dodson, Esquire
1722 Main Street, Suite 200
Columbia, South Carolina 29201
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Email: rdodson@rdodsonlaw.com
Attorney for Defendant

Feb. 9, 2017

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, et al Plaintiff, vs. AW-MAGPIG, LLC; HW-MAGPIG, LLC; and MW-MAGPIG, LLC, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT Case No. 2016-CP-40-02470 **MOTION AND ORDER INFORMATION FORM AND COVER SHEET**

Plaintiff's Attorneys: Name: James H. Pulliam and David H. Simpkins Address: Kilpatrick Townsend & Stockton LLP 214 N. Tryon St., Ste. 2400, Charlotte, NC 28202 phone: 704.388.5288 fax: 704.371.8311 e-mail: jpulliam@kilpatricktownsend.com, dsimpkins@kilpatricktownsend.com	**Defendant's Attorney:** Name: Robert D. Dodson, Esq. Address: Robert Dodson, P.A., 1722 Main Street, Suite 200, Columbia, SC 29201 Phone: (803) 252-2600 e-mail: rdodson@rdodsonlaw.com

☐ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)
☒ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)
☒ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

RICHLAND COUNTY FILED
2016 AUG 22 AM 9:44
JEANNETTE W. McBRIDE C.C.P. & G.S.

SECTION I: Hearing Information

Nature of Motion: **Motion to Sequester Rents**
Estimated Time Needed: **20-30 minutes** Court Reporter Needed: ☒ **YES** / ☐ **NO**

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

August 19, 2016

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other: Filed with Complaint; fee waived per Clerk of Court's office.

JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed:

Collected by: Mette
☐ MOTION FEE COLLECTED: 8/22/16
☐ CONTESTED – AMOUNT DUE: _____

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FOR THE FIFTH JUDICIAL CIRCUIT
)
U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, AS SUCCESSOR-IN-INTEREST TO BANK OF AMERICA, N.A., AS SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE REGISTERED HOLDERS OF BEAR STEARNS COMMERCIAL MORTGAGE SECURITIES, INC., COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-TOP26,) Case No. 2016-CP-40-02470

Plaintiff,

vs.

AW-MAGPIG, LLC; HW-MAGPIG, LLC; and MW-MAGPIG, LLC,

Defendants.

MOTION FOR ORDER REQUIRING TURNOVER OF COLLATERAL AND SEQUESTERING RENTS

RICHLAND COUNTY
FILED
2016 AUG 22 AM 9:44
ANNETTE W. MCBRIDE
C.C.P. & G.S.

NOW COMES the plaintiff U.S. Bank National Association, as Trustee, successor-in-interest to Bank of America, N.A., as successor by merger to LaSalle Bank National Association, as Trustee for the registered holders of Bear Stearns Commercial Mortgage Securities, Inc., Commercial Mortgage Pass-Through Certificates, Series 2007-TOP26 ("**Plaintiff**"), for the reasons set forth in the Complaint and herein, and moves this Court for an Order requiring the turnover of certain of Plaintiff's collateral, sequestering the Rents (defined below) and directing remittance thereof, and for such other and further relief as the Court deems just and proper. In support of this Motion, Plaintiff shows to the Court the following:

1. This is a foreclosure action. The defendants AW-MAGPIG, LLC, HW-MAGPIG, LLC and MW-MAGPIG, LLC, each a Delaware limited liability company (collectively,

"**Borrowers**") own the Property[1] that is the subject of this action. The Property is primarily comprised of a retail shopping center known as Magnolia Pointe Shopping Center, located at 2000-2020 Clemson Road in Columbia.

2. Plaintiff is the current owner and holder, by assignment, of a loan made by Bear Stearns Commercial Mortgage, Inc. ("**Original Lender**") to Borrowers in the original principal amount of $4,500,000.00 (the "**Loan**") and all documents executed or delivered in connection therewith (collectively, the "**Loan Documents**"), including, without limitation:

(a) Promissory Note dated March 1, 2007, executed by Borrowers and payable Original Lender in the original principal amount of the Loan (the "**Note**");

(b) Mortgage, Fixture Filing and Security Agreement dated March 1, 2007, granted by Borrower to Mortgage Electronic Registration Systems, Inc. as nominee for Original Lender ("**MERS**") and recorded in the Richland County Register of Deeds (the "**Register**") on March 6, 2007 in Book 1288 at Page 3842 (the "**Mortgage**");

(c) Assignment of Leases and Rents dated March 1, 2007, executed by Borrowers for the benefit of Original Lender and recorded with the Register on March 6, 2007, in Book 1288 at Page 3902 (the "**ALR**"); and

(d) Cash Management Agreement dated March 1, 2007, between Borrowers, Original Lender and The Bank of New York Trust Company, N.A. (the "**Cash Management Agreement**");

(e) Clearing Account Agreement dated March 1, 2007, between Borrowers, Original Lender and North Fork Bank (the "**Clearing Account Agreement**");

(f) Cash Management Agreement dated March 1, 2007, between Borrowers, Original Lender and The Bank of New York Trust Company, N.A. (the "**Cash Management Agreement**"); and

(g) Replacement Reserve and Security Agreement dated as of March 1, 2007, between Borrowers and Original Lender (the "**Reserve Agreement**").[2]

---

[1] Capitalized terms used but not defined herein shall have the meanings ascribed or referenced in the Cash Management Agreement, as defined in paragraph 2.(d) hereof.

[2] True and accurate copies of the Note, the Mortgage, the ALR, the Cash Management Agreement, the Clearing Account Agreement and the Reserve Agreement are attached to the Complaint as Exhibits A, B and D through G.

3. By virtue of the Mortgage, Plaintiff holds a first priority mortgage lien and security interests, as applicable, against and in the Property, which includes, without limitation, the Land, the Improvements, the Leases, the Rents, and the Personal Property, as such terms are defined therein.

4. Further, pursuant to the Mortgage and the ALR, Borrowers have absolutely and unconditionally assigned and granted to Plaintiff, among other rights and collateral, all of their rights, title and interests in and to the Rents. Upon such assignment, Borrowers were granted a revocable license to operate and manage the Property and collect and receive the Rents, subject to the provisions of the Cash Management Agreement (the "**License**").

5. Pursuant to the Cash Management Agreement and the Clearing Account Agreement, Borrowers are obligated throughout the term of the Loan to cause all Rents to be directly deposited by Tenants into a Clearing Account, over which Borrowers are to have control unless and until a Cash Management Event occurs.

6. Upon a Cash Management Event, Borrowers are obligated to, among other things: (i) establish a Cash Management Account (as defined in the Cash Management Agreement) and deposit or cause to be deposited certain sums therein, including all amounts on deposit in the Clearing Account, and (ii) submit to Plaintiff an Annual Budget within thirty days of receiving notice that a Cash Management Period has commenced.

7. During a Cash Management Period, Cash Management Account funds are to be disbursed to pay amounts due under the Loan Documents (including, without limitation, the monthly debt service payments, reserve deposits and default interest, if applicable) and to pay to Borrower amounts for operating expenses shown in the Approved Annual Budget. All Excess

Cash Flow remaining thereafter is to be paid to Lender and held as additional collateral for the Loan.

8. During 2014, the Property's anchor tenant, Piggly Wiggly, vacated the Property, resulting in a Cash Management Event. By letter dated August 1, 2014, Plaintiff notified Borrowers of said Cash Management Event and the resulting commencement of a Cash Management Period and demanded that Borrowers comply with their obligations under the Cash Management Agreement. A Cash Management Period commenced on August 2, 2014.

9. Borrowers failed to do so and have also failed to remit to Plaintiff all Excess Cash Flow during the existing Cash Management Period(s), resulting in Defaults and Events of Default (collectively, the "**Cash Management Defaults**") and further Cash Management Events. On multiple occasions thereafter, Plaintiff has notified Borrowers of the Cash Management Defaults and reminded Borrowers of their obligations under the Cash Management Agreement.

10. By letter from its counsel dated February 24, 2016, Plaintiff again notified Borrowers of the Cash Management Defaults and also demanded that Borrowers provide certain financials and other documentation (collectively, the "**Requested Documentation**") as required by Section 3.11 of the Mortgage, including, without limitation, a current rent roll, certain operating and financial statements, Annual Budgets for 2015 and 2016, a property management report and a property inspection report. By letter of its counsel dated July 27, 2016, Plaintiff made a second demand for the Requested Documentation. True and accurate copies of said letters are attached hereto as Exhibit A and incorporated herein by reference.

11. Nonetheless, Borrowers have failed to provide the Requested Documentation, resulting in a Default and Event of Default (with the Cash Management Defaults, collectively the "**Subject Defaults**") and a further Cash Management Event.

12. Subject to certain limited exceptions set forth in the Note, the Loan is generally nonrecourse; therefore, the Property (including, without limitation, the Rents) is the primary source of repayment of the Loan.

13. The Property (including, without limitation, the Rents) is in the possession or under the control of Borrowers and/or their members, managers, parents, subsidiaries, agents, servants, employees, attorneys, officers, affiliates, representatives, management companies and/or managers of the Property) (with Borrower, collectively "**Borrower Parties**").

14. Due to the Subject Defaults, and absent an Order of this Court, Plaintiff has been and will be unable to ensure that its collateral (the Property) is being properly maintained and protected or that all prior and future Excess Cash Flow is remitted to Plaintiff. Moreover, there is a manifest danger of loss, deterioration and diminution of the Rents and possibly other portions of the Property.

15. Plaintiff is entitled to have the provisions of the Mortgage, the ALR, the Cash Management Agreement and other applicable Loan Documents.

WHEREFORE, Plaintiff respectfully prays this Honorable Court for entry of an Order:

A. requiring Borrowers and any applicable Borrower Parties to immediately provide the Requested Documentation to Plaintiff;

B. requiring Borrowers and any applicable Borrower Parties to immediately remit to Plaintiff an amount equal to all Excess Cash Flow that should have been disbursed to Lender during the Cash Management Period which commenced on August 2, 2014, along with an accurate and complete an accounting thereof, said Excess Cash Flow not to be reduced by any of Borrower Parties' attorneys' fees or expenses incurred in connection with the Subject Defaults, this action or otherwise in connection with any Loan Documents;

C. requiring Borrowers to immediately implement the required cash management procedures or, in the alternative, requiring Borrower Parties to remit to Plaintiff (1) remit to Plaintiff regular monthly installments of Rents less any actual payments of current (and not past due) ordinary, necessary and reasonable expenses required for the operation and management of the Mortgaged Property (collectively, "**Operating Expenses**"), such Operating Expenses not to include any of Borrower Parties' attorneys' fees and expenses incurred in connection with the Subject Defaults, this action or otherwise in connection with any Loan Documents, and (2) provide to Plaintiff, concurrently with such installments, all operating and financial statements, rent rolls, reports and other documentation and information required under the Mortgage or reasonably required by Lender to provide a complete and current depiction of the condition, operation and maintenance of the Property and a full accounting for all Rents and Operating Expenses for each applicable month;

D. restraining Borrowers from making any disbursement or distribution of Rents except for actual payments of Operating Expenses; and

E. for such other and further relief as the Court may deem just and proper.

James H. Pulliam, Esq.
David H. Simpkins, Esq.
Kilpatrick Townsend & Stockton LLP
214 North Tryon Street, Suite 2400
Charlotte, North Carolina 28202
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Phone: 704-338-5287 (David)
jpulliam@kilpatricktownsend.com
dsimpkins@kilpatricktownsend.com
Attorneys for Plaintiff

August 19, 2016
Charlotte, N.C.

EXHIBIT A

Demands for Requested Documentation

[attached hereto]

KILPATRICK TOWNSEND
ATTORNEYS AT LAW

KILPATRICK TOWNSEND & STOCKTON LLP
www.kilpatricktownsend.com

Suite 2400, 214 North Tryon St.
Charlotte NC 28202-2381

James H. Pulliam
direct dial 704 338 5288
jpulliam@kilpatricktownsend.com

February 24, 2016

VIA U.P.S. OVERNIGHT DELIVERY
AW-MAGPIG, LLC, HW-MAGPIG, LLC
and MW-MAGPIG, LLC
11 East Hawthorne Avenue
Valley Stream, New York 11580
Attn: Mike Wasserman

RE: That certain loan (the "**Loan**") in the original principal amount of $4,500,000.00 made to AW-MAGPIG, LLC, HW-MAGPIG, LLC and MW-MAGPIG, LLC, each a Delaware limited liability company (individually or collectively, "**Borrower**"), by Bear Stearns Commercial Mortgage, Inc., a New York corporation ("**Original Lender**"), as evidenced by, among other documents, that certain Promissory Note dated March 1, 2007, executed by Borrower and payable to the order of Original Lender in the original principal amount of $4,500,000.00 (the "**Note**"); that certain Mortgage, Fixture Filing and Security Agreement March 1, 2007 (the "**Mortgage**"), given by Borrower for the benefit of Original Lender and recorded in the Richland County Register of Deeds (the "**Register**"); that certain Assignment of Leases, Rents, Income and Profits made as of March 1, 2007 by Borrower for the benefit of Original Lender and recorded in the Register (the "**ALR**"). The Note, the Mortgage, the ALR and all other documents executed or delivered in connection with the Loan are collectively referred to herein as the "**Loan Documents**."

Dear Borrower:

As you know from prior correspondence our firm is legal counsel to U.S. Bank National Association, as Trustee, successor-in-interest to Bank of America, N.A., as Trustee, successor by merger to LaSalle Bank National Association, as Trustee, for the registered holders of Bear Stearns Commercial Mortgage Securities, Inc., Commercial Mortgage Pass-Through Certificates, Series 2007-TOP26 ("**Noteholder**"), assignee of and successor to Original Lender, and the present owner and holder of the Note and all other Loan Documents. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed or referenced in the Mortgage.

As you were notified by prior correspondence, certain Events of Default occurred due to your failure to abide by the terms of the Clearing Account Agreement and the Cash Management Agreement upon and after the occurrence of a Cash Management Event. Additional Events of Default may have occurred, including without limitation the Borrowers' failure to pay

Noteholder amounts due under the Note and Loan Documents as required during the occurrence of a Cash Management Event. We hereby confirm that all of the foregoing Events of Default continue and have not been waived by the Noteholder.

Pursuant to the terms of the Mortgage, upon the occurrence of an Event of Default, Noteholder may, at its option, declare all amounts outstanding to be immediately due and payable. The obligations include, without limitation, the entire outstanding principal amount of the Note, together with all accrued and unpaid interest (including default interest), late charges, prepayment fees and all other amounts owed or chargeable under the Loan Documents. The Noteholder has exercised this option to accelerate the Loan and declare all outstanding amounts to be immediately due and payable. Demand is hereby made for immediate payment in full of all Secured Obligations. You may contact Mike Dickerson at 972-868-5304 or mdickerson@c3cp.com to obtain the total amount of the indebtedness.

Noteholder has received periodic payments from Borrower. Notwithstanding the Received Funds, Noteholder has waived no rights or remedies in regards to existing defaults or otherwise and all amounts due under the Loan Documents, including, without limitation, all accrued late charges and default interest, remains due and owing. Any payments received have been and will be applied in accordance with the Loan Documents. The receipt and application of any future payments by the Borrower should not be construed as a waiver nor an accord and satisfaction or as Noteholder's agreement to accept a lesser amounts than are due under the Loan Documents nor waive any existing defaults. Noteholder's acceptance of any endorsement or statement on any check evidencing a payment or letter accompanying a payment is not and shall not be construed as an accord and satisfaction and is not and shall not be deemed to be binding upon Noteholder. Noteholder may accept any such payment or check without waiver of any rights or remedies and without prejudice to its rights to receive all amounts due under the Loan Documents or to pursue its remedies.

You are further advised that neither this letter, nor any negotiations or communications which may ensue shall constitute a waiver of the Noteholder's rights to exercise any and all remedies which may be available to it pursuant to the Loan Documents or otherwise at law. No delay by the Noteholder in exercising any rights or remedies shall operate as a waiver of any rights or remedies the Noteholder may have. Any such waiver shall not be effective unless set forth in writing, duly executed by an authorized representative of the Noteholder. You shall not be entitled to rely upon any oral statements made or purported to be made by or on behalf of Noteholder in connection with any alleged agreement by or on behalf of Noteholder to refrain from exercising any of its rights under the Loan Documents or otherwise pursuant to applicable law. Any and all right and remedies available to the Noteholder shall be cumulative and may be exercised separately, successively or concurrently at the sole discretion of the Noteholder.

Pursuant to Section 3.11 of the Mortgage and on behalf of the Noteholder, we request the following documents be provided in connection with the Property:

(1) A current rent roll/current leases and any amendments. The rent roll should be signed, dated and certified by the Borrower;

(2) 2014 and 2015 Year-End Financial Statements (Annual Balance Sheet and Profit and Loss Statement of Borrower). In the event the 2015 Financial Statement is not available, then all Quarterly Financial Statements since September 30, 2014;

(3) January 2016 Monthly Operating Statement;

(4) A property management report, showing the rental inquiries and/or rental applications received from tenants or prospective tenants;

(5) A report detailing all security deposits held in connection with any Lease of any part of the Property, including the name and identification number of the accounts in which such security deposits are held, the name and address of the financial institution;

(6) The 2015 and 2016 Annual Operating Budgets; and

(7) Any property inspection reports prepared within the last three years.

You are hereby notified that Noteholder shall strictly enforce the Loan Documents in accordance with their respective terms. If you have any questions, contact me directly or have your counsel contact me.

Sincerely,

Kilpatrick Townsend & Stockton LLP

James H. Pulliam

cc: Michael S. Wasserman
11 East Hawthorne Avenue,
Valley Stream, New York 11580
(via U.S. Mail)

Alan B. Wasserman
11 East Hawthorne Avenue,
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S. Michael Dickerson (via e-mail)

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July 27, 2016

Via Email and U.S. First Class Mail

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Columbia, SC 29201

RE: U.S. Bank National Association, et al. v. AW-MAGPIG, LLC, HW-MAGPIG, LLC; and MW-MAGPIG, LLC; Richland County, SC Case No. 2016-CP-40-2470 ("Civil Action")

Dear Mr. Dodson:

In our communications you question the importance of the cash management requirements imposed by the parties' Loan Documents (as defined in the Complaint)[1]. Do the Borrowers' representatives deny that the Borrowers have failed to comply with the cash management provisions imposed by the Loan Documents? Will the Borrowers now comply? Will the Borrowers provide an accounting for the rents and other income collected by the Property since the occurrence of the Cash Management Event? Do the Borrowers deny the existence of a Cash Management Event? This letter shall renew the Plaintiff's request that the Borrower cooperate and take the necessary action to implement cash management. If I do not receive affirmative response to this cash management inquiry within five (5) business days then our client will assume that the Borrowers remain unwilling to voluntarily implement cash management.

Pursuant to a letter, dated February 24, 2016, we requested that the Borrowers provide certain documentation pursuant to Section 3.11 of the Mortgage. I have attached a copy of that letter for your reference. In addition to the documents requested therein, we request all financial statements for 2016. Will your client provide the documents requested? If I do not receive affirmative response to this renewed request for the documents as set forth in that letter as expanded herein within five (5) business days then our client will assume that the Borrowers remain unwilling to voluntarily produce the documents.

[1] Capitalized terms used but not defined herein shall have the meanings ascribed or referenced in the "Mortgage" as defined in paragraph 9 of the Complaint filed in the Civil Action.

Nothing in this letter constitutes an offer or counteroffer. Plaintiff has and continues to receive periodic payments from Borrower (the "**Borrower Payments**"). Notwithstanding the Borrower Payments, Plaintiff has waived no rights or remedies in regards to existing defaults or otherwise and all amounts due under the Loan Documents, including, without limitation, all accrued late charges and default interest, remains due and owing. Any Borrower Payments received have been and will be applied in accordance with the Loan Documents. The receipt and application of any future payments by the Borrower should not be construed as a waiver nor an accord and satisfaction or as Plaintiff's agreement to accept a lesser amounts than are due under the Loan Documents nor waive any existing defaults. Plaintiff's acceptance of any endorsement or statement on any check evidencing a payment or letter accompanying a payment is not and shall not be construed as an accord and satisfaction and is not and shall not be deemed to be binding upon Plaintiff. Plaintiff may accept any such payment or check without waiver of any rights or remedies and without prejudice to its rights to receive all amounts due under the Loan Documents or to pursue its remedies.

You are further advised that neither this letter, nor any negotiations or communications which may ensue shall constitute a waiver of the Plaintiff's rights to exercise any and all remedies which may be available to it pursuant to the Loan Documents or otherwise at law. No delay by the Plaintiff in exercising any rights or remedies shall operate as a waiver of any rights or remedies the Plaintiff may have. Any such waiver shall not be effective unless set forth in writing, duly executed by an authorized representative of the Plaintiff. You shall not be entitled to rely upon any oral statements made or purported to be made by or on behalf of Plaintiff in connection with any alleged agreement by or on behalf of Plaintiff to refrain from exercising any of its rights under the Loan Documents or otherwise pursuant to applicable law. Any and all right and remedies available to the Plaintiff shall be cumulative and may be exercised separately, successively or concurrently at the sole discretion of the Plaintiff.

We look forward to hearing from you. Please advise if you have any questions.

Sincerely,

Kilpatrick Townsend & Stockton LLP

By: James H. Pulliam

cc: Mike Dickerson, via email

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, AS SUCCESSOR-IN-INTEREST TO BANK OF AMERICA, N.A., AS SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE REGISTERED HOLDERS OF BEAR STEARNS COMMERCIAL MORTGAGE SECURITIES, INC., COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-TOP26, Plaintiff, Vs. AW-MAGPG, LCC; HW-MAGPIG, LLC; and MW-MAGPIG, LLC, Defendants.	Civil Action No: 2016-40-02470 MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' MOTION FOR ORDER REQUIRING TURNOVER OF COLLATERAL AND SEQUESTERING RENTS

RICHLAND COUNTY
FILED
2016 OCT 19 PM 3:25
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

This is a foreclosure action on a commercial shopping center owned by Defendants. Prior to filing this action, Defendants timely and fully paid their monthly mortgage. (*See* Defendants' Notice of Motion and Motion to Dismiss or in the Alternative to Add a Necessary and Indispensible Party and attachments thereto). More specifically, Defendants paid all of the interest, principal and escrowed money for taxes and insurance required of them. Id. At the time Plaintiffs filed this action, Defendants' mortgage payments were up to date, timely and fully paid. Id.

Plaintiffs commenced this action because they claim and allege a technical default. Defendants allege that because an anchor tenant moved out of the shopping center that this created a "cash management event" and that under the terms of the mortgage and related

documents Defendants have defaulted on the mortgage. (See Plaintiffs' Complaint, paragraph 25 and prayer for relief).

While captioned as a "Motion for Order Requiring Turnover of Collateral and Sequestering Rents" Plaintiffs' Motion is effectively a motion for a preliminary injunction. In the Motion, Plaintiffs' specifically ask the Court to change the status quo by: "requiring Borrowers to ... remit to Plaintiff regular monthly installments of Rents...[and] restraining Borrowers from making any disbursement or distribution of Rents except for actual payments of Operating Expenses..."[1] (Motion for Order Requiring Turnover of Collateral and Sequestering Rents, p. 6). In essence, Plaintiffs ask the Court to issue an Order that requires that rental payments go directly to Plaintiffs and awards Plaintiffs effective control over the shopping center. Plaintiffs seek this relief before Defendants have filed an Answer or are required to file an Answer. For the reasons outlined below, this Court should deny the Motion.

STANDARD OF REVIEW

"An injunction is a ***drastic remedy*** issued by the court in its discretion to prevent ***irreparable harm*** suffered by the plaintiff." *Scratch Golf Co. v. Dunes W. Residential Golf Properties, Inc.*, 361 A.S. 117, 121, 603 S.E.2d 905, 907-08 (2004) (citing *S.C. Civil Procedure,* 507 (2d ed. 1996)). "For a preliminary injunction to be granted, the plaintiff must establish that (1) it would suffer irreparable harm if the injunction is not granted; (2) it would likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law." *Id.* at 121, 603 S.E. 2d at 908 (citing *Cnty. Of Richland v. Simpkins,* 348 S.C. 664, 669, 560 S.E.2d 902, 904 (Ct. App. 2002)). "The ***sole purpose*** of a temporary injunction is to preserve the status quo and thus avoid

[1] Significantly, "Operating Expenses" would include a host of service fees Plaintiffs would charge Defendants for effectively running the shopping center so that any profit Defendants realize would be eaten up by the Operating Expenses claimed by Plaintiffs and ultimately charged to Defendants by Plaintiffs.

possible irreparable injury to a party pending litigation." *FOC. Lawshe Ltd. P'ship v. Int'l Paper Co.*, 352 S.C. 408, 413, 574 S.E.2d 228, 231 (Ct. App. 2002) (quoting *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 601, 553 S.E. 2d 110, 121 (2001)) (emphasis added). Stated differently, a temporary injunction is utilized "to preserve the subject of controversy in the condition which it is at the time of the Order until opportunity is offered for full and deliberate investigation and to preserve the existing status quo during litigation...." *Cnty. Of Richland v. Simpkins,* 348 S.C. 664, 671, 560 S.E. 2d 902, 905 (Ct. App. 2002) (quoting *Cnty. Council of Charleston v. Felkel,* 244 S.C. 480, 483-84, 137 S.E.2d 577, 578 (1964)). Due to their ***drastic*** and ***extraordinary*** nature, courts should issue injunctions with caution and only where no adequate remedy at law exists. *Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006).

ARGUMENT

Plaintiffs are not entitled to a temporary injunction against Defendants because they cannot establish any of the three elements necessary to obtain such relief. Additionally, the relief Plaintiffs seek would change the status quo and would not maintain the status quo. Therefore, Plaintiffs' motion should be denied.

I. PLAINTIFFS HAVE FAILED TO SHOW THAT THEY WILL SUFFER IRREPARABLE HARM ABSENT A PRELIMINARY INJUNCTION.

Because an injunction is a drastic remedy, courts impose a high standard for parties seeking to obtain such relief. The first requirement the Plaintiffs must show is that "irreparable harm" would occur in the absence of injunctive relief. Whether "a wrong is irreparable, in the sense that equity may intervene, and whether there is an adequate remedy at law, are questions that are not decided by narrow and artificial rules." *Kirk v. Clark*, 191 S.C. 205, 211, 4 S.E.2d 13, 16 (1939). "The fact that no actual damages can be provided, and in an action at law that the

jury could only award nominal damages, is often the best reason for a court of equity to interfere to prevent a continuous injury." 27 S.C. Jur. *Injunctions* § 4. Courts have found irreparable harm present where, absent injunctive relief, a party could not be restored to status quo with monetary damages. *See, e.g., Peek v. Spartanburg Reg'l Healthcare System,* 367 S.C. 450, 455-56, 626 S.E.2d 34, 36-37 (Ct. App. 2005) (granting an injunction where the anesthesiologist's termination of privileges would result in the loss of her patient referral base and potentially her professional practice).

In this case, Plaintiffs seek to have this Court turn these basic tenants of jurisprudence upside down because what they are seeking is money, specifically rent money. According to the pending Motion, Plaintiffs are asking that rental income be sequestered and given to them by Order of this Court through a preliminary injunction. The very nature of Plaintiffs' request demonstrates they will not suffer irreparable harm because what they are seeking is monetary relief. This is the same relief they can obtain once this case is fully litigated if they are able to prevail on the mertis.

Plaintiffs' pending Motion ignores the fundamental purpose for preliminary injunctions: Preliminary injunctions are issued where a party will suffer "irreparable harm" with no adequate remedy in law. However, even a cursory examination of the relief sought by Plaintiffs in the pending Motion demonstrates Plaintiffs have an adequate remedy at law. Plaintiffs seek an Order "Sequestering Rents" and requiring Defendants "to immediately remit to Plaintiff an amount equal to all Excess Cash Flow that should have been disbursed to Lender..." Plaintiffs' Motion for Order Requiring Turnover of Collateral and Sequestering Rents, p. 1 and 5. The Motion goes on to request that the Court issue an Order requiring Defendants to "remit to Plaintiff regular monthly installments of Rents" and that Defendants be restrained "from making

any disbursement or distribution of Rents." In essence, Defendants seek all the rental income on the property which they claim should have been paid under the "Cash Management Agreement." However, what is most significant and important for this motion is that those are monetary damages. Plaintiffs would not suffer any "irreparable harm" in the absence of a preliminary injunction because there is an adequate remedy at law. That remedy at law is the very monetary relief Plaintiffs are seeking in this lawsuit.

Plaintiffs, therefore, cannot show a likelihood of irreparable harm in the absence of injunctive relief. If they are successful at trial on their claim, they may recover the very monetary damages they now seek to have this Court "sequester" and give to them through a preliminary injunction. If the finder of fact agrees that an impairment of their rights occurred, there is a clear mechanism and measure for awarding damages. Therefore, injunctive relief, particularly with the extraordinary remedy of injunctive relief, is not warranted in this matter. Plaintiffs have not shown a likelihood of irreparable harm that could not be remedied with monetary damages.

II. PLAINTIFFS HAVE FAILED TO SHOW A LIKELIHOOD OF SUCCESS ON THE MERITS.

Plaintiffs have not demonstrated a likelihood of success on the merits, a necessary requirement for issuance of a preliminary injunction. Plaintiffs' Complaint is one that is based on basic contract law and a cause of action for breach of contract.[2] As this Court is aware:

> To recover for a breach of contract the plaintiff must allege and prove:
> (1) a binding contract entered into by the parties
> (2) breach or unjustifiable failure to perform the contract

[2] While Plaintiffs' Complaint lists the only cause of action as "Foreclosure of Mortgage," Plaintiffs and their Counsel misconstrue the nature of foreclosure actions. Foreclosure is a remedy. It is not a specific cause of action. The remedy of foreclosure is premised and based upon a breach of contract. Thus, while Plaintiffs have pleaded "Foreclosure of Mortgage" this remedy is only available if they prove a breach of contract claim against Defendants.

(3) damage suffered by the plaintiff as direct and proximate result of the breach. *Elements of Civil Causes of Action*, Third Edition, p. 44. At this stage in litigation, Plaintiffs have failed to establish any of these three elements.

First, Plaintiffs have not established that the parties to this litigation entered a binding contract. The named Plaintiffs to the lawsuit are different legal entities than the legal entities named in the mortgage documents attached to Plaintiffs' Complaint. The promissory note, mortgage and related documents are all in the name of "Bear Stearns Commercial Mortgage, Inc." That legal entity is not the same legal entity named as a plaintiff to this lawsuit. Instead, the lawsuit caption lists "Bear Stearns Commercial Mortgage **Securities**, Inc." as the Plaintiff to this lawsuit (emphasis added). The caption of the lawsuit itself lists "U.S. Bank National Association, as Trustee, As Successor-In-Interest to Bank of America, N.A. as Successor by Merger to LaSalle Bank National Association, as Trustee for the Registered Holders of Bear Stearns Commercial Mortgage Securities, Inc. Commercial Mortgage Pass-Through Certificates, Series 2007-TOP26." Plaintiffs have submitted nothing to this Court to show that in fact, U.S. Bank National Association was a trustee and successor-in-interest to Bank of America, as claimed. Plaintiffs have submitted nothing evidencing a Merger to LaSalle Bank or that LaSalle Bank was a Trustee for the Registered Holders Bear Stearns Commercial Securities, Inc. There has been no evidence submitted of a Commercial Mortgage Pass-Through.

Plaintiffs have submitted no evidence to this Court to establish anything. Plaintiffs' Complaint is not verified and the only evidence Plaintiffs have submitted to this Court in support of the Motion are two letters of their attorney. Counsels' letters are insufficient to carry the heavy burden necessary for the drastic remedy of an injunction. In fact, if this Court were to issue an injunction of the type requested by Plaintiffs, it could subject Defendants to double

liability if another legal entity – for example, Bear Stearns Commercial Mortgage, Inc. could institute its own action and point to the mortgage documents which bear its name. Respectfully, for purposes of issuing the extraordinary remedy of a preliminary injunction, this Court shouldn't accept the allegations of an unverified complaint as true.

Second, Plaintiffs have not established that Defendants breached a contract. To the contrary, Defendants have submitted evidence to this Court showing that the mortgage was fully paid up till and even after Plaintiffs commenced this lawsuit. (*See* Defendants' Notice of Motion and Motion to Dismiss or in the Alternative to Add a Necessary and Indispensible Party and attachments thereto). Even accepting the allegations of Plaintiffs' Complaint as true, Plaintiffs' have alleged nothing more than a technical default because an anchor tenant, Piggly Wiggly, moved out of the shopping center. Despite that fact, however, is the additional fact that Defendants paid the mortgage at issue up till and even after Plaintiffs commenced this action. Thus, even if this Court were to accept Plaintiffs' naked assertions that Defendants' breached the contract at issue, Plaintiffs cannot prove any damages, an essential element of any breach of contract action. *Collins Entn't, Inc. v. White*, 363 S.C. 546, 611 S.E.2d (Ct. App. 2005)(directed verdict proper where testimony presented provided no evidence of amount of damages attributable to any breach of contract).

Because Plaintiffs have failed to carry their burden of proof and demonstrate a likelihood of success on the merits, this Court should deny the pending "Motion for Order Requiring Turnover of Collateral and Sequestering Rents."

III. PLAINTIFFS HAVE AN ADEQUATE REMEDY AT LAW.

Plaintiffs are not entitled to an injunction because there is an adequate remedy at law available. As a general rule, injunctive relief is not available when an individual seeks money

damages. *See MailSource, LLC v. M.A. Bailey & Assocs.*, 356 S.C. 363, 369-70, 588 S.E.2d 635, 639 (Ct. App. 2003). The function of equity "is to supplement the law, not to displace it." *Wigfall v. Tideland Utilities, Inc.*, 354 S.C. 100, 117, 580 S.E.2d 348, 353 (2003). The basis of equitable relief is the "impracticability of obtaining full and adequate compensation at law." *Nutt Corp. v. Howell Rd., LLC,* 396 S.C. 323, 327, 721 S.E.2d 447, 449 (Ct. App. 2011). A party has an adequate remedy at law where the remedy "is as certain, practical, complete and efficient to obtain the ends of justice and its administration in equity." *Milliken & Co. v. Morin,* 386 S.C. 1, 8, 685 S.E.2d 828, 832 (Ct. App. 2009).

In the case now before this Court, Plaintiffs have both an adequate remedy should they ultimately prevail on the merits. In their Complaint, Plaintiffs have specifically prayed for the type of relief they now seek from this Court before Defendants have even filed an Answer. For example, Plaintiffs have prayed that Defendants be "jointly and severally [liable], for any and all amounts for which this Court determines Borrowers to be personally liable under the Note, the Mortgage and any other applicable Loan Documents..." Plaintiffs' Complaint, p. 9. They have also prayed for "a receiver to take possession of the Property in accordance with the provisions of the Mortgage and the ALR, and to collect, hold and disburse all Rents and other income or revenue of or from the Property..." Plaintiffs' Complaint, p. 10. In short, the relief sought in the injunction is the same or similar to what Plaintiffs seek and could be awarded if they are successful in the lawsuit. However, that does not entitle Plaintiffs to the extraordinary remedy of a preliminary injunction. Instead, they must win the underlying lawsuit to be entitled to the relief they now seek.

Indeed, that is precisely what Plaintiffs are seeking to accomplish through the pending Motion: They are seeking an Order and declaration from the Court at the very outset that

effectively declares them the winners of this lawsuit. To be clear, what Plaintiffs are seeking would effectively crush Defendants because it would take their rental income from the property and would effectively shift control of the shopping center to Plaintiffs. All of this would be done even before Defendants have answered the lawsuit, been able to assert counterclaims, engage in discovery or otherwise exercise their rights.

However, the purpose of a preliminary injunction is not to declare winners and losers at the outset, as Plaintiffs would have this Court do. Rather, it is to prevent irreparable harm where there is no other remedy. In this case, Plaintiffs have demonstrated no irreparable harm for which they have no other remedy. Accordingly, this Court should deny the pending Motion.

IV. INJUNCTIVE RELIEF SHOULD BE DENIED BECAUSE IT WOULD CHANGE THE STATUS QUO NOT MAINTAIN THE STATUS QUO.

"The ***sole purpose*** of a temporary injunction is to preserve the status quo and thus avoid possible irreparable injury to a party pending litigation." *FOC. Lawshe Ltd. P'ship v. Int'l Paper Co.*, 352 S.C. 408, 413, 574 S.E.2d 228, 231 (Ct. App. 2002) (quoting *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 601, 553 S.E. 2d 110, 121 (2001)) (emphasis added). Plaintiffs' Motion should be denied because it would change the status quo, not maintain the status quo.

Plaintiffs seek an Order requiring Defendants to "remit to Plaintiff regular monthly installments of Rents...[and] restraining Borrowers from making any disbursements or distributions of Rents..." Plaintiffs' Motion for Order Requiring Turnover of Collateral and Sequestering Rents, p. 6. In essence, Plaintiffs want rent money collected by a landlord to be immediately paid to them before Defendants have even answered the Complaint in this action or been afforded other Due Process Rights guaranteed to them by the Constitution and other laws. In making such an overly broad and far reaching request Plaintiffs ignore the important and

fundamental purpose for a preliminary injunction: to maintain the current status quo until a final decision is reached by the Courts. Here, Plaintiffs seek effective control over the shopping by "sequestering rents" from Defendants and giving those rents to Plaintiffs. This is something that has never been done through the life of the mortgage. In making such a motion now, Plaintiffs are asking the Court to change the status quo, not maintain the status quo. However, as clearly articulated by the appellate Courts of this State the "sole purpose" for issuing a temporary injunction is to maintain the status quo pending final resolution of the case. With all due respect to this Court and His Honor, this Court should not attempt to change this well established principal of law by issuing an Order/Injunction that changes the way the shopping center at issue has always operated.

CONCLUSION

For the reasons outlined above, Plaintiffs' "Motion for Order Requiring Turnover of Collateral and Sequestering Rents" should be denied.

Respectfully submitted,

LAW OFFICES OF ROBERT D. DODSON, P.A.

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October 19, 2016

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, AS SUCCESSOR-IN-INTEREST TO BANK OF AMERICA, N.A., AS SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE REGISTERED HOLDERS OF BEAR STEARNS COMMERCIAL MORTGAGE SECURITIES, INC., COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-TOP26, Plaintiff, vs. AW-MAGPIG, LLC; HW-MAGPIG, LLC; and MW-MAGPIG, LLC, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT Case No. 2016-CP-40-02470 **PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR ORDER REQUIRING TURNOVER OF COLLATERAL AND SEQUESTERING RENTS**

RICHLAND COUNTY
FILED
2016 OCT 21 AM 10: 11
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

The plaintiff, U.S. Bank National Association, as Trustee, successor-in-interest to Bank of America, N.A., as successor by merger to LaSalle Bank National Association, as Trustee for the registered holders of Bear Stearns Commercial Mortgage Securities, Inc., Commercial Mortgage Pass-Through Certificates, Series 2007-TOP26 ("**Plaintiff**"), respectfully submits this memorandum in support of its Motion for Order Requiring Turnover of Collateral and Sequestering Rents (the "**Rents Motion**").

I. FACTUAL AND PROCEDURAL BACKGROUND

This is a foreclosure action involving a retail shopping center commonly known as Magnolia Pointe (herein, the "**Property**"), which is owned by the defendants AW-MAGPIG, LLC, HW-MAGPIG, LLC and MW-MAGPIG, LLC ("**Borrowers**") and encumbered by the

Mortgage (defined below) held by Plaintiff. The Property is generally located at 2000-2020 Clemson Road, Columbia, South Carolina, and was formerly anchored by Piggly Wiggly.

The verified Complaint, the Affidavit of Michael S. Dickerson (the "**Dickerson Aff.**") and this Memorandum demonstrate that the Rents Motion should be granted. Borrowers have defaulted under multiple provisions of the applicable Loan Documents (defined below) and have intentionally subverted Plaintiff's interests in the Rents (defined below). Plaintiff is entitled to an Order that during the pendency of this action protects Plaintiff's interests in the Rents and other applicable sums, enforces Borrowers' agreements with respect to same and enforces Plaintiff's rights under South Carolina law.

A. The Loan and the Loan Documents.

On March 1, 2007, Borrowers obtained a $4,500,000.00 commercial mortgage loan (the "**Loan**") from Bear Stearns Commercial Mortgage, Inc. ("**Original Lender**"). Complaint ¶ 6. The Loan is evidenced and/or secured by, without limitation:

- Promissory Note dated March 1, 2007, executed by Borrowers and payable Original Lender in the original principal amount of the Loan (the "**Note**");
- Mortgage, Fixture Filing and Security Agreement dated March 1, 2007, executed by Borrowers and recorded in the Richland County Register of Deeds (the "**Register**") in Book 1288 at Page 3842 (the "**Mortgage**");
- Assignment of Leases and Rents dated March 1, 2007, made by Borrowers and recorded in the Register in Book 1288 at Page 3902 (the "**ALR**");
- Cash Management Agreement dated March 1, 2007, between Borrowers, Original Lender and The Bank of New York Trust Company, N.A. (the "**Cash Management Agreement**" or "**CMA**");
- Replacement Reserve and Security Agreement dated as of March 1, 2007, between Borrowers and Original Lender (the "**Reserve Agreement**").

Complaint ¶¶ 7, 9, 13, 15 and 16;[1] Dickerson Aff. ¶¶ 4 and 5.

[1] True and accurate copies of the Note, Mortgage, ALR, CMA and Reserve Agreement are attached to the Complaint as Exhibits A, B, D E and G, respectively.

In connection with the Loan, Borrowers, Original Lender and Whatfor, LLC, a New York limited liability company ("**Property Manager**") executed a Conditional Assignment of Management Agreement dated March 1, 2007 (the "**Management Agreement Assignment**"). Dickerson Aff. ¶ 22 and Ex. 5.

Plaintiff is the current owner and holder, by assignment, of the Loan and the Note, Mortgage, ALR, CMA, Reserve Agreement, Management Agreement Assignment and all other documents executed and/or delivered in connection with the Loan (collectively, the "**Loan Documents**"). Dickerson Aff. ¶ 7; Complaint ¶ 18.

B. Relevant Provisions of Note, Mortgage, ALR and Management Agreement Assignment.

1. Plaintiff's primary or sole source of recovery.

Subject to certain limited exceptions, the Loan is generally nonrecourse, meaning Plaintiff's primary, if not sole, means of recovery will be from the Property, including the Rents (as defined in the Mortgage).[2] Note Art. 14; Mortgage § 15.1.

2. First Lien and Assignments of Rents; Revocable License.

As security for Borrowers' payment and performance under the Loan Documents, Borrowers granted a first priority lien and security interests against and in the Property, including all Rents. Mortgage § 1.1; Complaint ¶ 19. Borrowers have also assigned and granted to Plaintiff, among other rights and collateral, all of Borrowers' rights, title and interests in and to the Rents. Mortgage § 1.2; ALR § 1.1(c)-(e); Complaint ¶ 17. Upon such assignment, subject to the below-referenced provisions of the Cash Management Agreement, Borrowers were granted a revocable license to operate the Property and collect and receive the Rents (the

[2] The "Rents" include, without limitation, and all rents, additional rents, revenues, issues and profits from the real estate and the improvements forming part of the Property. Mortgage § 1.1(f).

"**License**"), unless and until a Default (as defined in the ALR) or an Event of Default. Mortgage §§ 1.2 and 3.7(a); ALR §§ 1.1(c) and 2.1; Complaint ¶ 17.

3. Required Delivery of Financials and Property information.

Throughout the term of the Loan, Borrowers are obligated to deliver to Plaintiff certain financial information and other documentation pertaining to the management of the Property, including, without limitation, (a) monthly rent rolls, operating statements and annual balance sheets and profit and loss statements, and (b) upon Plaintiff's request, a property management report, an accounting of tenant security deposits and an annual budget. (herein, collectively, the "**Required Documentation**"). Mortgage § 3.11; Dickerson Aff. ¶ 14.

4. Property Manager to remit Rents less operating expenses to Plaintiff following default.

Upon notice from Plaintiff following a default, Property Manager must remit directly to Plaintiff an amount equal to all Rents received less the Property's operating expenses – specifically excluding management fees. Management Agreement Assignment §§ 4(a) and 6. Notably, Property Manager is an affiliate of Borrowers and controlled by one or more of the principals of Borrowers. Dickerson Aff. ¶ 23.

C. Relevant Provisions of Cash Management Agreement.

1. Generally; Obligation to Deposit Rents.

The provisions of the Cash Management Agreement serve to protect Plaintiff's interests in the Rents and other income of the Property, particularly in the event of a Cash Management Event.[3] During the Loan term, Borrowers are obligated to cause all Rents to be deposited directly into the Clearing Account, including through direct deposit by all Tenants. CMA

[3] Capitalized terms used but not defined herein shall have the meanings ascribed in the Cash Management Agreement.

§ 3.1(a). Clearing Account funds are then disbursed to Borrowers unless and until a Cash Management Event occurs. CMA §§ 2.1(a) and (b).

2. "Cash Management Event" and resulting obligations; Allocation of funds.

A Cash Management Event occurs upon, among other events, (i) the date Piggly Wiggly ceases operations at the Property, vacates the Property or otherwise "goes dark," or terminates its lease, or (ii) an Event of Default. CMA § 1.1, p. 2, "Cash Management Event" definition. Upon a Cash Management Event, Borrowers are obligated, inter alia, to establish a Cash Management Account and cause all sums on deposit in the Clearing Account to be swept to the Cash Management Account on a daily basis. CMA §§ 2.1(b) and 3.3.

On each monthly payment date, funds in the Cash Management Account are to be first applied to amounts owed under the Loan Documents, then amounts for operating expenses are to be disbursed to Borrowers, and the remaining funds (Excess Cash Flow) are to be disbursed to Plaintiff, held as additional collateral in a separate reserve account (the Excess Cash Flow Reserve Fund) and applied in the manner Plaintiff determines. CMA §§ 2.7, 3.4 and 4.1; Mortgage § 3.15; Dickerson Aff. ¶ 10.

D. Numerous Defaults have occurred.

1. Piggly Wiggly vacates; Borrowers fail to implement cash management.

During the spring or summer of 2014, Piggly Wiggly closed its store at the Property, resulting in a clear and indisputable Cash Management Event (the "**PW Event**"). Complaint ¶ 25; Dickerson Aff. ¶ 11. On August 1, 2014, Plaintiff notified Borrowers of the PW Event and demanded that Borrowers comply with their obligations under the Cash Management Agreement. Complaint ¶ 26 and Ex. H; Dickerson Aff. ¶ 11. Borrowers have failed and refused to do so, resulting in one or more Events of Default (individually or collectively, the "**CM**

Default") which are continuing, despite Plaintiff's multiple notices and demands for compliance. Complaint ¶ 29 and Ex. I; Dickerson Aff. ¶ 12 and Exs. 2 and 3.

As a result, Plaintiff has not received any Excess Cash Flow from and after the CM Event (the "**Withheld Excess Cash**"), all of which has been retained by or for the benefit of Borrowers. Dickerson Aff. ¶ 20; Ex. 5.[4]

2. Borrowers have failed to pay replacement reserve deposits.

On December 19, 2014, Plaintiff, through counsel, reminded Borrowers of the CM Default and notified Borrowers that monthly replacement reserve deposits would be required on the 1st day of January 2015 and each month thereafter. Dickerson Aff. ¶ 13; Ex. 2. However, Borrowers have failed to make any said reserve deposits as required. Reserve Agreement § 1(b); Dickerson Aff. ¶ 13. Each failure has constituted an Event of Default. Mortgage § 10.1(a).

3. After the PW Event, Borrowers ceased providing Required Documentation.

Borrowers are obligated to deliver to Plaintiff (a) monthly rent rolls, operating statements and annual balance sheets and profit and loss statements, and (b) upon Plaintiff's request, a property management report, an accounting of tenant security deposits and an annual budget. Mortgage § 3.11. Shortly after the PW Event and Plaintiff's demand that Borrowers implement cash management, Borrowers ceased providing any Required Documentation, effectively preventing Plaintiff from obtaining an accurate financial picture of the Property - *particularly the amount of Excess Cash Flow that should have been distributed to Plaintiff.* Dickerson Aff. ¶ 15.

Plaintiff, through counsel, has made multiple requests for certain Required Documentation (collectively, the "**Requested Documentation**"). Dickerson Aff. ¶ 16 and Ex. 3.

---

[4] The amount of positive cash flow generated and being generated following the PW Event is likely very significant. Dickerson Aff. ¶¶ 17-20.

Borrowers have failed to provide any Requested Documentation, resulting in Events of Default. Dickerson Aff. ¶ 16; Mortgage § 10.1(o).

4. Borrowers have failed to cause Property Manager to remit required amounts to Plaintiff.

Plaintiff provided said notice to Borrowers and Property Manager that Property Manager should begin remitting all Rents less operating expenses (excluding management fees) to Plaintiff, but Borrowers have failed to cause Property Manager to do so. Dickerson Aff. ¶ 24 and Ex. 6. As noted above, Property Manager is an affiliate of Borrowers. Dickerson Aff. ¶ 23.

5. Borrowers fail to direct Tenants to pay Rents directly to Plaintiff.

In addition to failing to implement cash management or causing Property Manager to remit required amounts to Plaintiff, Borrowers have failed to direct all Tenants and lease guarantors to pay all Rents and other applicable sums directly to Plaintiff or such other party as Plaintiff directs, as required by Section 2.2 of the ALR. Defaults have thus occurred and are continuing as of the date hereof, and Borrowers have been notified of same (with the CM Default and all other above-referenced Events of Default and Defaults, collectively the "**Subject Defaults**" and each a "**Subject Default**").[5] ALR §§ 2.2 and 3.1; Dickerson Aff. ¶ 21 and Ex. 3, Oct. 11 Letter.

II. ARGUMENT AND CITATIONS OF AUTHORITY

Plaintiff seeks an Order that during the pendency of this action protects Plaintiff's interests in the Rents, enforces Borrowers' agreements with respect to same and enforces Plaintiff's rights under South Carolina law. Specifically, Plaintiff requests an Order (a) requiring Borrowers to deliver all delinquent and future Required Documentation, (b) requiring Borrowers

[5] Each Subject Default is also a Cash Management Event.

to remit to Plaintiff an amount equal to all Withheld Excess Cash, (c) requiring Borrowers to (i) immediately implement cash management or (ii) remit to Plaintiff on a monthly basis all Rents less the necessary operating expenses of the Property (excluding management fees or attorneys' fees), along with monthly accountings thereof, (d) restraining any other distribution of Rents, and (e) granting such other relief as the Court deems just and proper.

As set forth above, pursuant to the Mortgage, Borrowers have granted Plaintiff a first lien and security interests against and in the Property, including the Rents. Mortgage § 1.1; Complaint ¶ 19. Further, as more fully set forth in the Mortgage and the ALR, Borrowers have assigned and granted to Plaintiff all of Borrowers' rights, title and interests in and to the Rents. Mortgage § 1.2; ALR § 1.1(c)-(e); Complaint ¶ 17. Upon any Subject Default, Borrowers' License to collect and receive the Rents was automatically revoked and Plaintiff became immediately entitled to collect and receive the Rents even if Plaintiff does not enter or control the Property. Mortgage § 3.7(a); ALR § 3.1; Complaint ¶ 17.

The assignments of Rents contained in the Mortgage and the ALR and Plaintiff's rights with respect to same are perfected and enforceable under South Carolina law. The Mortgage and the ALR each constitute an "assignment of leases, rents, issues, or profits" as defined in S.C. Code Ann. 29-3-100(A)(2) (such an assignment is a "document assigning, transferring, pledging, mortgaging, or conveying an interest in leases, licenses to real property, and rents, issues, or profits arising from real property…").

Upon being recorded in the Register, the assignments of Rents contained in the Mortgage and the ALR became "enforceable…to pass the interest granted, pledged assigned, or transferred as against [Borrowers],…perfected from the time of recording against subsequent assignees, lien

creditors, and purchasers for a valuable consideration from [Borrowers]." S.C. Code Ann. § 29-3-100(B).

Further, the Mortgage and the ALR each constitute a "collateral assignment" under S.C. Code Ann. § 29-3-100 because the assignments of Rents therein were granted as security for Borrowers' payment and performance under the Loan Documents and Borrowers were granted the License to collect and receive the Rents until a default. S.C. Code Ann. § 29-3-100(A)(3) ("'Collateral assignment' means any assignment of leases, rents, issues, or profits made and delivered in connection with the grant of any mortgage...where the assignor retains the right to collect or to apply the lease revenues, rents, issues, or profits after assignment and prior to default").

The significance of a collateral assignment is set forth in S.C. Code Ann. § 29-3-100(C), which provides in relevant part as follows:

> Where an assignment of leases, rents, issues, or profits is a collateral assignment, after a default under the mortgage ... or evidence of indebtedness which the assignment secures, the assignee [i.e. Plaintiff] is thereafter entitled ... to collect and receive any accrued and unpaid or subsequently accruing lease revenues, rents, issues, or profits subject to the assignment, without need for the appointment of a receiver, any act to take possession of the property, or any further demand on the assignor.

Therefore, Plaintiff is both contractually and statutorily entitled to collect and receive the Rents without entering the Property, obtaining the appointment of a receiver or making further demand on Borrowers. Accordingly, Plaintiff is entitled to an Order sequestering the Rents and other applicable sums during the pendency of this action.

It is also important to note that the Order sought by Plaintiff is in accord with Borrowers' other agreements in the Cash Management Agreement, the Mortgage and the Management Agreement Assignment. In the Cash Management Agreement, Borrowers effectively agreed that

upon a Cash Management Event Lender would receive the Rents and other applicable sums directly, apply same to amounts owed under the Loan Documents, disburse amounts to Borrowers for operating expenses, and retain the remainder (Excess Cash Flow) in a separate reserve account (the Excess Cash Flow Reserve Fund). CMA §§ 2.1(b), 3.4 and 4.1; Mortgage § 3.15. As set forth above, multiple Cash Management Events have occurred. In the Management Agreement Assignment, Borrowers agreed that upon notice from Plaintiff following a default that Property Manager would remit all Rents to Plaintiff after payment of the Property's operating expenses – specifically excluding management fees. Management Agreement Assignment §§ 4(a) and 6.

Borrowers' failure to implement cash management despite a clear and indisputable Cash Management Event and Plaintiff's multiple demands for compliance, failure to direct Tenants to pay Rents to Plaintiff directly as required under the ALR, failure to cause Property Manager to remit Rents directly to Plaintiff after payment of specified operating expenses, failure to remit positive cash flow directly to Plaintiff and withholding delivery of Required Documentation following the PW Event and Plaintiff's demand for cash management (thus concealing amounts of positive cash flow and any disbursements to, among other persons, Property Manager or Borrowers' principals) all clearly demonstrate that absent this Court's intervention Borrowers will continue to refuse to comply with their obligations under the Loan Documents and continue to subvert Plaintiff's interests in the Rents.[6]

[6] In addition to the issues noted herein, Borrowers have already succeeded in delaying the filing of an answer by at least 5 months, thereby providing Borrowers additional time to collect the Rents and retain excess cash. See Plaintiff's Memorandum in Opposition to Borrowers' Rule 12(b)(7) motion, fn. 3 and fn. 4.

The relief sought by Plaintiff is particularly exigent given that the Loan is generally nonrecourse and thus with certain limited exceptions Plaintiff's sole source of recovery is to the Property (including the Rents).

CONCLUSION

For the foregoing reasons, Plaintiff submits to this Honorable Court that the Rents Motion should be granted.

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Attorneys for Plaintiff

October 19, 2016
Charlotte, N.C.

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, AS SUCCESSOR-IN-INTEREST TO BANK OF AMERICA, N.A., AS SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE REGISTERED HOLDERS OF BEAR STEARNS COMMERCIAL MORTGAGE SECURITIES, INC., COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-TOP26, Plaintiff, Vs. AW-MAGPG, LCC; HW-MAGPIG, LLC; and MW-MAGPIG, LLC, Defendants.	Civil Action No: 2016-40-02470 **DEFENDANTS' SUPPLEMENTAL MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' MOTION FOR ORDER REQUIRING TURNOVER OF COLLATERAL AND SEQUESTERING RENTS**

JEANNETTE W. McBRIDE, C.C.P. & G.S.
2016 NOV 16 AM 11:03
RICHLAND COUNTY FILED

In addition the reasons articulated in Defendants' initial Memorandum of Law in Opposition to Plaintiffs' Motion for Order Requiring Turnover of Collateral and Sequestering Rents, this Court should deny Plaintiffs' Motion because the loan documents relied upon by Plaintiffs contain both choice of law provisions and venue/forum selection clauses which provide that the parties "hereby submit to the exclusive jurisdiction of the state courts of the State of New York for the purposes of all legal proceedings arising out of or relating to this Agreement or the transactions contemplated hereby." Page 5 to Exhibit F to Plaintiffs' Complaint, Clearing Account Agreement.

The Clearing Account Agreement which is quoted above relates to the Cash Management Agreement, Note and Mortgage which Plaintiffs relied upon as a factual and legal basis for their Motion and which Plaintiffs relied upon in drafting a Proposed Order for this Court. The Cash

Management Agreement is Exhibit G to Plaintiffs' Complaint. The Cash Management Agreement defines the Clearing Account Agreement. In fact, the Cash Management Agreement attached to Plaintiffs' Complaint actually includes an additional copy of the Clearing Account Agreement with the same language quoted above. The Note (Exhibit A to Plaintiffs' Complaint) and Mortgage (Exhibit B to Plaintiffs' Complaint) both explicitly reference and relate to Cash Management Agreement. For example, Article 22 of the Note details the "Lock Box Procedures" and specifically references the "Cash Management Agreement". Page 11 of Exhibit A to Plaintiffs' Complaint). By way of another example, the Mortgage details the "Assignment of Rents" and also references the Cash Management Agreement. Page 4 of Exhibit B to Plaintiffs' Complaint. In addition, the Mortgage itself has its own "CHOICE OF LAW" provision which provides that it is "ENTERED INTO PURSUANT TO THE LAWS OF THE STATE OF NEW YORK AND SHALL IN ALL RESPECTS BE GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK..." Page 49 of Exhibit B to Plaintiffs' Complaint (emphasis in original). However, of equal significance is the venue/forum selection clause in the Clearing Account Agreement which is attached to the Cash Management Agreement and was also attached as a separate exhibit to Plaintiffs' Complaint.

Obviously, Plaintiffs' did not comply with this venue/forum selection clause nor did they seek to have this Court apply New York Law. These failures demonstrate precisely why this Court should deny the pending motion before Defendants are even required to Answer the Complaint in this action.

Respectfully submitted,

LAW OFFICES OF ROBERT D. DODSON, P.A.

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Attorney for Defendant

November 16, 2016

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
U.S. Bank Nationa Association et. al.	)	CASE NO.
☐ Plaintiff	)	2016-CP-40-02470
	)	
v.	)	MOTION AND ORDER INFORMATION
	)	FORM AND COVER SHEET
Aw-Magpig, Llc Et. Al.	)	
☒ Defendant.	)	

Plaintiff's Attorney:	Defendant's Attorney:
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e-mail: other:	

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

2016 DEC -8 PM 4:01

SECTION I: Hearing Information

Nature of Motion: Motion for Reconsideration or in the Alternative Requiring that Plaintiff Post a Bond for the Injunction it Obtained and/or in the Alternative Staying Enforcement of the Court's Previous Order pending Appeal

Estimated Time Needed: 30 Minutes Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant — 12/8/16 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: 25.00

☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Collected by:

Date Filed: 12/8/16

☐ MOTION FEE COLLECTED:

☐ CONTESTED – AMOUNT DUE:

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, AS SUCCESSOR-IN-INTEREST TO BANK OF AMERICA, N.A., AS SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE REGISTERED HOLDERS OF BEAR STEARNS COMMERCIAL MORTGAGE SECURITIES, INC., COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-TOP26, Plaintiff, vs. AW-MAGPG, LCC; HW-MAGPIG, LLC; and MW-MAGPIG, LLC, Defendants/Third-Party Plaintiffs, vs. WELL FARGO BANK, N.A. and MERIDIAN CAPITAL GROUP, LLC, Third-Party Defendants.	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT Civil Action No: 2016-CP-40-02476 **NOTICE OF MOTION AND MOTION FOR RECONSIDERATION OR IN THE ALTERNATIVE REQUIRING THAT PLAINTIFF POST A BOND FOR THE INJUNCTION IT OBTAINED AND/OR IN THE ALTERNATIVE STAYING ENFORCEMENT OF COURT'S PREVIOUS ORDER PENDING APPEAL**

TO: PLAINTIFFS AND THEIR ATTORNEYS:

YOU WILL PLEASE TAKE NOTICE that ten (10) days after the filing of this Notice of Motion or as soon thereafter as may be scheduled and heard by the Court, Defendants/Third-Party Plaintiffs will move the Court for the relief sought herein.

MOTION FOR RESONSIDERATION

1. **The Court should reconsider and retract its prior Order Requiring Turnover of Collateral and Sequestering Rents because the contracts relied upon by Plaintiffs**

contain forum selection clauses and choice of law provisions providing that New York law be applied in New York.

The loan documents cited and relied upon by this Court in issuing its previous Order each contain choice of law provisions and/or venue selection clauses which provide that New York law should be applied in New York. The Promissory Note provides: "This Note shall be deemed to be a contract entered into pursuant to the law of the State of New York..." Promissory Note, p. 9). The Mortgage states: "THIS SECURITY INSTRUMENT SHALL BE DEEMED TO BE A CONTRACT ENTERED INTO PURSUANT TO THE LAW OF THE STATE OF NEW YORK AND SHALL IN ALL RESPECTS BE GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK..." Mortgage, p. 49 (emphasis in original). The Assignment of Leases and Rents provides: "THIS ASSIGNMENT SHALL BE DEEMED TO BE A CONTRACT ENTERED INTO PURSUANT TO THE LAW OF THE STATE OF NEW YORK AND SHALL IN ALL RESPECTS BE GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK." Assignment of Leases and Rents, p. 8 (emphasis in original). The Cash Management Agreement states: "**Governing Law. THE LOAN WAS MADE BY LENDER IN THE STATE OF NEW YORK AND...SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.**" Cash Management Agreement, p. 24 (emphasis in original). The Replacement Reserve and Security Agreement states: "CHOICE OF LAW. THIS AGREEMENT SHALL BE DEEMED TO BE A CONTRACT ENTRERED INTO PURSUANT TO THE LAWS OF THE STATE OF NEW YORK AND SHALL IN ALL RESPECTS BE GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAW OF THE STATE OF

NEW YORK." Replacement Reserve and Security Agreement, p. 11 (emphasis in original). These were the mortgage documents cited and relied upon by this Court in its Order but the Court's Order never addresses why South Carolina law was applied when the documents relied upon by Plaintiffs all state that New York law should apply.

Equally important is fact there are venue selection clauses in the mortgage documents which provide that venue is only proper in the State of New York. The Clearing Account Agreement, which was attached the loan documents provides: "Borrower, Clearing Bank and Lender hereby submit to the exclusive jurisdiction of the state court of the State of New York for the purposes of all legal proceedings arising out of or relating to this Agreement or the transactions contemplated hereby." Clearing Account Agreement, p. 5. The Cash Management Agreement also contains a similar venue selection clause that provides for venue "IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK..." p. 24, Cash Management Agreement (emphasis in original).

Plaintiffs to this action simply didn't follow the terms and conditions of the mortgage documents they drafted. Instead of filing suit in New York and having a New York court apply New York state law, they breached the venue selection clauses they drafted and filed suit in South Carolina. Thereafter, they sought and received an Order from this Court that is based entirely on South Carolina statutory law even though the loan document relied upon by Plaintiffs in obtaining this Order provide for application of New York state law in a New York court.

These issues were previously raised to this Court but were never addressed by this Court. In a Supplemental Memorandum of Law that was previously filed with this Court, Defendants/Third-Party Plaintiffs raised these issues before this Court issued the current Order. However and with all due respect to this Court and His Honor, the current Order simply fails to

address why South Carolina law was applied over New York law. Additionally, the Order fails to address why venue and jurisdiction even rested with this Court for issuance of the Order Requiring Turnover of Collateral and Sequestering Rents.

Defendants/Third-Party Plaintiffs respectfully request that this Court revisit its Order and deny Plaintiffs' Motion that gave rise to the Order. In the alternative, Defendants/Third-Party Plaintiffs request that this Court address the choice of law, venue and jurisdiction issues which were previously raised and which are now raised again.

II. The Court should reconsider and retract its prior Order Requiring Turnover of Collateral and Sequestering Rents because the Order is injunctive relief and Plaintiffs did not sustain their burden of proof or demonstrate that they were entitled the extraordinary injunctive relief granted by this Court.

The Court's Order in this case granted injunctive relief to the Plaintiffs before a full hearing/trial on the merits. In so doing, however, the Court did not explain or address how Plaintiffs were entitled to injunctive relief before Defendants/Third-Party Plaintiffs had even filed an Answer in this case or were required to file an Answer in this case.

"An injunction is a ***drastic remedy*** issued by the court in its discretion to prevent ***irreparable harm*** suffered by the plaintiff." Scratch Golf Co. v. Dunes W. Residential Golf Properties, Inc., 361 A.S. 117, 121, 603 S.E.2d 905, 907-08 (2004) (citing S.C. Civil Procedure, 507 (2d ed. 1996)). "The ***sole purpose*** of a temporary injunction is to preserve the status quo and thus avoid possible irreparable injury to a party pending litigation." FOC. Lawshe Ltd. P'ship v. Int'l Paper Co., 352 S.C. 408, 413, 574 S.E.2d 228, 231 (Ct. App. 2002) (quoting Zabinski v. Bright Acres Assocs., 346 S.C. 580, 601, 553 S.E. 2d 110, 121 (2001)) (emphasis

added). With all due respect to the Court and His Honor, the Court's Order simply fails to address any of the requirements necessary before injunctive relief is granted.

More specifically and as noted above the "sole purpose for a temporary injunction is to preserve the status quo" but the Court's Order changes the status quo. Instead of tenant rental payments going to the Defendants/Third-Party-Plaintiffs as they have for the last nine years, this Court's Order changes that arrangement by mandating that rents be remitted to Plaintiffs. Significantly, the Court's Order dictates further that Defendants/Third-Party Plaintiffs may not be reimbursed or paid for "Management Fees...or distributions to any Borrower Parties..." Order, p. 8, paragraph C(i). Presumably, Plaintiffs to this action would have Defendants/Third-Party Plaintiffs manage the property as they have for the last nine years but instead of being paid for managing the property they would use this Court's Order to deny them payment for their time, labor and effort in doing so. Such an outcome does not maintain the status quo. Instead, it significantly changes the status quo from what it has been for the last nine years.

Just as importantly, Plaintiffs cannot establish a likelihood of success on the merits of the case. As noted above, New York state law should apply but the Court's Order is premised entirely on South Carolina statutory law and specifically S.C. Code Ann. §29-3-100. Additionally, the Note and Mortgage are in the names of Bear Stearns Commercial Mortgage, Inc. but the lawsuit and named Plaintiff in this case is not in the name of Bear Stearns Commercial Mortgage, Inc. Rather, it is Bear Stearns Commercial Mortgage Securities, Inc., a different legal entity entirely.

Significantly, the Plaintiffs demonstrated no irreparable harm or injury if an injunction were not granted. Even if the untimely and improper Dickerson Affidavit is considered, it does not establish irreparable harm if an injunction is not granted.[1]

The Supreme Court has held that due to their ***drastic*** and ***extraordinary*** nature, courts should issue injunctions with caution and only where there is no adequate remedy at law. Strategic Res. Co. v. BCS Life Ins. Co., 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). With all due respect to this Court and His Honor, the Order Requiring Turnover of Collateral and Sequestering Rents does not address any of the requirements necessary for a preliminary injunction. Defendants/Third-Party Plaintiffs ask that this Court reconsider its previous Order under the legal standard to be applied to motions for preliminary injunctions and that this Court issue an Order that retracts the previous Order.

MOTION TO REQUIRE PLAINTIFF TO POST BOND

SCRCP, Rule 65(c) provides:

> Except in divorce, child custody and non-support actions where the giving of security is discretionary, no restraining order or temporary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

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[1] As argued at the October 26th Motion Hearing, the Dickerson Affidavit should not have been considered by the Court because it was not timely filed pursuant to Rule 6(d), SCRCP. Rule 6(d) states in part: "When a motion is to be supported by affidavit, the affidavit shall be served with the motion..." That was not done in this case. The Court cited this affidavit but failed to explain how it could properly consider the affidavit. Defendants/Third-Party Plaintiff also ask that the Court specifically address this argument which was not addressed in the Order.

Additionally, Plaintiffs' Counsel referenced a verified complaint in this action. However, a careful review of the Court's docket and the Affidavit of Service related to the Summons and Complaint shows that the verification to the Complaint was never served on the Defendants (it was served on Defense Counsel but only after the October 26th Hearing). Defendants/Third-Party Plaintiff also request that the Court specifically address how this could be properly considered at the October 26th hearing when it was not served in accordance with the applicable Rules of Civil Procedure.

In issuing the Order Requiring Turnover of Collateral and Sequestering Rents, the Court failed to require that Plaintiff post any bond as required by Rule 65(c). In AJG Holdings, LLC v. Dunn, 382 S.C. 43, 674 S.E.2d 505 (Ct. App. 2009), the Court of Appeals noted that even if a temporary injunction was properly granted by a trial court, the trial was still required to assess the proper amount of a bond. Failure to do so is reversible error. Moreover, the Supreme Court has noted that the bond amount must be sufficiently large to cover costs and damages if it is later determined that a preliminary injunction should not have been issued. Atwood Agency v. Black, 374 S.C. 68, 646 S.E.2d 882 (2007). Thus, in Atwood the Supreme Court held that a nominal bond was insufficient to satisfy Rule 65(c)'s requirements and it reversed the trial court's issuance of a nominal amount only.

While Defendants/Third-Party Plaintiffs maintain the Order Requiring Turnover of Collateral and Sequestering Rents should be re-visited and modified as outlined above, they also maintain that if the Order Requiring Turnover of Collateral and Sequestering Rents remains in force and effect, the Court should hold a hearing to determine the appropriate amount of a bond Plaintiffs should be required to post to maintain the Order Requiring Turnover of Collateral and Sequestering Rents.

MOTION TO STAY PENDING APPEAL

In the event this Court does not alter, amend or retract its prior Order Requiring Turnover of Collateral and Sequestering Rents as outlined above, Defendants/Third-Party Plaintiffs move that the Court stay the Order pending appeal. Respectfully, there are serious questions as to whether or not the Order should have been issued especially given the venue and forum selection clauses and choice of law provisions in the documents. Moreover, and irrespective of whether this Court views the Order Requiring Turnover of Collateral and Sequestering Rents as a

preliminary or temporary injunction, the Order Requiring Turnover of Collateral and Sequestering Rents undoubtedly makes significant changes to the statute quo that existed before the Order was issued. Before taking effect and changing the status quo, Defendants/Third-Party Plaintiffs maintain those issues should be reviewed by an appellate court before the conditions in the Order Requiring Turnover of Collateral and Sequestering Rents take effect/remain in effect. Therefore, Defendants/Third-Party Plaintiffs request that this Court issue an Order staying the Order Requiring Turnover of Collateral and Sequestering Rents while this matter is on appeal.

Respectfully submitted,

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Attorney for Defendant

December 8, 2016

State of South Carolina)
)
County of Richland)

In The Court of Common Pleas
Fifth Judicial Circuit
2016-CP-40-2470

U.S. Bank National Association, as Trustee, as successor-in-interest to Bank of America, N.A., as successor by merger to LaSalle Bank Nation Association, as Trustee for the registered holders of Bear Stearns Commercial Mortgage Securities, Inc., and Commercial Mortgage Pass-Through Certificates, Series 2007, TOP26,

Plaintiff,

vs.

AW-MAGPIG, LLC, HW-MAGPIG, LLC, and MW-MAGPIG, LLC,

Defendants.

Transcript of Record

October 26, 2016
Columbia, South Carolina

B E F O R E:

The Honorable Robert E. Hood, Judge

A P P E A R A N C E S:

David H. Simpkins, Esquire
Attorney for the Plaintiff

Robert D. Dodson, Esquire
Attorney for the Defendants

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

I N D E X

Witness/Description	Page No.
Certificate Page.	45

E X H I B I T S

No.	Description	ID.	Ev.

No exhibits introduced.

THE COURT: All right. So, we're on the record in 2016-CP-40-2470, U.S. Bank Association and others against AW-MAGPIG, LLC, and you are Mr.?

MR. SIMPKINS: David Simpkins.

THE COURT: Mr. Simpkins. Okay, thanks for being here. Mr. Simpkins is present for the plaintiff, and Mr. Dodson is present for the defendant, and the motion for requiring turn over of collaterals has been dealt with. Is that right?

MR. DODSON: No, Your Honor.

THE COURT: Okay. We have that that was completed October 14th.

MR. SIMPKINS: No, Your Honor.

THE COURT: Okay. Well, welcome to my life with the Richland County clerk's office. Okay. All right, who wants to go first?

MR. SIMPKINS: Well, Your Honor, I think there's a procedural issue.

THE COURT: Okay.

MR. SIMPKINS: An order of reference was entered.

THE COURT: Okay.

MR. SIMPKINS: We actually had a calendar call or roaster meeting a couple weeks back, and Judge Benjamin initially said she was going to enter the order because this is a foreclosure case, and Mr. Dodson objected and so

Ms. -- Judge Benjamin I think had said that that motion could be heard today.

THE COURT: Okay.

MR. SIMPKINS: And then for some reason, a few days later the clerk, I guess, entered the order of reference and I got it in the mail, you know, a few days ago or last week. So, I think it's just a procedural thing that we need to ---

THE COURT: What you know about that, Mr. Dodson?

MR. DODSON: I have not been served with a copy of the order of reference, Your Honor.

THE COURT: Okay.

MR. DODSON: I don't recall seeing that from the clerk's office.

THE COURT: I need that woman -- who is the woman who runs all these things? Anne? I need Anne.

BAILIFF: Yes, sir.

THE COURT: Okay, go ahead, Mr. Dodson. You haven't gotten a copy of that yet?

MR. DODSON: I have not. What, what happened, sort of timeline, is that he filed a motion for order of reference, and I was, I was in mediation the day that apparently he filed that and then he served -- there were some email communications while I was in mediation between his office and Judge Benjamin's office, and Judge Benjamin's law clerk

indicated the order had been signed.

When I got out of the mediation, the following day I emailed Judge Benjamin and I said essentially I object to the order of reference. I had not at that time even been served with it except the prior day by email, and then the original copy came in that afternoon mail. But it was sort of presented to Judge Benjamin as if it was a consent order even though I haven't consented to it in any way, shape, fashion, or form. And so her law clerk emailed back and indicated that since I objected, that the order would not be signed or would be withdrawn. I don't remember her exact wording.

THE COURT: Do you have a copy of that, Mr. Simpkins?

MR. SIMPKINS: I do. I just set it there.

THE COURT: Okay. Can I see it, Mr. Dodson?

MR. DODSON: Yes, sir.

THE COURT: You can look at, too, but I just want to see it real quick. It's not -- there's nothing in the file.

MR. DODSON: Oh. Well, it looks like it was signed by the clerk of court. That's -- that would probably explain why Judge Benjamin said what she said, but it looks like it got...

MR. SIMPKINS: And, Your Honor, I, I -- we didn't present it as though it was a consent order. It's a

foreclosure case, so these are normally entered. I just simply reached out to the -- Judge Benjamin's office to see if we were still going to be on the calendar call in, in case -- you know, if the case had been referred, then we probably weren't going to be on the calendar. So, I was just trying to figure out if I had to come down here.

THE COURT: Okay, so there's an order of -- a motion for reference to the master that's pending.

MR. DODSON: Yeah, and I ---

THE COURT: In theory, okay.

MR. DODSON: And I'll have to file, you know, I guess it would be a Rule 59 motion. I'll have to brush up on my rules, but I'll have to file a motion. I mean, you know, if that's going to become an issue, I'll have to file a motion to reconsider.

THE COURT: Well, Mr. Simpkins, do you disagree that Mr. Dodson objected to that order of reference?

MR. SIMPKINS: No, Your Honor.

THE COURT: Okay. So, it ---

MR. SIMPKINS: And my being ---

THE COURT: --- wasn't your intent to present that to Judge Benjamin as if everybody was on board with that. Is that correct?

MR. SIMPKINS: Right. I mean, I sent it down. I was thinking that the clerk would probably sign it like she

ended up doing.

THE COURT: Okay. Right.

MR. SIMPKINS: But.

THE COURT: Okay. All right. So, first thing we're going to do is I'm going to do an order on my own that says the motion to refer the case to the master is hereby reopened. It needs to be put back on the docket, and you all can brief that issue or submit whatever you'd normally submit in the normal course of business, but I'm going to save you the filing on the 59(b).

MR. DODSON: Thank you, Your Honor.

THE COURT: Or whatever it is. I don't think Mr. Simpkins intended to submit that as a we're all on board just signing and sending. Mr. Dodson clearly objected to that in the line of communications. So, I'm just going to do to a Form 4 that says the case is not referred to the master. The motion to move the -- to refer the case to the master is reopened and needs to be set for hearing in the normal course of cases. Okay, Mr. Simpkins?

MR. SIMPKINS: That's fine.

THE COURT: Is that okay with you, Mr. Dodson?

MR. DODSON: Yes, Your Honor. Thank you.

THE COURT: Okay. Let's do a Form 4 that says all that, okay, but we've got to have the clerk's office copied on that order to do it.

All right. So, the two motions that are pending today are a motion to dismiss or, in the alternative, to add a necessary party, and that's filed by Mr. Dodson. Is that right?

MR. DODSON: That's correct, Your Honor.

THE COURT: And then a motion requiring the turn over of collaterals which is filed by Mr. Simpkins, which we have as completed which everybody agrees is not completed. Is that correct?

MR. SIMPKINS: Yes, Your Honor.

MR. DODSON: That's correct, Your Honor.

THE COURT: All right. So, let's start with the motion to dismiss and add Wells Fargo as a party.

MR. DODSON: Thank you, Your Honor. This is a mortgage foreclosure action, as Mr. Simpkins told you. What I don't think has been made clear to the court is that the mortgage at issue had been fully paid: principal, interest, escrow amount for real estate taxes, and that kind of thing. At the time of filing and actually up through filing, that mortgage had been fully paid, and attached to the motion to dismiss or in the alternative to add necessary and indispensable parties, I attached copies of the payments that my clients made to Wells Fargo, and Wells Fargo is not a named plaintiff in this.

THE COURT: Right.

MR. DODSON: And that's really at the heart of it is that -- I understand that these -- you know, I mean, I titled it as a motion to dismiss, but I understand the court's reluctance to dismiss cases at this early stage, but I do think that Wells Fargo needs to be named as a necessary and indispensable party because that's who we made the payments to. That's who accepted the payments for several months, and I think even probably more than that. Probably several years, and I think part of this foreclosure action actually grows out of ---

THE COURT: Go off the record.

(OFF THE RECORD.)

THE COURT: I apologize, Mr. Dodson. Okay, so you were saying Wells Fargo is not a party in the case, but Wells Fargo is who your payments have been made to over -- or for prior to about a year or so before the case was filed?

MR. DODSON: Yeah. Even longer than that.

THE COURT: Okay. Okay. Got it.

MR. DODSON: Even longer than that.

THE COURT: Okay.

MR. DODSON: As far as I know, it may have been even the life of the mortgage.

THE COURT: Okay.

MR. DODSON: But I'm not sure. I'm not representing

that to the court.

THE COURT: Okay.

MR. DODSON: Because I'm not sure about it, but at least, at least a year's worth of mortgage payments we attached to the motion. And so our contention is they need to be added as a necessary and indispensable party because otherwise it potentially subjects my client to double liability. The money that we paid to Wells Fargo, these plaintiffs could say we don't know anything about it or, you know, that's not the right -- you know, you didn't pay it to the right entity. I don't know but, you know, we already have an issue with regard to whether the plaintiff to this action is properly named, the plaintiff that he named is actually the proper corporate defendant because the plaintiff he named and who is in the caption of this case, that -- those set of plaintiffs do not appear anywhere in any of these mortgage documents that were attached to their complaint. The mortgage documents that were attached to their complaint contain totally different legal entities than what he has named anywhere in the caption of the complaint or otherwise. And they do not include Wells Fargo, who is actually who we made the payments to.

So, the other reason that I would give to the court for requiring that they be added as a necessary that

indispensable party is this. I think part of the reason that we're here is because the mortgage payments we made, which as you see is attached to our motion, my clients very clearly designated on those payments this much is for principal, this much is for interest, this much is for escrow. And I think what Wells Fargo did is they just did willy-nilly whatever. They just allocated that money in any way that they felt. And so somewhere between all these different entities is, is floating around that our mortgage is not up-to-date because I can't figure out why an action for foreclosure gets filed by a plaintiff when the mortgage is being paid. And that -- call me old fashioned but, I mean, when you pay your mortgage on time -- it's not even like the payments were late. The payments were timely made. And I think part of that is because Wells Fargo said, well, you owe us all these additional fees and extra and whatnot, and my clients disputed that.

My clients said we don't owe you that fee and this fee and that charge and whatever else you're trying to gin up to generate more fees. We owe you principal, interest and, you know, the escrow amount for taxes and insurance and that kind of thing, and that's all we're going to pay. And so without having them in the case, you know, that's nothing -- I mean, that's something that we can't drill down to the bottom of. And so that's another reason that I

think that they need to be named as a necessary and indispensable party or the case should be dismissed.

THE COURT: All right, Mr. Simpkins.

MR. SIMPKINS: Thank you, Your Honor. I think the first thing is that they, they haven't met their burden here. There's no -- I mean, they just have attached some alleged checks to their motion.

THE COURT: Right.

MR. SIMPKINS: There's no affidavits, nothing.

The second of all ---

THE COURT: I mean, y'all admit in your filings that Wells Fargo is the servicer of the account. Is that right?

MR. SIMPKINS: Correct. Wells Fargo, servicer ---

THE COURT: Okay.

MR. SIMPKINS: Wells Fargo ---

THE COURT: And I know that servicer may not be the right word. I think y'all used a different word but, I mean, y'all admitted in your filings that Wells, basically Wells Fargo was collecting the money.

MR. SIMPKINS: Right. Wells Fargo does receive and process payments as a agent for the plaintiff, and the plaintiff is properly named. There's assignments attached to -- assignments of the mortgage and assignments of the lease, to the rents that were recorded attached to the affidavit of David Weiss clearly showing that the mortgage

and the, the recorded documents have been assigned to the plaintiff. And he also stated in his affidavit that the plaintiff owned and holds the note. That Wells has never owned or held the note. All Wells does is receive and process payments on behalf of the plaintiff.

This is a foreclosure case; that's the only cause of action right now. The named plaintiff is the mortgagee, and it is the beneficial owner of the mortgage debt.

THE COURT: But Mr. Dodson is saying the mortgage is paid off.

MR. SIMPKINS: No, he was -- what he's referring to is he's saying that the principal and interest monthly payments were up to date when we filed the case.

THE COURT: Okay.

MR. SIMPKINS: He's not saying that the loan itself ---

THE COURT: Okay. All right.

MR. SIMPKINS: Right. So, Wells is simply an agent and under South Carolina law and a principal named as a party, the agent is not a necessary, indispensable party.

Second of all, the property -- the proper parties in a foreclosure are the mortgagee, the holder of the mortgage debt, and the defendants are the people -- those who have other recorded interest in the property. So, your property owners, maybe judgment lien holders, second mortgagee,

something along those lines. All the proper parties are already in the case. Wells is simply an agent that received these payments and processed them.

As far as -- and Wells, in the affidavit of David Weiss, who specifically says that Wells doesn't claim an interest in the property which is required under Rule 19 that you have to claim an interest in the subject matter of the suit, Wells doesn't have an interest in the property by a mortgage or otherwise.

THE COURT: When you say Wells, you mean Wells Fargo?

MR. SIMPKINS: Wells Fargo, correct, I'm sorry. Wells doesn't have, possess, or claim an interest in the property, and we already have all the necessary parties to a foreclosure here.

THE COURT: So, if what Mr. Simpkins says is true, Mr. Dodson, why do you need to add Wells Fargo? If he's stating on the record as an officer of the court that the position of U.S. Bank National Association is that Wells Fargo in this case is their agent and they have absolutely no claim to the mortgage in any, way, shape, or form and they are not a party in interest, and they are not coming after the money, nor do they have any right to the money, but he's admitting as officer of the court that Wells Fargo is their agent and that they are Wells Fargo's principal, why do I need to add Wells Fargo as a party?

MR. DODSON: Okay, David Weiss cannot make that assertion in his affidavit, and here's why. He is not an employee of Wells Fargo. He does not say in his affidavit that he is an employee of Wells Fargo. And he can't assert that Wells Fargo is not taking any kind of interest in this property for somebody he doesn't work for, and there's nothing in his affidavit to indicate.

He, he works for some company called C3, who's another legal entity that I've never -- who's not named as a plaintiff and I've not heard of until, until I got his affidavit. And so I don't how he can make -- it would be like Mr. Simpkins making an assertion that my law firm is not going to assert an interest in something else. Well, he's not an employee.

THE COURT: But if what Mr. Simpkins says is true, and I don't mean it that Mr. Simmons is lying.

MR. DODSON: Right. I don't think he is.

THE COURT: But if legally, if legally it is accurate that Wells Fargo has no interest in the mortgage, then they don't need to be added. Is that right?

MR. DODSON: I mean, I disagree with that and the reason that I disagree with it is because as I indicated before, part of the reason that I think we're here is because what Wells Fargo has done is misappropriate the payments that my clients did make, the monthly payments

that my clients did make. And while it is certainly true that the principal is on the hook for the actions of the agent, that doesn't alleve the agent from liability either.

THE COURT: So, under what legal theory would I add them as a party?

MR. DODSON: Well, because they are, you know ---

THE COURT: I mean, what rule would allow me to -- are you going to file a counterclaim against them?

MR. DODSON: I, I -- absolutely.

THE COURT: Okay.

MR. DODSON: I mean, I absolutely intend to file.

THE COURT: And help me with the mechanism of how ---

MR. DODSON: Absolutely.

THE COURT: --- if I decided to do it I would allow you to do it.

MR. DODSON: I think that they are -- I think it's under the, the, the -- I believe it's Rule 14 that they are a necessary and indispensable party.

THE COURT: Okay.

MR. DODSON: And under Rule 12(b), I think Your Honor has the discretion to either allow you to amend the complaint, which I certainly, you know, obviously would agree to them as a party. And then I would make certain counterclaims against them because I think that's really -- that gets at the core of why we're here. That they

misappropriated that money from my clients and essentially -- and again I can't, can't say this with absolute certainty, Your Honor, because we haven't even filed an answer yet. We haven't done any discovery aside from I've answered some written discovery that Mr. Simpkins served on me. But other than that, we haven't done any discovery.

But I think what has happened is I think Wells Fargo has essentially reported to C3 or Bear Stearns, I don't know who, that my clients are delinquent. And they've done that saying, well, we took all this money that you paid and we applied it to this fee and that fee and another service charge and this and that. And we didn't apply it to principal, interest in escrow as the, as the checks were -- as was directed on the checks in the payments that my clients made.

THE COURT: All right, you want to respond to that, Mr. Simpkins?

MR. SIMPKINS: Sure. I think the rule is actually Rule 19, which is what he referenced in his motion.

MR. DODSON: He's right.

THE COURT: Okay.

MR. SIMPKINS: First of all, David Weiss does say that he is employed with Wells Fargo, and I think Mr. Dodson is thinking of our affidavit in support of the plaintiff's motion to sequester rents which was made by an employee of

C3 Asset Management. But David Weiss does say I am a director of Asset Management for Wells Fargo Bank.

THE COURT: What about that?

MR. DODSON: Let me see if I'm looking at the same affidavit, Your Honor, because I'm not sure.

THE COURT: Okay. That's fine. Take your time.

MR. SIMPKINS: Your Honor, we ---

THE COURT: Help him with where it is, Mr. Simpkins.

MR. SIMPKINS: Well, we, we served it with the -- with our memos last week.

THE COURT: Okay. Give him a second.

Take a second, Mr. Dodson.

MR. DODSON: Yeah, because I did see one.

THE COURT: Okay.

MR. DODSON: And I saw that it was attached to their motion to essentially the injunctive relief, and I'm looking at the other.

(A PAUSE.)

MR. SIMPKINS: I'm looking at it now. I see, I see that. It -- you know, and if he, he says that in is affidavit, then I stand corrected, and I do see that he said I am director of Asset Management for Wells Fargo. He does, he does say that.

But my point is nevertheless the same. Even as an agent, just the fact that you're an agent doesn't relieve

you from tort liability. If you've committed a tort, if you've committed a wrongful act, the fact that you had a principal and you were acting as an agent for that principal does not relieve the agent of liability.

THE COURT: Well, I don't dispute that, but at this point you're just in a foreclosure case.

MR. DODSON: Right.

THE COURT: So, if you want to file a tort against Wells Fargo, you can.

MR. DODSON: I mean, I guess that would be if, you know, you're ---

THE COURT: I mean, I'm not -- I'm just saying with the, with the mechanism of it, at this point you're in a, if you're in a foreclosure case, if you think Wells Fargo has committed a tort against your client, then, I mean...

MR. DODSON: Yeah and, I mean, that would be the -- I guess, you know, if the motion were denied, and again I don't think it should be, but if the motion were denied, then I guess we would end up filing a separate action against Wells Fargo, and then eventually there would be some type of action, a motion to consolidate those two cases.

THE COURT: Right.

MR. DODSON: And I'm just trying to kind of -- instead of going through that cumbersome procedure get all the

parties to the table right now so that it's clean.

THE COURT: All right.

MR. DODSON: And I think that that's the appropriate thing for Your Honor to do.

THE COURT: Okay. Do you want to be heard on anything else on that issue, Mr. Simpkins? I cut you off in the middle of talking, so if you want to, you're more than welcome to.

MR. SIMPKINS: Well, I, I, I just want to say this alleged misappropriation, there's no evidence, no affidavits, nothing to support that, no affidavits to support his motion. And I agree that if he wants to make a counterclaim, he can do it by that means.

THE COURT: Okay. All right. Let's move on to the second motion, which is the motion for an order requiring the turn over of collateral, et cetera. That's your motion, Mr. Simpkins?

MR. SIMPKINS: Yes, Your Honor.

THE COURT: Okay. All right. I had read everything on the first one because this one said completed. So, I didn't read this one because all our notes said that it had already been dealt with. So, help me with what you're talking about here, Mr. Simpkins.

MR. SIMPKINS: Okay. Be glad to, and so, Your Honor, this foreclosure case, all of the defendants are Delaware,

LLCs whose principals live in New York, and the property is a shopping center known as Magnolia Point. It's at the intersection of Hardscrabble and Clemson Road.

THE COURT: Okay.

MR. SIMPKINS: It used to be anchored by Piggly Wiggly. So, I'm going to just kind of walk through some of the, the loan documents and some of the provisions in there. It might take a minute, but I think that it's, it's worthwhile to do that.

Attached is Exhibit A to the complaint. It is the -- so, this was a 4-and-a-half million dollar loan that the defendants got in order to acquire -- 4, 4-and-a-half million dollar commercial mortgage loan that they used to acquire this property. So, Exhibit A is a copy of the promissory note that they signed, and that was to Bear Stearns Commercial Mortgage, Inc., who we've already -- I've already established or mentioned was the original lender, and that loan has now been assigned to the plaintiff.

The defendants executed a mortgage, which is attached as Exhibit B to the complaint. It was recorded in the Register of Deeds in Book 1288, page 3242, assignment of leases and rent. That was also recorded in the register that's attached to Exhibit D. Exhibit E is a replacement reserve and security agreement that the defendants and the

original lender executed, which basically provides for the establishment of a replacement reserve account that the lender would hold to use to pay for major repairs or replacements to the property. Exhibit G is a cash management agreement. It's between the defendants, the original lender, and Bank of New York, and I'm going to kind of get into these, details of those, in just a minute.

We submitted an affidavit of Mike Dickerson, who works for C3 Asset Management. They are the special servicer for the loan. So, you have the master servicer which handles more of the receipt of payment side, and the special servicer -- well, the file will be transferred to them when there's been a default or other sort of more complicated things to deal with. So, C3 is the special servicer for the loan.

Attached to that, his affidavit, is Exhibit 5, an assignment of management agreement which is between the defendants, original lender, and a company called Whatfor, LLC, which is an affiliate of the defendants which is the property manager for the property. And then his affidavit also has the assignments and mortgage I mentioned earlier.

Like I said, to kind of get into some of the details here or more the things I think that are relevant to our motion, in the mortgage in section 1.1, it describes all the property that's being mortgaged: real estate,

improvements, the personal property, and other collateral. And part of that collateral is essentially all leases of the property. So, all the leases with all the tenants, and all rents, and, and the term rents is not just monthly rent. That term is defined to include all income of the property: rents, security deposits, any other income. If there's a drink machine out there that defendants get money from, any income is included within the term rents.

And in section 1.2, the defendants unconditionally assigned all current and future leases, rents, and other collateral. So, they unconditionally assigned all the rents, and in exchange back they were given a revocable license to collect and receive the rents until they default. And Section 3.7 talks about that, you know, and says that if there is a default, their license to collect the rents will be automatically revoked and the lender, or the plaintiff in this case, is immediately entitled to possession of all rents.

Later on in the mortgage in section 3.11, it talks about how during the term of the loan, the borrowers have to provide the plaintiff with certain financials: monthly rent rolls, monthly operating statements, annual balance sheet, and profit and loss statements. And also the plaintiff requested property management reports and other information.

In Section 3.15, it refers to the cash management agreement, but I think it's, it's just -- I'll get to this in a minute, but it, it basically says that all excess cash flow, which is defined in the cash management agreement, is to be remitted to the lender and held by the lender in accordance with the cash management agreement and will -- I'll get to that in just one second. Under the mortgage, a default can occur if they fail to pay any amounts that are due within five days of the due date under the loan documents; if they failed to deliver any of the required financials that I mentioned earlier; or if they default on any other loan docs such as -- one of the loan docs expressly says it's a default hereunder if; or they continue to be in default for sixty days after any other default under any of the loan documents.

And then as part of the remedy in section 11.1(h) it talks about, it reiterates that upon default, defendant's license to collect the rents is automatically revoked, and the lender has the right to collect and receive all of the rents.

So, moving to assignment of leases and rents, which is Exhibit D to the complaint, it basically goes through the exact same type of provisions with regard to the assignment of rents. In section 1.1, 2.1, and 3.1, the borrowers assign all rents, all income of the property,

unconditionally assign it. They get a revocable license back to collect them, and then if there's a default, that license is revoked and the plaintiff is entitled to possession of all rents. Also on default, the defendants are obligated to tell the tenants of the property to pay all their rents directly to the plaintiff.

Switching to the, over to the replacement reserve agreement which is Exhibit E, once there is a default, upon notice from the plaintiff, the defendants have to begin making monthly deposits to the replacement reserve account of 766 -- $776.60 per month. So, there's a default. Lender notifies they have to start making these monthly deposits to the replacement reserve.

And then the cash management agreement in Exhibit G, this basically serves to protect the lender's interest in the event of what's called -- what's defined in, in that agreement as a cash management event. And importantly a cash management event includes an event of default, or it includes the date that Piggly Wiggly ceases operations at the property, vacates the property, or otherwise goes dark, or terminate its lease. And so if one of those events happen -- if one of those events happens, the defendants are then obligated to establish a bank account called a cash management account, and they have to cause all the rents to be transferred into the cash management account.

And once the funds go into the cash management account, every month on the monthly payment date the funds in that account are then applied to principal, interest, escrows in a specified order. So, instead of the borrower -- sorry. I call them borrowers. Instead of the defendants keep getting the rents and paying those items, once there is a cash management event, all the rents go into the account and those -- and the funds in the account are then applied to pay those items in order and pay principal, and interest, escrow, reserve. And then there's also a disbursement that's made back to the borrowers to pay the property's operating expenses.

And one more loan document, the assignment of management agreement attached as Exhibit 5 to Mr. Dickerson's affidavit, sections 4 and 6 basically. The defendants and their affiliate property manager, these, these, these two entities are controlled by the same people. So, it's essentially the same company. They agree that after a default, the property manager would also send rents less operating expenses to the plaintiff.

So, at, you know, at this point we've got very high importance placed on the rents of the property. And one of the -- the main reason for that is that the defendants are single asset entities. All they own is the mortgage property and the rents; they have no other assets. And so

by extension if we foreclose, there's no assets after the foreclosure to satisfy any other -- this isn't an ongoing business once the foreclosure ends. So, we've got two separate loan docs assigning the rents, getting the license back to collect, and then on default plaintiff is entitled to all of the rents.

THE COURT: So, you want me to issue an order that says they got to do all that?

MR. SIMPKINS: Exactly.

THE COURT: Okay.

MR. SIMPKINS: And just so you know, in -- during 2014, spring or summer of 2014, Piggly Wiggly vacated the property. Well, they closed their store. I think they continued to pay rent but they closed their store, which was a cash management event which obligated the borrowers to then establish a cash management account, which they failed to do. We gave them notice of that. A default has occurred. They still haven't done it two years later. And the important part of that cash management process is that as part of the distribution of funds from the cash management account, once the principal, interest, escrows, reserves, and operating expenses are paid, all the remaining funds, the excess cash flow, is then sent to the lender which the lender holds and can apply in whatever manner it chooses to.

So, we notified them of the need to establish a cash management account. They haven't done that, and shortly afterwards they stopped sending us all the required financials. So, we haven't gotten any financials for the last two years. So, basically they haven't established the -- they haven't implemented cash management. We're not getting the excess cash that we should have been getting, and they're now hiding the ball on how much that actually is.

The last documents that we got from them were from the third quarter of 2014. At the time, the property was a little over 92 percent leased and was generating excess cash flow. So, we had an operating statement for that year-to-date January to September of 2014. To that point, including principal and interest and escrows, they had collected $391,000, over $391,000 in excess cash, which averages out to a little over $43,000 a month in excess cash.

Shortly after the default, the cash management default, we told them they needed to begin making replacement reserve deposits, monthly replacement reserve deposits. They haven't paid those amounts. So, this notion that there's non-monetary -- there's no monetary default is simply not true. They, to this point, they should have begun making replacement reserve deposits in

January of 2015. To this point, that would have totaled over $17,000. And if you run excess -- right now we think the property is similarly leased. It's, we're guessing it's probably 85 to 90 percent leased, and if we assume that it's generating similar excess cash every month, near 40 grand, and you run that back to the summer of 2014, you're looking at around $1 million in excess cash that should have been submitted to the plaintiff. Or in any event, it's some significant amount because, like I said, Piggly Wiggly, the anchor tenant, has continued to pay its rent, and most of the other units we believe are rented out. We've gotten none of that.

And so basically what we're asking the court to do is enforce the parties' agreement because they're clearly not going to provide us with excess cash. They're not giving us financials to show us what's going on with the property like they're supposed to do. We've made three demands this year for the required financials and they haven't provided anything, which is also default under the mortgage.

On top of what's in the loan documents, we have this statute here, South Carolina Code 29-3-100. It's an assignment of rents statute and it goes through -- and without literally reading all through the statute, basically the mortgages and the assignment of leases and rents that they signed at closing qualify under that

statute as an assignment of leases, rents, or profits and once we recorded, it became enforceable from that point forward. And those documents, the mortgage and assignment of leases and rents, also qualify as what's called a collateral assignment under that statute. And the significance of that, and I will read this particular part, is the statute, this 29-3-100(c). If you got a collateral assignment, it says:

> After a default under the mortgage or the default under evidence -- other evidence of indebtedness which the assignment secures, the assignee ---

Which is -- here is the plaintiff.

> --- is thereafter entitled to collect and receive any accrued and unpaid or subsequently accruing lease revenues, rents, issues, or profits without having to seek a receiver, without having to take possession -- to try to take possession of the property.

So, so, under both the loan documents and the statutory law of the state, we are entitled to all rents and profits. Under both the parties' agreements and statutory law, we're entitled to the rents. They're not remitting them to us; they haven't implemented cash management.

So, basically what we're seeking is an order that says

-- you know, we're seeking, actually seeking the least intrusive means possible. Instead of coming here and seeking appointment of a receiver, which we could do, we're asking that they send us the money after they pay operating expenses, send us all the remaining money, and send us a monthly accounting of that amount every month.

Now, operating expenses should not include management fees, and we don't think it should include attorneys' fees because we shouldn't have to absorb that loss so they -- to pay, you know, to pay their attorneys' fees for this case. We also want them to deliver any excess cash they currently have on hand because, again, we should have been receiving that for the last two years. And we also want them to deliver all of the required financials they should have delivered for the last two years and to deliver them moving forward during the pendency of this case.

Again, the important thing here is -- or one of the important things here is these single asset entities. Once the foreclosure ends, they have no other assets. We can't say, well, you kept all this excess cash, and now we want to get this judgment against you and then execute on it. We, we don't have -- we can't do that because once the foreclosure ends, they have nothing left. So, this, this notion that Mr. Dodson expressed in his memo that we have some kind of means to go get a money judgment or -- a money

judgment would be worthless because they don't own anything once the foreclosure ends. So, this is our only -- really our primary or sole source of recovery is the property and the rents.

THE COURT: All right, what about it, Mr. Dodson?

MR. DODSON: Thank you, Your Honor. There's four specific points that I'd like to make, Your Honor, but the overriding point of all of this is we are not there. This is premature. We are not at a summary judgment stage in the case; we are not at a final judgment stage in the case. The defendants to this action have not even filed answers or counterclaims yet, and so the relief that he is seeking from the court today -- he's a good lawyer. And he's very cleverly worded his motion as one not of preliminary injunction but of turn over of collateral and sequestering rents, but what he is asking for is injunctive relief.

THE COURT: And what he's asking for is a preliminary injunction while the case is pending, to control the ---

MR. DODSON: Right, while the case is pending, he's -- that's simply not supported by the facts and circumstances. And so the first of the four points that I'd like to make is this, Your Honor. If I may approach?

THE COURT: Sure.

MR. DODSON: He submitted an affidavit in support of his motion. That affidavit was first submitted one week

ago.

THE COURT: Thanks.

MR. DODSON: And that affidavit is, is improperly before the court and should not be considered by the court under Rule 6(d), and I highlighted this. I gave an extra copy for your law clerk, but the rule specifically says:

> When a motion is to be supported by affidavit, the affidavit shall be served with the motion.

And that simply was not done. This motion was filed back in August, and we didn't get that affidavit until one week ago. And that's significant because the whole motion is premised upon that affidavit, and it is more than me being hypertechnical with him. When I spent several hours of time briefing the court, I briefed the court on the motion that he submitted based on evidence that he attached to that motion, based on the affidavits he attached or didn't attach to that motion. But whether I'm being hypertechnical or not, Rule 6(d) couldn't be any clearer. It says that, that:

> When a motion is to be supported by affidavit, the affidavit shall be served with the motion.

And it simply wasn't, and it's not properly before Your Honor.

Now, turning to the merits of the motion for preliminary injunction, and I briefed this, and this is in

the last couple of pages of my brief, but the courts in the state have made clear that the purpose for a preliminary injunction is to maintain the status quo. That is, according to our courts, the sole purpose of a preliminary injunction. That comes out of the -- I quoted this in my brief. That comes out of the *FOC Lawshe Partnership vs. International Paper* case and some older case law as well.

What he is asking Your Honor to do is to change the status quo. He said we're entitled to the rents. Those are his words; I wrote them down here on my paper. And he said he wanted Your Honor to issue and order that any, quote, any excess money on hand be taken from my client and given to his, his client. He even mentioned early in his arguments that the term, what he was seeking, the term rents was broad. If there's a Coke machine out there that's generating revenue, the money from the Coke machine apparently, according to his argument, has to be turned over to his client. That does not maintain the status quo. That changes the status quo. That says before an answer, counterclaims, or anything have ever been filed, that my clients have to take rent money that they earn from this property and give them to him, and that simply defeats the whole purpose of a preliminary injunction, which is to maintain the status quo.

Those two points aside with regard to the untimeliness

of the affidavit and changing the status quo, our appellate courts have said that a preliminary -- there are three requirements for a preliminary injunction. That it's to prevent irreparable harm, that there is a likelihood of success on the merit, and that there is no adequate remedy at law or otherwise to the party seeking that injunctive relief, and none of those requirements are satisfied here.

I'm going to discuss the irreparable harm and the adequate remedy at law kind of together because under the facts and circumstances in this case, I think they kind of go hand-in-hand as opposed to me discussing them separately like I did in my memorandum. But this doesn't seek to avoid irreparable harm because our courts have said when you have a remedy when what you are seeking is money, which is exactly what he's seeking -- I mean, he said it. Any excess money on hand should be turned over. Should be taken by from my client's account right now and given to his clients. He said also we're entitled to the rents. So, he wants all the money that's generated from the property to be turned over to his client. That is money. That's not irreparable harm when you have another remedy at the end of the day which, if he's right, he has that remedy at the end of the day.

THE COURT: Meaning foreclosure.

MR. DODSON: Meaning foreclosure and he, he gets, he

gets that. I mean, he, he didn't only ask for foreclosure. He asked for monetary judgments. It's in the prayer for relief in the complaint for money judgment as well. So, it's not just he has that remedy at law and there's simply not irreparable harm there.

But the second requirement for a preliminary injunction is that he has to show a likelihood of success on the merits. And let me point out to Your Honor on a couple of points here where that argument falls short. It falls short for the first reason: because when you look at the mortgage documents that he attached to his complaint, those mortgage documents, which include the note which is Exhibit A, are in the name of Bear Stearns Commercial Mortgage, Inc. okay, Bear Stearns Commercial Mortgage, Inc. His complaint does not list as a party plaintiff Bear Stearns Commercial, Inc. His complaint lists Bear Stearns Commercial Mortgage Securities, Inc.

Now, I don't, I don't know if that's just a scrivener's error, but that's a different Bear Stearns entity according to the, to the mortgage documents that he attached to his complaint versus what he put in the pleadings to his complaint and he's put in every other legal document. And that could potentially subject my client to, again, double liability because if as a mortgage, documents themselves say plainly on the face that

the promissory note is held by Bear Stearns Commercial Mortgage and he sues my client under Bear Stearns Commercial Mortgage Securities, then Bear Stearns Commercial Mortgage could say wait a second. They could come in after this is all said and done and say we're the actual real party in interest, not Bear Stearns Securities, but us because we're on the note.

But even getting aside from that point, this likelihood of success on the merit, on the merits, I cannot emphasize enough, and we submitted the documentation to Your Honor. This mortgage was paid on time, and all of these other documents, the cash management agreement and everything else that he was -- that he referred to is designed so that the bank is protected and its mortgage gets paid by my clients. That's what those documents are in place for. In just a plain, old, ordinary home mortgage, it says in there you have to escrow your taxes and insurance, and then we'll pay it, we'll pay it for you because they want to make sure that, you know, the property doesn't go into -- you don't pay your taxes, and then they end up, you know ---

THE COURT: Right.

MR. DODSON: --- at a tax sale.

THE COURT: Right.

MR. DODSON: Okay, but the point here is this is not a

situation where my clients are -- didn't pay their mortgage on time and didn't pay what was owed.

THE COURT: He's not saying you didn't pay the mortgage on time.

MR. DODSON: I understand.

THE COURT: What you're telling me, Mr. Simpkins, is is there is a state statute that says I have the authority to do this.

MR. SIMPKINS: That, and the loan documents say it, and the fact that they pay principal and interest in tax escrows doesn't mean they paid all the money that's due under the loan documents. They haven't ---

THE COURT: How do I get around the state statute there, Mr. Dodson, that says they have the -- if they have an agreement and they're in default, they're entitled, they're entitled to an order of the court to enforce it?

MR. DODSON: Because they're not in -- two reasons. Number one, they are not in default. We contest that they are in default, okay? Those other terms we do not concede are material terms to the mortgage. They are terms that, that are there and designed to specifically protect the bank and to ensure that the mortgage, the principal, the interest, and the escrow taxes ---

THE COURT: So, your client's theory ---

MR. DODSON: --- get paid.

THE COURT: --- is, well, those terms really don't matter because they kept making their payment?

MR. DODSON: Absolutely. That, that ---

THE COURT: Even though Piggly Wiggly is gone and Piggly Wiggly leaving is a triggering event that triggers all these terms and conditions of the contract, and so your clients just said none of that matters because we kept make the payment.

MR. DODSON: That, that's exactly it. That, that is, that is one theory.

THE COURT: Okay.

MR. DODSON: The second thing I would say to Your Honor is this. That statute that he cited does not address anything with regard to preliminary injunction.

THE COURT: Right. Yeah. The word preliminary injunction is not in there.

MR. DODSON: It's not and, and, and that's what he's seeking before the defendants to this action have even been able to file, file counterclaims and litigate those issues on merits because he's going to make the argument that Your Honor just made. Those are material terms and we're entitled to that money.

We're going to make other arguments, and those arguments are best flushed out after we have had a full and fair opportunity for discovery because the -- he used the

term $1 million that, that for the last two years they would have been entitled to. He thinks about $1 million. That's his term, not my term. One of the things that we would, we would say in a counterclaim is that violates our usury laws. You're getting more money than you could possibly get. It's commercially unreasonable because what they're seeking to do is take all the rent that we make and gobble up every bit of profit that's generated at this shopping center even though their mortgage has been paid and paid on time at a preliminary injunction stage. And, and it simply is improper at this juncture in the case.

THE COURT: What about this Bear Stearns Commercial Mortgage, Inc., versus Bear Stearns Securities Inc., Mr. Simpkins?

MR. SIMPKINS: Your Honor, again attached to the affidavits of Mr. Weiss and Mr. Dickerson are the assignments and mortgage which, which assigned the loan docs to my -- to the plaintiff, and that's U.S. Bank National Association as trustee of essentially what is a common-law trust that holds the note, and it holds other loans. And that whole naming convention, it just simply tracks who the prior trustees of the trust were. And the name of that trust is -- contains the Bear Stearns Commercial Mortgage Securities, Inc., Commercial Mortgage Pass-through Certificates 2007. This is simply a naming

convention of a trust. There's no multiple plaintiffs. This is U.S. Bank National Association as a -- is the trustee of a trust which holds the note, the mortgage, and the other loan documents, and the, and the loan itself.

THE COURT: All right, I'll let y'all know by the end of next week.

MR. DODSON: Judge, may I say one more thing?

THE COURT: You may.

MR. DODSON: The document that he is referring to says Bear Stearns Commercial Mortgage Securities, Inc. That's on the transfer documents that he just referred to. It's not the same entity in his complaint. Even on that document that he just referred to -- I'm looking at his memorandum and what he attached, and it is not the same legal entity, Your Honor.

THE COURT: You want to respond to that?

MR. SIMPKINS: It's just a name, that particular name associated with that trust. It doesn't have to be the same name as the original lender. The original lender could have been the Bank of America who assigned it to U.S. Bank as trustee for this particular trust. Those names don't have to match. These -- this is lender A assigning a loan to lender B. Simple, you know, UCC negotiable instruments law. I mean, it's just assigning a loan, and that's the name of this particular trustee, U.S. Bank, which holds the

notes and mortgage.

MR. DODSON: Judge, he's fundamentally misunderstanding my argument. I am not saying that any of the transfers weren't proper. What I am saying is that if there is a transfer from A to B, B to C, C to D, that somewhere in there, in the mortgage documents, A has to be mentioned. A is not mentioned. The mortgage documents are in the name of Bear Stearns Commercial Mortgage, Inc. The, the transfer that he's referring to transfers ---

THE COURT: Says Commercial Mortgage Securities, Inc.

MR. DODSON: Exactly.

THE COURT: Yeah. That's what I was asking about.

MR. SIMPKINS: Okay. The mortgage and, and the assignment of leases and rents were originally given to Mortgage Electronic Registration System. That's who assigned the mortgage in ALR. That's just simply an agent for the original lender, Bear Stearns. So, we've had the original mortgagee transfer the mortgage to the current mortgagee. That's all that's happened.

Could I have maybe a minute on the irreparable harm?

THE COURT: Yeah.

MR. SIMPKINS: Okay. Well, first of all, I don't think we're nec -- we're seeing ---

THE COURT: Yeah, your argument is we're not under the preliminary injunction standards because I didn't file

whatever it is under whatever rule for preliminary injunction. I'm asking for something based upon the enforcement of the document and section 29-3-100, section (c). So, the TRO rules or the preliminary injunction rules don't apply to this scenario because that's not what I'm asking for, and that's not the way I phrased my caption. Is that right?

MR. SIMPKINS: Correct, and we are getting irreparably harmed.

THE COURT: Right. Your, your argument is there are terms and provisions of this contract which are expressly put in place when the anchor leaves the building. The anchor left the building. When the anchor has left the building, those terms and conditions were material. They kicked in. They're supposed to be followed. The defendants didn't do it in any way, shape, or form, and we have no guarantee of our collateral. Even if they've still been making the principal payment, there are other things that are supposed to be in place for -- to -- for us to protect our interest in the property, right?

MR. SIMPKINS: Correct.

THE COURT: Okay.

MR. SIMPKINS: And, and this is the only collateral that they own.

THE COURT: And there's nothing else you can go after

them for, so that's why we're being irreparably harmed because we have no guarantee in recovering any monies since this is their only asset.

MR. SIMPKINS: Right, and they're hiding the ball by not giving us the financials ---

THE COURT: Right.

MR. SIMPKINS: --- to show us what's there.

THE COURT: Okay. I got it. I'm with it.

MR. SIMPKINS: Okay.

THE COURT: End of next week I'll be -- I'll make a decision. Thank you very much.

--- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 26TH DAY OF OCTOBER, 2016.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

Elizabeth B. Harris

ELIZABETH B. HARRIS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

MARCH 30TH, 2017

State of South Carolina)
)
County of Richland)

In The Court of Common Pleas
Fifth Judicial Circuit
2016-CP-40-2470

U.S. Bank National Association, as Trustee, as successor-in-interest to Bank of America, N.A., as successor by merger to LaSalle Bank Nation Association, as Trustee for the registered holders of Bear Stearns Commercial Mortgage Securities, Inc., and Commercial Mortgage Pass-Through Certificates, Series 2007, TOP26,

Plaintiff,

vs.

AW-MAGPIG, LLC, HW-MAGPIG, LLC, and MW-MAGPIG, LLC,

Defendants.

Transcript of Record

December 14, 2016
Columbia, South Carolina

B E F O R E:

The Honorable Jean H. Toal, Judge

A P P E A R A N C E S:

David H. Simpkins, Esquire
Attorney for the Plaintiff

Robert D. Dodson, Esquire
Attorney for the Defendants

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

I N D E X

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E X H I B I T S

No.	Description	ID.	Ev.

No exhibits introduced.

THE COURT: Now we have the matter, the two matters of U.S. Bank National Association against AW-MAGPIG, LLC, two matters: motion to refer to master and motion for appointment of receiver. We ready to proceed?

MR. SIMPKINS: Yes, Your Honor.

THE COURT: All right, gentlemen, just a second. Let me grab hold of your file.

(A PAUSE.)

THE COURT: All right, this is Mr. Simpkins for U.S. Bank?

MR. SIMPKINS: Yes, ma'am.

THE COURT: And Mr. Dodson for the defendant?

MR. DODSON: That's correct, Your Honor.

THE COURT: All right. Well, it says motion to refer to master. Why wouldn't I just do that without hearing a whole lot of argument about it?

MR. DODSON: I think that's probably addressed at me, Your Honor, so I'll answer the question.

THE COURT: All right, you may have a seat.

MR. DODSON: And the answer is we've pleaded for a jury trial in our answer, counterclaims, and third-party complaint. And as I read Rule 53(b), there's an order of reference and if a party pleads for a jury trial, then we are in -- then, then the order -- it would come back even if it had already been referred. At the time the motion

was filed, we had not filed our answer, counterclaim, and third-party complaint. That's the short answer, Your Honor. I have a longer answer, but I think he would probably like to respond to my short answer.

THE COURT: I agree with you, and I wonder, in the process of both of you responding to that, you know, we've got that old case of Anna Mary Jones against the Tricentennial Commission. She was a past master trying to avoid foreclosures and other type debt collection activities by asserting that she had all these jury trial matters, so forth. That was basically a battle over of order of reference, late '80s, early '90s case, and that always sticks in my mind as a little bit of a counterbalance to this thing of, hey, you automatically get one even though you started off in equity.

So, for the bank.

MR. SIMPKINS: Yes, Your Honor. David Simpkins for the plaintiff, and we are also representing a third-party defendant, Wells Fargo Bank.

I think that the key thing from our perspective is that this is a foreclosure case, and in multiple loan documents the defendants waived jury trial on all claims related to -- indirectly or directly related to the loan: the loan documents, the loan, the application for the loans, and any acts or omissions of the plaintiff, its

officers, employees, or agents. And all of the counterclaims and third-party claims that they have asserted, they all boil down to either being directly or indirectly related to the loan, the application for the loan because they've, they've asserted claims against the, the loan broker. Those claims would be directly or indirectly related to the loan or the loan application.

They've asserted claims that their payments weren't processed correctly. Well, those apply to Wells Fargo, third-party defendant, which is the master servicer for the plaintiff. Those obviously relate to the loan, and the waivers were knowing and voluntary.

There's a section in the mortgage that each defendant separately initialed that says that they read the mortgage, that they were -- all the -- all of their questions regarding the legal effects, the provisions of the mortgage were fully answered by their counsel prior to them signing the mortgage. And then there's also in the cash management agreement with the jury trial waiver there, it says that they knowingly and voluntarily waived a jury trial.

So, our short answer is that all this stuff that they asserted, they waived jury trial on, or it's a permissive counterclaim and all of this should go to the master anyway. That's, that's all I have for now.

THE COURT: All right. How about it?

MR. DODSON: Thank you. Now if I may give my bit of a longer answer?

THE COURT: Yes, sir.

MR. DODSON: And if I may approach, Your Honor, I'd like to pass up a couple of things. This is already in the court's file.

THE COURT: Yes.

MR. DODSON: The file is getting ---

THE COURT: It's getting bigger by the minute, but I have got that, and the documents he referred to, I've got right here.

MR. DODSON: Okay. What I have for Your Honor is just sort of the condensed version of the documents.

THE COURT: Sure. Sure. I think that would be very helpful.

MR. DODSON: They have the relevant pages that I want to talk about today.

THE COURT: All right.

MR. DODSON: And then I have -- the other thing I'm passing up is a motion to dismiss for improper venue and jurisdiction, and I think that will be clear as I get into this.

THE COURT: All right.

MR. DODSON: I'm happy that he mentioned the cash management agreement to Your Honor. That is actually --

the relevant portions of that for my argument are actually attached there at G, and I've highlighted those in orange for Your Honor.

But the cash management agreement itself has a venue selection clause, and it provides that venue is proper in New York. In each of the loan documents that he has referenced, in addition to, to the venue selection clause ---

THE COURT: Well, let me just stop you right there. It says at lender's option.

MR. DODSON: It says at lender's option as it pertains to state or federal court in New York is what that at lender's option provided, but if you look at the other document that I submitted which is at tab F, it also has a venue selection clause that provides for New York law, and it provides that disputes are to be litigated in New York, and the note itself references those, those documents. The note is at tab A, and I've highlighted for Your Honor on page 5 of that.

THE COURT: Well, this doesn't -- wait a minute. Hold it. This is just a choice of law provisions. That doesn't set venue.

MR. DODSON: Well, it ---

THE COURT: It simply says that you: Governed, construed, applied, and enforced in accordance with the

laws of the State of New York. That's very typical. We deal with those all the time. That doesn't select the venue.

MR. DODSON: It, it -- well, if you read further it does, Your Honor, because the next sentence is:

> Borrower, clearing bank, and lender hereby submit to the exclusive jurisdiction of the state courts of New York for the purposes of all legal proceedings arising out of ---

THE COURT: Where are you talking about?

MR. DODSON: I am at tab F on page 5 there.

THE COURT: You're talking about the highlighted material?

MR. DODSON: Yes, ma'am, that's correct.

THE COURT: It says:

> This agreement shall be deemed to be a contract entered into pursuant to the laws of the State of New York and shall in all respects be governed, construed, and applied, and enforced in accordance with the laws of the State of New York.

Now, that's tab E.

MR. DODSON: And I'm at tab F. I'm sorry, Your Honor.

THE COURT: I'm getting there: Governing law and venue. Okay:

> Governed and construed in accordance with the law of the State of New York, borrower, clearing house, and lender hereby submit to the exclusive jurisdiction of the state courts of New York for the purpose of all legal proceedings arising out of this agreement or transactions contemplated therein.

I see what you're talking about, okay.

MR. DODSON: That's what I'm referring to. Thank you, Your Honor.

THE COURT: All right.

MR. DODSON: And if you look at the actual note on page 5, it actually incorporates that document that you just read from in the note itself because it says -- and again I've highlighted it. The note is secured by the security instruments and other security documents, and what you just read is one of those because it provides later in that paragraph:

> All of the terms, covenants, conditions contained in the security instrument and other security documents are hereby made a part of this note to the same extent and with the same force as if they were fully set forth.

THE COURT: Now, is this a suit on the note.

MR. DODSON: It, it is. They've attached the note to

the complaint, and they have, they have ---

THE COURT: Well, this is a foreclosure proceeding, though, is it not?

MR. DODSON: It is but my point is ---

THE COURT: I never have heard of a foreclosure taking place in a state other than the state where the property is located.

MR. DODSON: Your Honor, I don't know how you can have a foreclosure without a note. I've actually ---

THE COURT: Well, the foreclosure of the mortgage is an attempt to enforce a debt that's owed, right?

MR. DODSON: But the debt comes from ---

THE COURT: And the mortgage ---

MR. DODSON: --- the note.

THE COURT: Well, the mortgage is the security that you're attempting to foreclosure, right?

MR. SIMPKINS: Your Honor, if I may?

THE COURT: Yes, sir.

MR. SIMPKINS: The mortgage that we are foreclosing on, it says that:

> New York law applies except with respect to the creation, perfection, and enforcement of the lien and security interest created by the mortgage.

THE COURT: Exactly.

MR. SIMPKINS: Where, where the state ---

THE COURT: And this is enforcement of a security agreement. The note is a little different kettle of fish. They may have some deficiencies in their ability to foreclose, depending on what you contend about the note, but at the moment what we're talking about is the foreclosure of the security interest.

MR. DODSON: I guess my only point is this, Your Honor. Well, it's not the only point, but, but my only point is this. All of these documents are interconnected; the plaintiff has pleaded it that way. They have attached those documents, and they all reference one another.

THE COURT: No question about that.

MR. DODSON: And each and, and each and every document has, with the exception of the description of property, but each and every document has a choice of law provision for application of New York law, and two of the loan documents have a choice of law or forum selection clause that provide that cases are to be litigated in the state of New York. And so as it pertains to both the order of reference and the other pending motion, my argument is -- and I passed up the motion to dismiss that we filed for improper venue.

THE COURT: Yeah.

MR. DODSON: Now, Mr. Simpkins is going to point out that he has not had his ten days' notice on that, and if he says that, he's correct about it because, I mean, it was

filed December 8th. It's a timely motion. We're raised that in our answer. We raised it in our amended answer, but the simple fact is that they have filed suit in the wrong court to enforce the terms of these documents because the documents have in them choice of law, forum selection clauses that all provide that a New York court should apply New York law in New York. And so what we would ask is that you hold any ruling in abeyance until the motion to dismiss can be heard.

THE COURT: All right, Mr. Dodson.

What you got to say to that?

MR. SIMPKINS: Your Honor, we haven't even received this motion.

THE COURT: Listen, you all can stand on technicalities if you want to, but the truth about the matter is y'all have been battling about this issue for some time, and it's a pretty straightforward one. Whether you characterize it as a motion to dismiss or a motion to refer to the master, the issue remains the same, and that is is this thing in the right court.

He says that because of what the note says, that with its choice of not only the law of New York but the venue of New York, that that controls. You say because you are foreclosing on a security instrument, the mortgage, which has a little clause in it that, says, hey, you can't.

There's one exception to this choice of venue, and that is if you're trying to enforce a lien on a security interest. The property is here; the lien would have to be reinforced here.

I well understand why it would be done, why, therefore, the foreclosure would work that way. You may have some problems when you get to the master if you haven't got the ability to prove the failure to pay the note, but I don't know that you've got to have a judgment on the note in order to enforce your security interest. That's not raised in these pleadings.

So, my inclination is to send this thing to the master, to deny the -- well, you've got a motion to appoint a receiver. That's another thing that's got to be done. Is there any objection to that?

MR. DODSON: There is, Your Honor, and the objection as to that, until we get the issue of where the case should be litigated and who should be making -- what court should be making decisions on it, we would object to the appointment of a receiver on that ground.

THE COURT: Well.

MR. DODSON: But the other ---

THE COURT: Let me just stop, stop you there.

MR. DODSON: Yes, Your Honor.

THE COURT: When I send you to the master, if I do,

that's not going to preclude you from raising all these things with the master. All I would be doing is referring this thing to the master and taking the circuit court out of it, but the master might well decide, and the order would give the master the leeway to decide this overarching question.

As it sits before me at the present time, it's a foreclosure and an attempt to enforce a lien on a piece of property in South Carolina. That's clearly a master-type situation. Now, and the document that creates that lien specifically accepts this business about where venue should be in order to allow for enforcement of the lien where the property is. That would be the basis upon which I would send the foreclosure to the master, but I would do it without prejudice to the right of -- to your right to make further assertions about the interrelation between the debt and the lien, et cetera.

MR. DODSON: Yes, Your Honor.

THE COURT: And that's what I would do is just -- then you would be in a South Carolina court that still has to determine whether New York law makes part of this thing go there or all of this thing go there.

I know one thing with pretty good certainty. The enforcement of a lien based on a debt that has become past due is enforceable where the property is, and that's what

this foreclosure does, and it would be on that basis that I would send the foreclosure to Judge Strickland. But I could do it without getting you into the two-judge rule by simply saying that one of the things that would be decided by the master would be the interrelationship of these other documents. I personally think you would lose that, to be quite honest with you, because ---

MR. DODSON: Yes, and I might.

THE COURT: And you might because to me, the enforcement of the note does not have to be sued on in order to prove the existence of the debt, the lack of payment thereof, which would then lead to the enforcement of the lien. And it would not preclude the appointment of a receiver because the receiver would be appointed to, again, protect the potentially liened upon property, as I understand it. But that's something that could be explored in a hearing.

MR. DODSON: Yes, Your Honor, and, and ---

THE COURT: But I think the first thing is we decide which South Carolina court is going to make all these determinations, and to me it just makes a whole lot more sense to put it where a lien can be enforced with an exploration of the normal issues that are explored in a foreclosure.

MR. DODSON: And if Your Honor -- I mean, I do have --

I mean, if you wanted to -- I mean, obviously you're the judge. You can do anything you want to, but if, if it -- you know, one possibility, as what I was about to bring up to Your Honor, was you could make an order of reference and hold all other -- hold all the other motions in abeyance and either let ---

THE COURT: It doesn't make any sense to have you have to come to circuit court. The master has got complete authority to settle all those things with appeal directly to the regular courts.

I mean, I realize that when you're trying to protect the debtor, you try to use every means at your disposal, but it doesn't seem sensible to -- and I don't know that you really want your debtors to have to go to New York.

MR. DODSON: Well, my debtors are in New York, so I do. I mean, they all -- that's where they live.

THE COURT: Well, maybe you do want them there, but it makes for simply a lot of delay in enforcing a debt if it's, in fact, due by having to enforce the note in New York and then enforce the lien here when you've got a court here who can make the decision as to whether the debt can be pursued without getting a judgment from the New York courts on the note just as a matter of proof in the foreclosure action. So, that's how I'm going to do it.

Counsel.

MR. SIMPKINS: Yes, Your Honor. We would still like to have our motion for receiver heard today because we think there's an urgent situation with the property that would need to be -- that we think needs to be addressed because just ---

THE COURT: What's the problem? I mean, they're up in New York. The property is down here.

MR. SIMPKINS: Right. Well.

THE COURT: Y'all want to rent it to a Piggly Wiggly, and you can't do that because you can't ---

MR. SIMPKINS: Well.

THE COURT: --- get a receiver appointed, right?

MR. SIMPKINS: No. About a week and a half ago -- well, you have to -- Judge Hood entered an order last month sequestering the rents which basically made -- forced them -- they're going to have -- they're supposed to deliver us all of the rents they had on hand at the time, which they haven't done. They're supposed to ---

MR. DODSON: That's not true, Your Honor. We absolutely -- that is not true. We've done that.

THE COURT: Okay. All right.

MR. SIMPKINS: Regardless, deliver us financials, some other documentation, and within a day of serving that on the defendants, Mr. Dodson informed us that his clients were going to cease managing the property. They were going

to turn off the utilities and turn off other services, and they then sent us -- he then sent us, even though we instructed him not to do so, he then sent us tenant rent checks. And you have to understand. Judge, Judge Hood's order said that they were to collect the rents, pay the normal operating expenses each month, and send the rest to us.

So, their response to that was, well, we're -- you know, we can't bilk the property of any more, any more cash, so now we want to abandon it. And so our response was fine. Then we'll just have a receiver put in place, and we asked Mr. Dodson multiple times. Well, you guys, you guys willing to consent to that? He never responded and today before the hearing, I find out that they're going to contest it.

Well, there should be no basis to contest. When you're saying you're not going to manage the property, you're going to turn off the utilities, we're, we're going to abandon the services that we give to tenants, we're not going to abide by Judge Hood's order, I don't know that there's a better ---

THE COURT: Yeah, I know the dilemma you're facing.

Mr. Dodson you sure ought to allow them, if they want to, to keep the business running.

MR. DODSON: Your Honor.

THE COURT: And keep the tenants satisfied. I would not be inclined to create a situation where that can't be done.

MR. DODSON: Your Honor, I want to be very clear on a couple of things. This is just simply not, not true. This idea that my clients are not complying with Judge Hood's earlier order is not true.

The -- as soon as we got the rent checks in for -- Judge Hood's order was, I think, signed on November 28th. I think it was served on me the following day. Served on my clients that day, too. As soon as that happened, I told my client give me -- get the rent checks to me. Don't cash them. Get them to me because Judge Hood's order specifically said on page 7:

> Borrowers and all other borrower parties are hereby ordered and directed to remit and provide to plaintiff within five days of the entry of this order all rents.

And so we specifically did that. We didn't, we didn't attempt to cash any checks. I sent the checks to him; he sent them back to me. I have additional checks. Now, we'll figure out ---

THE COURT: Have you told him you're going to turn off the lights?

MR. DODSON: I, I wrote that as part -- and I -- as

part of a settlement letter to him, and I think it's inappropriate to ---

THE COURT: Well, have the lights been ---

MR. DODSON: The lights have not been ---

THE COURT: Have the lights ---

MR. DODSON: --- turned off. The water has not been turned off, and to be very clear, the tenants at the property control their own utilities. The only lights -- the only water would be to the sprinkler systems and to the -- like the outside lights, the parking lot lights. And to be very clear, Your Honor, that had -- nothing has happened. Since Judge Hood's order was issued, nothing had changed. My clients continued to manage the property, but what he's referring to is a settlement letter. In light of Judge Hood's order ---

THE COURT: No, I'm not going to go there. So, let's ---

MR. DODSON: Yeah.

THE COURT: I'm not going there. Why aren't you cashing the checks that Judge Hood ordered to be sent to you?

MR. SIMPKINS: Well, they -- what he ordered was that all rents they had on hand at that time, which would have been in November, be delivered to us. The rest of his order said after that point, then on the 10th of every

month beginning on December 10th and the 10th of each month after that, they are to send us the net operating income, which would have been the rents that they then collected thereafter for December moving forward, and then paid the operating expenses, and then they would send us the, the net operating income after that.

The other thing, you know ---

THE COURT: Well, so, why wouldn't you take the first check?

MR. SIMPKINS: Because they have to, they have to take the checks and pay the ---

THE COURT: Well, he's talking about the checks for last month. I'm not talking about these other checks. I'll get into that in a minute.

MR. SIMPKINS: Right. Well, my point being his order said give us -- give them the rents, the money that you have from the property on hand at that time.

THE COURT: Right.

MR. SIMPKINS: And it clearly contemplated that they would continue taking in rents and paying in the -- paying the operating expenses moving forward. What he sent us were unendorsed checks and he said -- and, Your Honor, I've got the ---

THE COURT: Well, now ---

MR. SIMPKINS: I've got the ---

THE COURT: You can't cash them, but they just sent them to you unendorsed?

MR. SIMPKINS: They sent them, they sent them unendorsed, and it's not in keeping with his order. And, Your Honor, there's other facts that support our, our motion for the appointment of a receiver.

THE COURT: Well, just hold it on that one.

Counsel, how about it? Have they endorsed the checks?

MR. DODSON: I, I don't, I, I don't think they have, but I don't think that ---

THE COURT: Well, that's not acceptable; that's not in compliance. If the judge said you're supposed to turn the money over to the plaintiffs, it's not acceptable to ---

MR. DODSON: Well, they have in there, in the -- in Judge Hood's order ---

THE COURT: How are they supposed to cash those checks?

MR. DODSON: Based on Judge Hood's order, which specifically has ---

THE COURT: Nobody is going to allow them to start signing somebody else's name and attach to ---

MR. DODSON: If ---

THE COURT: --- it an order ---

MR. DODSON: If a bank ---

THE COURT: --- that a bank has got to sort through.

MR. DODSON: Your Honor, if there was confusion on my, on my part or my client's part about we need to endorse the checks over to them, we'll do that.

THE COURT: Well, you need to do that.

MR. DODSON: Okay. We will because ---

THE COURT: Because otherwise I'm going to appoint a receiver. If we don't have some -- you're supposed to be managing these properties in the meantime until y'all get this worked out, either by trial or by settlement, right?

MR. DODSON: We are managing the property; nothing has changed.

THE COURT: Well, part of that includes endorsing the checks, the net checks over to them period.

MR. DODSON: And, and the only, the only problem with that was a, was a breakdown in communication.

THE COURT: Well, let's go back and get that solved.

MR. DODSON: I mean, that will get resolved because I told my client, I said don't cash the checks. Send them to me. They, they didn't probably think to endorse them. I didn't think to ask them, to be honest with you.

THE COURT: Well, that, that ---

MR. DODSON: We'll get that resolved.

THE COURT: That's got to get resolved.

MR. DODSON: It will get resolved.

THE COURT: Otherwise, Judge -- well, it hadn't been

resolved yet. The checks hadn't been endorsed, so don't say that anymore. Those checks need to be endorsed so that -- it's not enough to send them to them. They've got to be endorsed so they can cash them, and that's got to be done every month, and y'all have got to continue to manage this property. Otherwise, I'm going to appoint a receiver. It's just that simple.

MR. DODSON: And we have, we have continued to manage the property. That's the, that's the only point I'm trying to make.

THE COURT: Well, but you haven't complied with the fundamental thing that was ordered, which was to give the money to the plaintiffs, and you've not giving it to them when these games are being played by, well, don't cash them but send them to them where they can't cash them either. That's not satisfactory.

MR. DODSON: Your Honor, I want to make clear, I really do because we are not trying to play games with them on the checks.

THE COURT: It looks like it.

MR. DODSON: And if it looks like it, I want to explain that because I want to make very clear, Your Honor, that when we got Judge Hood's order, I specifically told my client don't cash those checks.

THE COURT: I tell you what.

MR. DODSON: Send them to me.

THE COURT: Here's what I'm going to do. I'm not going to have these kinds of disputes. I am going to appoint a receiver.

Counsel, draw me up an order that, first of all, sends this to the master and leaves to the master the decision as to whether or not any part of this controversy has to be tried in New York. In addition to that, draw an order appointing a receiver for this defendant.

MR. SIMPKINS: Your Honor, I ---

THE COURT: Just a second.

MR. SIMPKINS: Sorry.

(A PAUSE.)

THE COURT: As I said, we're going to appoint a receiver. We're going to send this matter to the master. He is fully empowered to make all rulings about whether the provisions in the note require that the note be sent to New York for enforcement and whether that -- if that is so, whether that precludes the plaintiff from going forward with the foreclosure here. But it's clear to me that the foreclosure at least is in South Carolina and ought to be tried by the master.

And my own opinion is that the provisions of the note don't preclude that because you do not have to collect the note or even get a judgment on the note to enforce the lien

for lack of payment, but I will leave that to y'all. I won't preclude you from arguing that to Judge Strickland.

Get that to me as quickly as possible, counsel, as you've got some time constraints that you are concerned about.

MR. SIMPKINS: I do have a draft order appointing receiver that I sent to Mr. Dodson this morning. If I could bring that up?

THE COURT: Yeah. Let me see it.

MR. SIMPKINS: I mean, it's kind of lengthy, but I did want to go ahead and present that. I can also email it to you.

THE COURT: This is much more lengthy than -- it's almost 5 o'clock.

MR. SIMPKINS: Right.

THE COURT: This is a lot more lengthy than ---

MR. SIMPKINS: Sure.

THE COURT: --- what I can do. We will take a look at it. I want you to get to me by tomorrow a proposed order with respect to the matter of reference. Send it to me at the same time you send it to counsel, and either Ms. Waring or myself will advise you as to whether we require further information before deciding whether to sign it or consider anything Mr. Dodson might have to say about it.

MR. SIMPKINS: Thank you, Your Honor.

THE COURT: Okey doke.

MR. DODSON: Thank you, Your Honor.

THE COURT: Yes, sir.

--- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 14TH DAY OF DECEMBER, 2016.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/s/*ELIZABETH B. HARRIS*, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

JULY 17TH, 2017

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, AS SUCCESSOR-IN-INTEREST TO BANK OF AMERICA, N.A., AS SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE REGISTERED HOLDERS OF BEAR STEARNS COMMERCIAL MORTGAGE SECURITIES, INC., COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-TOP26, Plaintiff, vs. AW-MAGPIG, LLC; HW-MAGPIG, LLC; and MW-MAGPIG, LLC, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT Case No. 2016-CP-40-02470 **AFFIDAVIT OF DAVID WEISS**

RICHLAND COUNTY
FILED
2016 OCT 21 AM 10:12
JEANNETTE W. McBRIDE
C.C.P. & G.S.

Before the undersigned Notary Public personally appeared David Weiss, who after being duly sworn stated under oath as follows:

1. My name is David Weiss. I am over 21 years of age and am competent to give testimony. I am a Director of Asset Management for Wells Fargo Bank, National Association ("**Wells**"), the Master Servicer of the Loan on behalf of Plaintiff. This affidavit is submitted in opposition to Defendants' Motion to Dismiss or in the Alternative to Add a Necessary and Indispensable Party (the "**Motion**") filed by defendants AW-MAGPIG, LLC, HW-MAGPIG, LLC and MW-MAGPIG, LLC, each a Delaware limited liability company (collectively, "**Borrowers**"). The facts stated herein are based upon my personal knowledge of the Loan and the books and records kept and maintained in the ordinary course of Plaintiff's business activity.

3. On or about March 1, 2007, Borrowers obtained a loan from Bear Stearns

Commercial Mortgage, Inc., a New York corporation ("**Original Lender**") in the original principal amount of Four Million Five Hundred Thousand and 00/100 Dollars ($4,500,000.00) (the "**Loan**"). To evidence the Loan, Borrowers executed a certain Promissory Note dated March 1, 2007, payable to Original Lender in the principal amount of the Loan, with interest as set forth therein (the "**Note**").

4. To secure payment and performance of Borrowers' obligations under the Loan Documents (defined below), Borrowers executed for the benefit of Original Lender, among other documents, (i) a certain Mortgage, Fixture Filing and Security Agreement dated March 1, 2007, as recorded in the Richland County Register of Deeds (the "**Register**") on March 6, 2007 in Book 1288 at Page 3842 (the "**Mortgage**"), and (ii) a certain Assignment of Leases and Rents dated March 1, 2007, as recorded in the Register on March 6, 2007 in Book 1288 at Page 3902 (the "**ALR**"), each encumbering the property that is the subject of this foreclosure proceeding, being a retail shopping center commonly known as Magnolia Pointe (herein, the "**Property**").

5. The Loan and the Note, Mortgage and all other documents executed and/or delivered in connection therewith (collectively, the "**Loan Documents**") were assigned to Plaintiff as evidenced by a certain Assignment of Mortgage, Fixture Filing and Security Agreement and that certain Assignment of Assignment of Leases and Rents recorded in the Register in Book 2121 at Pages 43 and 47, respectively. Copies of said assignments are attached hereto as Exhibit A.

6. Plaintiff is thus the current owner and holder of the Loan and the Loan Documents and has not disposed of or assigned its rights therein.

7. In its capacity as Master Servicer, Wells' duties include, on behalf of Plaintiff, the receipt and processing of payments from borrowers (including Borrowers) for loans (including

the Loan) owned and held by Plaintiff.

8. Although Wells receives and processes payments, it does so solely in its capacity as Master Servicer, an agent of Plaintiff. Wells has not owned or held and does not own or hold the Loan, the Mortgage or any other Loan Documents. The indebtedness owed by Borrowers under the Loan Documents is owed to Plaintiff, not Wells or any other person or entity.

9. Wells does not possess or claim an interest in or related to the Property that is the subject of this action. Wells has no contractual relationship with Borrowers with respect to the Loan or the Property.

10. In its capacity as trustee, U.S. Bank, National Association has the authority to foreclose the Mortgage.

[*remainder of page left blank – signature and notary page to follow*]

FURTHER AFFIANT SAYETH NOT.

Executed this 18 day of October, 2016.

David Weiss

David Weiss, Director
Wells Fargo Bank, National Association

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

On _____, 2016, before me, _____, personally appeared David Weiss, who signed the above-referenced instrument in my presence and who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her respective authorized capacity, and that by his/her signature on the instrument that person, to the entity upon behalf of which that person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____ (Notary Seal)

Signature of Notary

see attached

CALIFORNIA ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of San Francisco

On 10/18/2016, before me **Jamie Carlson**, Notary Public, personally appeared **David Weiss**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

NRO1 JAMIE CARLSON COMM. #2105718 Notary Public - California San Francisco County My Comm. Expires Apr. 4, 2019 NRO1

EXHIBIT A

Assignments of Mortgage and ALR

[attached hereto]

Book 2121-43
2016043567 08/14/2016 10:07:28:497 Assignment of Mortgage
Fee: $9.00 County Tax: $0.00 State Tax: $0.00



2016043567 John T. Hopkins II Richland County R.O.D.

[above space for recording information only]

After recording, please return to:
Kilpatrick Townsend & Stockton LLP
214 N. Tryon Street, Suite 2500
Charlotte, NC 28202
Attn: Capital Markets (DS)

MERS MIN: 8000101-0000004106-0

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

ASSIGNMENT OF MORTGAGE, FIXTURE FILING AND SECURITY AGREEMENT

THIS ASSIGNMENT OF MORTGAGE, FIXTURE FILING AND SECURITY AGREEMENT is made by **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.**, a Delaware stock corporation, having a mailing address at MERS Commercial, P.O. Box 2300, Flint, Michigan 45801-2300 ("***Assignor***") to **U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, AS SUCCESSOR-IN-INTEREST TO BANK OF AMERICA, N.A., AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE, FOR BEAR STEARNS COMMERCIAL MORTGAGE SECURITIES INC., COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-TOP26,** having a mailing address of 190 South LaSalle Street, 7th Floor, Chicago, Illinois 60603 ("***Assignee***");

KNOW ALL MEN BY THESE PRESENTS, that in consideration of the sum of TEN DOLLARS ($10.00) lawful money of the United States and other good and valuable consideration, to it in hand paid at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, Assignor has granted, bargained, sold, assigned, transferred and set over, and by these presents does grant, bargain, sell, assign, transfer and set over unto Assignee all right, title and interest, of any kind whatsoever, in and to of Assignor in and to the following:

> **MORTGAGE, FIXTURE FILING AND SECURITY AGREEMENT** made as of March 1, 2007 (as same may have been amended, restated, extended, supplemented or otherwise modified from time to time, herein the "***Mortgage***") by AW-MAGPIG, LLC, HW-MAGPIG, LLC and MW-MAGPIG, LLC, each a Delaware limited liability company, to Assignor, as nominee for Bear Stearns

Commercial Mortgage, Inc., a New York corporation, together with its successors and assigns, and recorded with the Office of the Register of Deeds for Richland County, South Carolina on March 6, 2007, in **Book 1288 at Page 3842.**

TOGETHER WITH the subject promissory note(s), loan documents, obligations and collateral described in said Mortgage, and the moneys due and to grow due thereon with the interest and other amounts accruing thereon, and any and all other related security instruments which secure the indebtedness and/or obligations secured by said Mortgage.

TO HAVE AND TO HOLD the same unto Assignee, its successors and assigns, forever.

[*the remainder of this page is intentionally left blank*]

IN WITNESS WHEREOF, Assignor has caused these presents to be duly executed as of _____, 2016.

ASSIGNOR:

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a Delaware stock corporation

Witness #1

Witness #2

By: _____

Name: Wayne Ventus, Jr. _____

Title: Vice President _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

COUNTY OF _____)

On April ____, 2016, before me, _____, personally appeared _____, who signed the above-referenced instrument in my presence and who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her respective authorized capacity, and that by his/her signature on the instrument that person, to the entity upon behalf of which that person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____ (Notary Seal)

Signature of Notary

11343119v.1 050902/0944530

CALIFORNIA ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Alameda

On June 8, 2016, before me **Heidi Vleisides**, Notary Public, personally appeared **Wayne Ventus, Jr.**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

HEIDI VLEISIDES
Commission # 2139611
Notary Public - California
Alameda County
My Comm. Expires Feb 5, 2020

Signature _____
Signature of Notary Public

Book 2121-47
2016043568 08/14/2016 10:07:26:580 Asgmt Lease Rent Profit
Fee: $10.00 County Tax: $0.00 State Tax: $0.00
2016043568 John T. Hopkins II Richland County R.O.D.

[above space for recording information only]

After recording, please return to:
Kilpatrick Townsend & Stockton LLP
214 N. Tryon Street, Suite 2500
Charlotte, NC 28202
Attn: Capital Markets (DS)

MERS MIN: 8000101-0000004106-0

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

ASSIGNMENT OF ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF ASSIGNMENT OF LEASES AND RENTS is made by **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.**, a Delaware stock corporation, having a mailing address at MERS Commercial, P.O. Box 2300, Flint, Michigan 45801-2300 ("***Assignor***") to **U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, AS SUCCESSOR-IN-INTEREST TO BANK OF AMERICA, N.A., AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE, FOR BEAR STEARNS COMMERCIAL MORTGAGE SECURITIES INC., COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-TOP26,** having a mailing address of 190 South LaSalle Street, 7th Floor, Chicago, Illinois 60603 ("***Assignee***");

KNOW ALL MEN BY THESE PRESENTS, that in consideration of the sum of TEN DOLLARS ($10.00) lawful money of the United States and other good and valuable consideration, to it in hand paid at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, Assignor has granted, bargained, sold, assigned, transferred and set over, and by these presents does grant, bargain, sell, assign, transfer and set over unto Assignee all right, title and interest, of any kind whatsoever, in and to of Assignor in and to the following:

> **ASSIGNMENT OF LEASES AND RENTS** made as of March 1, 2007 (as the same may have been amended, restated, extended, supplemented or otherwise modified form time to time, herein the "***ALR***"), by AW-MAGPIG, LLC, HW-MAGPIG, LLC and MW-MAGPIG, LLC, each a Delaware limited liability

company, to Assignor, as nominee for Bear Stearns Commercial Mortgage, Inc., a New York corporation, together with its successors and assigns, recorded with the Office of the Register of Deeds for Richland County, South Carolina on March 6, 2007 in **Book 1288 at Page 3902.**

TOGETHER WITH the subject promissory note(s), loan documents and obligations described in said ALR, and the moneys due and to grow due thereon with the interest, and any and all other related security instruments which secure the indebtedness and/or obligations secured by said ALR.

TO HAVE AND TO HOLD the same unto Assignee, its successors and assigns, forever.

[*the remainder of this page is intentionally left blank*]

IN WITNESS WHEREOF, Assignor has caused these presents to be duly executed as of _____, 2016.

ASSIGNOR:

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a Delaware stock corporation

Witness #1

Witness #2

By: _____

Name: Wayne Ventus, Jr.

Title: Vice President

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

COUNTY OF Alameda)

On April ____, 2016, before me, _____, personally appeared _____, who signed the above-referenced instrument in my presence and who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her respective authorized capacity, and that by his/her signature on the instrument that person, to the entity upon behalf of which that person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____ (Notary Seal)

Signature of Notary

CALIFORNIA ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

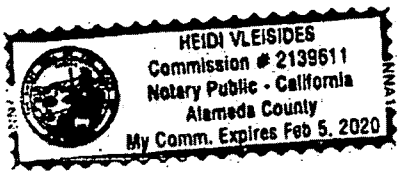
State of California

County of Alameda

On June 8, 2016, before me **Heidi Vleisides**, Notary Public, personally appeared **Wayne Ventus, Jr.**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature _____
Signature of Notary Public

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FOR THE FIFTH JUDICIAL CIRCUIT
)
U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, AS SUCCESSOR-IN-INTEREST TO BANK OF AMERICA, N.A., AS SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE REGISTERED HOLDERS OF BEAR STEARNS COMMERCIAL MORTGAGE SECURITIES, INC., COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-TOP26,) Case No. 2016-CP-40-02470

Plaintiff,

vs.

AW-MAGPIG, LLC; HW-MAGPIG, LLC; and MW-MAGPIG, LLC,

Defendants.

VERIFICATION

RICHLAND COUNTY FILED
2016 OCT 26 PM 2:42
JEANNETTE W. MCBRIDE C.C.P. & G.S.

STATE OF TEXAS
COUNTY OF DALLAS

Personally appeared before me, the undersigned officer duly authorized to administer oaths, S. Michael Dickerson, who, after being duly sworn, testified that he is a Servicing Officer of C-III Asset Management LLC, which is an agent for Plaintiff and the Special Servicer of the Loan, that he has personal knowledge or knowledge derived from records maintained in the ordinary course of business of the information set forth in the Complaint filed in this action on April 18, 2016, and that such information is true and correct to the best of his knowledge and belief.

S. Michael Dickerson

Sworn to and subscribed before me
this 25 day of October, 2016.

Notary Public for _____
Print Name: _____
My commission expires: _____

VIVIAN P. HARRIS
Notary Public, State of Texas
Comm. Expires 12-24-2019
Notary ID 128829277

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, AS SUCCESSOR-IN-INTEREST TO BANK OF AMERICA, N.A., AS SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE REGISTERED HOLDERS OF BEAR STEARNS COMMERCIAL MORTGAGE SECURITIES, INC., COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-TOP26, Plaintiff, vs. AW-MAGPIG, LLC; HW-MAGPIG, LLC; and MW-MAGPIG, LLC, Defendants / Third-Party Plaintiffs, vs. WELLS FARGO BANK, N.A., and MERIDIAN CAPITAL GROUP, LLC, Third-Party Defendants.	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT Case No. 2016-CP-40-02470 **AFFIDAVIT OF RICHARD FAULKENBERRY**

RICHLAND COUNTY
FILED
2016 DEC 14 PM 3:04
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

Richard Faulkenberry, after first being duly sworn, deposes and says under oath as follows:

1. My name is Richard Faulkenberry. I am over 21 years of age and am competent to give testimony. The facts stated herein are based upon my personal knowledge.

2. I am the Director of Property Management and Senior Vice President of Lincoln Harris, LLC, a Delaware limited liability company ("**Lincoln Harris**").

3. Lincoln Harris is a full-service commercial real estate management company. Lincoln Harris offers complete real estate services, including leasing and management, and has substantial experience in the management of retail and office properties. Lincoln Harris presently manages over two and one half (2.5) million square feet of retail and office space in South Carolina and North Carolina.

4. Lincoln Harris has significant experience marketing, selling, managing, leasing and operating investment properties located throughout the Carolinas, including properties that are similar to the retail shopping center known as Magnolia Pointe, generally located at 2000 Clemson Road, Columbia, South Carolina 29203 (the "**Property**").

5. Lincoln Harris has previously served as a receiver, by court appointment, for multiple properties in South Carolina, including in Richland and Lexington counties. In Richland County, Lincoln Harris served as receiver for a retail shopping center formerly anchored by Piggly Wiggly and previously owned by entities that apparently involved the same principals as the defendants in this case. See Richland County Case No. 2012-CP-40-8551, *U.S. Bank, National Association, as Trustee vs. AW-HIGHPIG, LLC et al.* Lincoln Harris also served as receiver for a large office building in downtown Columbia by court appointment in Richland County Case No. 2011-CP-40-04014, *U.S. Bank, National Association, as Trustee vs. B of A Plaza Columbia, LLC.* In Lexington County, Lincoln Harris served as receiver for a retail shopping center by court appointment in Lexington County Case No. 2011-CP-32-04056, *U.S. Bank, National Association, as Trustee vs. Columbiana Crossing, LLC et al.* Lincoln Harris has also served as receiver for multiple properties in North Carolina.

6. I have worked in commercial real estate for twenty one years with Lincoln Harris. I am a former Board Member for the Carolinas and West Virginia Building Owners and

Managers Association and a past President of the Charlotte, North Carolina Building Owners and Managers Association. As the Director of Property Management of Lincoln Harris, I have had direct responsibility for the management and operation of retail shopping centers that are similar to the Property. If Lincoln Harris is appointed as receiver in this proceeding, I would be involved in the management and oversight of the Property.

7. Lincoln Harris has no involvement or affiliation with the Property or the defendants in this matter that would interfere with Lincoln Harris' ability to act as a receiver in this matter. Lincoln Harris has no interest that is adverse to the defendants or that would prevent it from effectively performing as receiver in this proceeding. I have no knowledge of any of matter that would prevent Lincoln Harris from successfully and effectively performing its duties as receiver in this matter.

[*remainder of page left blank - signature page follows*]

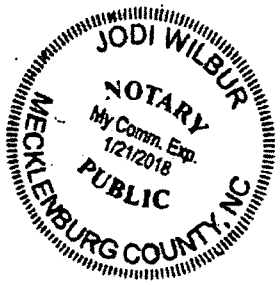
FURTHER AFFIANT SAYETH NOT.

Richard Faulkenberry

Sworn to and subscribed before me
this 13 day of December, 2016.

Jodi Wilbur

Notary Public for Mecklenburg Co., NC



Print Name:

Jodi Wilbur

My commission expires: 1.21.18

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2017-000180

U.S. Bank National Association, as Trustee, successor-in-interest to Bank of America, N.A., as successor by merger to LaSalle Bank National Association, as Trustee for the registered holders of Bear Stearns Commercial Mortgage Securities, Inc., Commercial Mortgage Pass-Through Certificates, Series 2007-TOP26, Respondent,

v.

AW-MAGPIG, LLC; HW-MAGPIG, LLC; and MW-MAGPIG, LLC, Appellants,

v.

Wells Fargo Bank, N.A., and Meridian Capital Group, LLC, Third-Party Defendants.

AFFIDAVIT OF S. MICHAEL DICKERSON

Before the undersigned Notary Public personally appeared S. Michael Dickerson, who after being duly sworn stated under oath as follows:

1. My name is S. Michael Dickerson. I am a Servicing Officer for C-III Asset Management LLC, the Special Servicer of the Loan (defined below) for Respondent. I am over 21 years of age and am competent to give testimony.

2. This affidavit is submitted in support of Respondent's Motion to Dismiss Appeal.

The facts stated herein are based upon my personal knowledge of the Loan, and the books and records kept and maintained in the ordinary course of Respondent's business activity.

3. On March 1, 2007, Appellants obtained a loan from Bear Stearns Commercial Mortgage, Inc. ("**Original Lender**") in the principal amount of $4,500,000.00 (the "**Loan**").

4. The Loan is evidenced in part by a Promissory Note dated March 1, 2007, executed by Appellants and payable to the order of Original Lender in the principal amount of the Loan (the "**Note**"), and secured by, among other documents:

a. Mortgage, Fixture Filing and Security Agreement dated March 1, 2007, executed by Appellants for the benefit of Original Lender and recorded in the Richland County Register of Deeds (the "**Register**") on March 6, 2007 in Book 1288 at Page 3842 (the "**Mortgage**"); and

b. Assignment of Leases and Rents dated March 1, 2007, executed by Appellants for the benefit of Original Lender and recorded in the Register on March 6, 2007, in Book 1288 at Page 3902 (the "**ALR**").[1]

5. The Mortgage encumbers certain real and personal property and other collateral owned by Appellants and primarily comprised of a retail shopping center in Columbia, SC.

6. Respondent is the owner and holder, by assignment, of the Loan and the Note, Mortgage, ALR and all other documents executed and/or delivered in connection therewith (collectively, the "**Loan Documents**") as evidenced by the Assignment of Mortgage, Fixture Filing and Security Agreement and the Assignment of Assignment of Leases and Rents recorded in the Register in Book 2121 at Pages 43 and 47, respectively, copies of which are attached hereto as Exhibit D.

7. Following certain defaults by Appellants under the Loan Documents, Respondent commenced this action to foreclose the Mortgage.

---

[1] Copies of the Note, Mortgage and ALR are attached hereto as Exhibits A, B and C, respectively.

FURTHER AFFIANT SAYETH NOT.

Executed this 27th day of June, 2017.

S. Michael Dickerson
Servicing Officer, C-III Asset Management, LLC

Sworn to and subscribed before me
this 27th day of June, 2017.

Notary Public for Texas

Print Name: _____

My Commission Expires: _____

ROBIN BEHRNS
Notary Public, State of Texas
My Commission Expires
February 14, 2018

EXHIBIT A

Note

[attached hereto]

MERS MIN: 8000101-0000004106-0

PROMISSORY NOTE

$4,500,000.00

New York, New York
March 1, 2007

FOR VALUE RECEIVED, AW-MAGPIG, LLC, HW-MAGPIG, LLC, and MW-MAGPIG, LLC, each a Delaware limited liability company, as maker, each having its principal place of business at 11 East Hawthorne Avenue, Valley Stream, New York 11580 (collectively, "Borrower"), hereby unconditionally promises, on a joint and several basis, to pay to the order of **BEAR STEARNS COMMERCIAL MORTGAGE, INC.**, a New York corporation, as payee, having an address at 383 Madison Avenue, New York, New York 10179 ("Lender"), or at such other place as the holder hereof may from time to time designate in writing, the principal sum of FOUR MILLION FIVE HUNDRED THOUSAND AND 00/100 DOLLARS ($4,500,000.00), in lawful money of the United States of America with interest thereon to be computed from the date of this Note at the Applicable Interest Rate (defined below), and to be paid in installments as follows:

ARTICLE 1 - PAYMENT TERMS

(a) Unless this Note is dated the first day of a month, a payment on the date hereof on account of all interest that will accrue on the principal amount of this Note from and after the date hereof through and including the last day of the present month (the "Month-End Date");

(b) A constant payment of $25,308.23 (the "Monthly Payment") on the first day of April 1, 2007 and on the first day of each calendar month thereafter up to and including the first day of February 1, 2017 (each such date to be hereinafter referred to as a "Monthly Payment Date");

each Monthly Payment to be applied as follows:

(i) first, to the payment of interest which has accrued during the preceding calendar month computed at the Applicable Interest Rate; and

(ii) the balance toward the reduction of the principal sum;

and the balance of the principal sum and all interest thereon shall be due and payable on the first day of March 1, 2017 (the "Maturity Date"). Interest on the principal sum of this Note shall be calculated by multiplying the actual number of days elapsed in the period for which interest is being calculated by a daily rate based on said 360-day year.

ARTICLE 2 - INTEREST

The term "Applicable Interest Rate" as used in the Security Instrument (defined below) and this Note shall mean an interest rate equal to Five and Four hundred Fourteen thousandths percent (5.4140%) per annum.

ARTICLE 3 - DEFAULT AND ACCELERATION

(a) The whole of the principal sum of this Note, (b) interest, default interest, late charges and other sums, as provided in this Note, the Security Instrument or the Other Security Documents (defined below), (c) all other monies agreed or provided to be paid by Borrower in this Note, the Security Instrument or the Other Security Documents, (d) all sums advanced pursuant to the Security Instrument to protect and preserve the Property (defined below) and the lien and the security interest created thereby, and (e) all sums advanced and costs and expenses incurred by Lender in connection with the Debt (defined below) or any part thereof, any renewal, extension, or change of or substitution for the Debt or any part thereof, or the acquisition or perfection of the security therefor, whether made or incurred at the request of Borrower or Lender (all the sums referred to in (a) through (e) above shall collectively be referred to as the "Debt") shall without notice become immediately due and payable at the option of Lender if any payment required in this Note is not paid within five (5) days of the date the same is due or on the Maturity Date or on the happening of any other default, after the expiration of any applicable notice and grace periods, herein or under the terms of the Security Instrument or any of the Other Security Documents (collectively, an "Event of Default").

ARTICLE 4 - DEFAULT INTEREST

Borrower does hereby agree that upon the occurrence of an Event of Default, Lender shall be entitled to receive and Borrower shall pay interest on the entire unpaid principal sum at a rate equal to the lesser of (a) five percent (5%) plus the Applicable Interest Rate and (b) the maximum interest rate which Borrower may by law pay (the "Default Rate"). The Default Rate shall be computed from the occurrence of the Event of Default until the earlier of the date upon which the Event of Default is cured or the date upon which the Debt is paid in full. Interest calculated at the Default Rate shall be added to the Debt, and shall be deemed secured by the Security Instrument. This clause, however, shall not be construed as an agreement or privilege to extend the date of the payment of the Debt, nor as a waiver of any other right or remedy accruing to Lender by reason of the occurrence of any Event of Default.

ARTICLE 5 - PREPAYMENT; DEFEASANCE

Borrower shall not have the right or privilege to prepay all or any portion of the unpaid principal balance of this Note.

After the date that is the earlier of (a) two years following the effective Startup Date (as such term is defined in Section 860(G)(a)(9) of the Internal Revenue Code of 1986, as amended) of the issuance of Securities (as defined in Article 12 herein) or (b) the third anniversary of the Month-End Date, Borrower may obtain a release of the Property (as hereinafter defined) from the lien of the Security Instrument and the Other Security Documents provided that the following conditions have been satisfied:

(i) Borrower shall have provided not less than 30 and not more than 60 days prior written notice (the "Defeasance Notice") to Lender specifying the scheduled date on

which the Defeasance Collateral (as hereinafter defined) is to be delivered in the manner hereinafter provided (the "Release Date");

(ii) No Event of Default shall have occurred;

(iii) Borrower shall have delivered to Lender on or before the Release Date:

(a) direct, non-callable obligations of the United States of America that provide for payments prior, but as close as possible, to all successive Monthly Payment Dates occurring after the Release Date and the Maturity Date, with each such payment being equal to or greater than the amount of the corresponding Monthly Payment required to be paid under this Note for the balance of the term hereof and the amount required to be paid on the Maturity Date (the "Defeasance Collateral"), each of which shall be duly endorsed by the holder thereof as directed by Lender or accompanied by a written instrument of transfer in form and substance wholly satisfactory to Lender (including, without limitation, such instrument as may be required by the depository institution holding such securities or the issuer thereof, as the case may be, to effectuate book-entry transfers and pledges through the book-entry facilities of such institution) in order to perfect upon the delivery of the Defeasance Security Agreement (as hereinafter defined) the first priority security interest therein in favor of the Lender in conformity with all applicable state and federal laws governing the granting of such security interests. The Defeasance Collateral may be purchased by Lender on Borrower's behalf, in which case Borrower shall deposit with Lender on the Release Date a sum sufficient to purchase the Defeasance Collateral.

(b) a pledge and security agreement, in form and substance satisfactory to Lender in its sole discretion, creating a first priority security interest in favor of Lender in the Defeasance Collateral (the "Defeasance Security Agreement"), which shall provide, among other things, that any excess received by Lender from the Defeasance Collateral over the amount payable by Borrower hereunder shall be refunded to Borrower promptly following each Monthly Payment Date and the Maturity Date;

(c) a certificate by an independent certified public accountant acceptable to Lender certifying that all of the requirements set forth in paragraphs (a) and (b) above have been fully satisfied;

(d) an opinion in form and from a counsel reasonably acceptable to Lender in all respects that Lender has received a perfected first priority security interest in the Defeasance Collateral and that the substitution of the Defeasance Collateral for the Property will not adversely affect the status of the holder of this Note as a REMIC under the Code; and

(e) such other certificates, documents or instruments as Lender may reasonably require;

(iv) all accrued and unpaid interest and all other sums due under this Note, the Security Instrument and other Security Documents up to the Release Date, including, without limitation, all costs and expenses incurred by Lender or its agents pursuant to this

Article 5 in connection with such release (including, without limitation, the review of the proposed Defeasance Collateral and the preparation or review of the Defeasance Security Agreement and the related documentation and opinions, and the cost of obtaining the written confirmation of the rating agencies), shall have been fully paid on or before the Release Date; and

(v) Lender shall have received written confirmation from the rating agencies that have rated the Securities (as defined in the Security Instrument) that such substitution of Defeasance Collateral will not result in a downgrade, withdrawal or qualification of the ratings then assigned to any of the Securities.

Upon compliance with the foregoing requirements relating to the delivery of the Defeasance Collateral, the Property shall be released from the lien of the Security Instrument and the Other Security Documents and the Defeasance Collateral shall constitute collateral which shall secure this Note and the Debt. Lender will, at Borrower's expense, execute and deliver any agreements reasonably requested by Borrower to release the lien of the Security Instrument from the Property.

In addition to the foregoing, Lender shall have the right in connection with the Borrower's exercise of its rights under this Article 5 to require an entity designated by Lender to acquire the Defeasance Collateral and to assume that portion of the obligations of Borrower which is secured by such Defeasance Collateral, in which event Borrower shall thereafter be released from such obligations.

Following an Event of Default and acceleration of this Note, if Borrower or anyone on Borrower's behalf makes a tender of payment of the amount necessary to satisfy the indebtedness evidenced by this Note and secured by the Security Instrument at any time prior to foreclosure sale (including, but not limited to, sale under power of sale under the Security Instrument), or during any redemption period after foreclosure, the tender of payment shall constitute an evasion of the prepayment prohibition contained in this Article 5 and shall, therefore, to the maximum extent permitted by law, include an amount equal to the greater of (i) three percent (3%) of the then principal amount of this Note and (ii) an amount equal to the excess of (A) the sum of the present values of a series of payments payable at the times and in the amounts equal to the payments of principal and interest (including, but not limited to the principal and interest payable on the Maturity Date) which would have been scheduled to be payable after the date of such tender under this Note had this Note not been accelerated, with each such payment discounted to its present value at the date of such tender at the rate which when compounded monthly is equivalent to the Prepayment Rate (as hereinafter defined), over (B) the then principal amount of this Note.

The term "Prepayment Rate" means the bond equivalent yield (in the secondary market) on the United States Treasury Security that as of the Prepayment Rate Determination Date (hereinafter defined) has a remaining term to maturity closest to, but not exceeding, the remaining term to the Maturity Date, as most recently published in the "Treasury Bonds, Notes and Bills" section in The Wall Street Journal as of the date of the related tender of payment. If more than one issue of United States Treasury Securities has the remaining term to the Maturity

Date referred to above, the "Prepayment Rate" shall be the yield on the United States Treasury Security most recently issued as of such date. The term "Prepayment Rate Determination Date" shall mean the date which is five (5) Business Days prior to the prepayment date. The rate so published shall control absent manifest error. As used herein, "Business Day" shall mean any day other than Saturday, Sunday or any other day on which banks are required or authorized to close in New York, New York.

If the publication of the Prepayment Rate in The Wall Street Journal is discontinued, Lender shall determine the Prepayment Rate on the basis of "Statistical Release H.15 (519), Selected Interest Rates," or any successor publication, published by the Board of Governors of the Federal Reserve System, or on the basis of such other publication or statistical guide as Lender may reasonably select.

ARTICLE 6 - SECURITY

This Note is secured by the Security Instrument and the Other Security Documents. The term "Security Instrument" means the Mortgage, Fixture Filing and Security Agreement dated the date hereof in the principal sum of FOUR MILLION FIVE HUNDRED THOUSAND AND 00/100 DOLLARS ($4,500,000.00) given by Borrower to (or for the benefit of) Mortgage Electronic Registration Systems, Inc., a Delaware stock corporation, as Lender's nominee ("MERS"), having an address at 1595 Spring Hill Road, Suite 310, Vienna, Virginia 22182, as security for the Debt (hereinafter defined) and other obligations covering the fee simple estate of Borrower in certain premises located in Richland County, State of South Carolina, and other property, as more particularly described therein (collectively, the "Property") and intended to be duly recorded in said County. The term "Other Security Documents" as used in this Note shall mean all and any of the documents other than this Note or the Security Instrument now or hereafter executed by Borrower and/or others and by or in favor of Lender or MERS, which wholly or partially secure or guarantee payment of this Note. All of the terms, covenants and conditions contained in the Security Instrument and the Other Security Documents are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. All capitalized terms not defined herein shall have the meanings ascribed to them in the Security Instrument and the Other Security Documents.

ARTICLE 7 - SAVINGS CLAUSE

This Note is subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the principal balance due hereunder at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the maximum interest rate which Borrower is permitted by applicable law to contract or agree to pay. If by the terms of this Note, Borrower is at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of such maximum rate, the Applicable Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to such maximum rate and all previous payments in excess of the maximum rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the Debt, shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the

full stated term of the Note until payment in full so that the rate or amount of interest on account of the Debt does not exceed the maximum lawful rate of interest from time to time in effect and applicable to the Debt for so long as the Debt is outstanding.

ARTICLE 8 - LATE CHARGE

If any sum payable under this Note is not paid prior to the fifth (5th) day after the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of five percent (5%) of the unpaid sum or the maximum amount permitted by applicable law to defray the expenses incurred by Lender in handling and processing the delinquent payment and to compensate Lender for the loss of the use of the delinquent payment and the amount shall be secured by the Security Instrument and the Other Security Documents.

ARTICLE 9 - NO ORAL CHANGE

This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

ARTICLE 10 - JOINT AND SEVERAL LIABILITY

The obligations and liabilities of each person or party comprising Borrower shall be joint and several.

ARTICLE 11 - WAIVERS

Borrower and all others who may become liable for the payment of all or any part of the Debt do hereby severally waive presentment and demand for payment, notice of dishonor, protest and notice of protest and non-payment and all other notices of any kind. No release of any security for the Debt or extension of time for payment of this Note or any installment hereof, and no alteration, amendment or waiver of any provision of this Note, the Security Instrument or the Other Security Documents made by agreement between Lender or any other person or party shall release, modify, amend, waive, extend, change, discharge, terminate or affect the liability of Borrower, and any other person or entity who may become liable for the payment of all or any part of the Debt, under this Note, the Security Instrument or the Other Security Documents. No notice to or demand on Borrower shall be deemed to be a waiver of the obligation of Borrower or of the right of Lender to take further action without further notice or demand as provided for in this Note, the Security Instrument or the Other Security Documents. If Borrower is a partnership, the agreements herein contained shall remain in force and applicable, notwithstanding any changes in the individuals comprising the partnership. If Borrower is a corporation, the agreements contained herein shall remain in full force and applicable notwithstanding any changes in the shareholders comprising, or the officers and directors relating to, the corporation. If Borrower is a limited liability company, the agreements contained herein shall remain in full force and applicable notwithstanding any changes in the members comprising, or the managers, officers or agents relating to, the limited liability company. The term "Borrower", as used herein,

shall include any alternate or successor partnership, corporation, limited liability company or other entity or person to the Borrower named herein, but any predecessor partnership (and their partners), corporation, limited liability company, other entity or person shall not thereby be released from any liability. Nothing in this Article 11 shall be construed as a consent to, or a waiver of, any prohibition or restriction on transfers of interests in such partnership, corporation, or limited liability company which may be set forth in the Security Instrument or any Other Security Document.

ARTICLE 12 - TRANSFER

Lender may, at any time, sell, transfer or assign this Note, the Security Instrument and the Other Security Documents, and any or all servicing rights with respect thereto, or grant participations therein or issue mortgage passthrough certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement (the "Securities"). Lender may forward to each purchaser, transferee, assignee, servicer, participant, investor in such Securities or any Rating Agency rating such Securities (collectively, the "Investor") and each prospective Investor, 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 and any guarantor agree to cooperate with Lender in connection with any transfer made or any Securities created pursuant to the Security Instrument, including, without limitation, the delivery of an estoppel certificate in accordance therewith, and such other documents as may be reasonably requested by Lender. Borrower shall also furnish and Borrower and any guarantor consent to Lender furnishing to such Investors or such prospective Investors any and all information concerning the Property, the Leases, the financial condition of Borrower and any guarantor as may be requested by Lender, any Investor or any prospective Investor in connection with any sale, transfer or participation interest. Lender may retain or assign responsibility for servicing the Loan, including this Note, the Security Instrument, and the Other Security Documents, or may delegate some or all of such responsibility and/or obligations to a servicer including, but not limited to, any subservicer or master servicer. Lender may make such assignment or delegation on behalf of the Investors if this Note is sold or the Security Instrument or the Other Security Documents are assigned. All references to Lender herein shall refer to and include any such servicer to the extent applicable.

ARTICLE 13 - WAIVER OF TRIAL BY JURY

BORROWER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN EVIDENCED BY THIS NOTE, THE APPLICATION FOR THE LOAN EVIDENCED BY THIS NOTE, THIS NOTE, THE SECURITY INSTRUMENT OR THE OTHER SECURITY DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.

ARTICLE 14 - EXCULPATION

Except as otherwise provided herein, in the Security Instrument or in the Other Security Documents, Lender shall not enforce the liability and obligation of Borrower, to perform and observe the obligations contained in this Note, the Security Instrument or the Other Security Documents by any action or proceeding wherein a money judgment shall be sought against Borrower or any partner or member of Borrower, except that Lender may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Lender to enforce and realize upon this Note, the Security Instrument, the Other Security Documents, and the interests in the Property; and any other collateral given to Lender pursuant to the Security Instrument and the Other Security Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against Borrower or any partner or member of Borrower only to the extent of Borrower's interest in the Property and in any other collateral given to Lender, and Lender, by accepting this Note, the Security Instrument and the Other Security Documents, agrees that it shall not sue for, seek or demand any deficiency judgment against Borrower or any partner or member of Borrower, in any such action or proceeding, under or by reason of or in connection with this Note, the Security Instrument or the Other Security Documents. The provisions of this paragraph shall not, however, (i) constitute a waiver, release or impairment of any obligation evidenced or secured by the Security Instrument or the Other Security Documents; (ii) impair the right of Lender to name Borrower as a party defendant in any action or suit for foreclosure and sale under the Security Instrument; (iii) affect the validity or enforceability of any guaranty made in connection with this Note, the Security Instrument or the Other Security Documents; (iv) impair the right of Lender to obtain the appointment of a receiver; (v) impair the enforcement of any assignment; or (vi) constitute a waiver of the right of Lender to enforce the liability and obligation of Borrower or any partner or general partner of Borrower, by money judgment or otherwise, to the extent of any loss, damage, cost, expense, liability, claim or other obligation incurred by Lender (including attorneys' fees and costs reasonably and actually incurred) arising out of or in connection with the following:

(a) fraud or misrepresentation by Borrower in connection with this Note, the Security Instrument or the Other Security Documents;

(b) the gross negligence or willful misconduct of Borrower;

(c) material physical waste of the Property;

(d) the breach of provisions in this Note, the Security Instrument or the Other Security Documents concerning Environmental Laws and Hazardous Substances and any indemnification of Lender with respect thereto in any document;

(e) the removal or disposal of any portion of the Property after an Event of Default under this Note, the Security Instrument or the Other Security Documents;

(f) the misapplication or conversion by Borrower of (i) any insurance proceeds paid by reason of any loss, damage or destruction to the Property, (ii) any awards or other amounts received in connection with the condemnation of all or a portion of the Property, or (iii) any

Rents following default under this Note, the Security Instrument or the Other Security Documents;

(g) failure to pay Taxes (provided that the liability of Borrower shall be only for amounts in excess of the amount held by Lender in escrow for the payment of Taxes), assessments, charges for labor or materials or other charges that can create liens on any portion of the Property; and

(h) any security deposits collected with respect to the Property which are not delivered to Lender upon a foreclosure of the Property or action in lieu thereof, except to the extent any such security deposits were applied in accordance with the terms and conditions of any of the Leases prior to the occurrence of the Event of Default that gave rise to such foreclosure or action in lieu thereof.

Notwithstanding anything to the contrary in this Note, the Security Instrument or the Other Security Documents (i) the Debt shall be fully recourse to Borrower; and (ii) Lender shall not be deemed to have waived any right which Lender may have under Section 506(a), 506(b), 1111(b) or any other provisions of the U.S. Bankruptcy Code to file a claim for the full amount of the Debt or to require that all collateral shall continue to secure all of the Debt owing to Lender in accordance with this Note, the Security Instrument or the Other Security Documents, in the event that: (A) the first full Monthly Payment is not paid when due; (B) Borrower fails to permit on-site inspections of the Property, fails to provide financial information, or fails to comply with the terms of Section 4.3 of the Security Instrument; (C) Borrower fails to obtain Lender's prior written consent to any subordinate financing or other voluntary lien encumbering the Property; (D) Borrower fails to obtain Lender's prior written consent to any assignment, transfer, or conveyance of the Property or any interest therein as required by the Security Instrument.

ARTICLE 15 - AUTHORITY

Borrower (and the undersigned representative of Borrower, if any) represents that Borrower has full power, authority and legal right to execute and deliver this Note, the Security Instrument and the Other Security Documents and that this Note, the Security Instrument and the Other Security Documents constitute valid and binding obligations of Borrower.

ARTICLE 16 - APPLICABLE LAW

This Note shall be deemed to be a contract entered into pursuant to the laws of the State of New York and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of New York.

ARTICLE 17 - SERVICE OF PROCESS

(a) Borrower will maintain a place of business or an agent for service of process in the State of South Carolina and give prompt notice to Lender of the address of such place of business and of the name and address of any new agent appointed by it, as appropriate. Borrower further agrees that the failure of its agent for service of process to give it notice of any service of

process will not impair or affect the validity of such service or of any judgment based thereon. If, despite the foregoing, there is for any reason no agent for service of process of Borrower available to be served, and if it at that time has no place of business in the State of South Carolina then Borrower irrevocably consents to service of process by registered or certified mail, postage prepaid, to it at its address given in or pursuant to the first paragraph hereof.

Borrower initially and irrevocably designates William P. McElveen, Jr., with offices on the date hereof at Ellis, Lawhorne & Sims, P.A., 1501 Main Street, 5th Floor, Columbia, South Carolina 29201, to receive for and on behalf of Borrower service of process in the State of South Carolina with respect to this Note.

ARTICLE 18 - COUNSEL FEES

In the event that it should become necessary to employ counsel to collect the Debt or to protect or foreclose the security therefor, Borrower also agrees to pay all reasonable fees and expenses of Lender, including, without limitation, reasonable attorney's fees for the services of such counsel whether or not suit be brought.

ARTICLE 19 - NOTICES

All notices or other written communications to Borrower, Lender or MERS hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person with receipt acknowledged by the recipient thereof, (ii) one (1) Business Day (defined below) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to Borrower, Lender or MERS at their addresses set forth in the Security Instrument or addressed as such party may from time to time designate by written notice to the other parties. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

ARTICLE 20 - MISCELLANEOUS

(a) Wherever pursuant to this Note (i) Lender exercises any right given to it to approve or disapprove, (ii) any arrangement or term is to be satisfactory to Lender, or (iii) any other decision or determination is to be made by Lender, the decision of Lender to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory and all other decisions and determinations made by Lender, shall be in the sole and absolute discretion of Lender and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

(b) Wherever pursuant to this Note it is provided that Borrower pay any costs and expenses, such costs and expenses shall include, but not be limited to, reasonable and actual legal fees and disbursements of Lender, whether retained firms, the reimbursement for the expenses of in-house staff, or otherwise.

(c) Whenever used, the singular number shall include the plural, the plural number shall include the singular, and the words "Lender" and "Borrower" shall include their respective successors, assigns, heirs, executors and administrators.

ARTICLE 21 - DEFINITIONS

All capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Security Instrument.

ARTICLE 22 - LOCK BOX PROCEDURES

Upon the commencement of a Cash Management Period (as defined in the Cash Management Agreement), all Rents (as defined in the Security Instrument) and other receivables related to the Property shall be paid directly by the parties paying such Rents (including, without limitation, tenants under the Leases (as defined in the Security Instrument)) to the Clearing Account (as defined in the Cash Management Agreement). Lender or the Agent (as defined in the Cash Management Agreement) shall (and is irrevocably authorized by Borrower to) apply all funds in the Clearing Account in accordance with the provisions of the Cash Management Agreement.

[remainder of page intentionally left blank; signature page follows]

[SIGNATURE PAGE TO PROMISSORY NOTE]

IN WITNESS WHEREOF, Borrower has duly executed this Note as of the day and year first above written.

BORROWER:

AW-MAGPIG, LLC, a Delaware limited liability company

By: AW-MAGPIG OWNER, LLC, a Delaware limited liability company, its sole member

By: _____
Name: Alan B. Wasserman
Title: Member

HW-MAGPIG, LLC, a Delaware limited liability company

By: HW-MAGPIG OWNER, LLC, a Delaware limited liability company, its sole member

By: _____
Name: Harold Wasserman
Title: Member

MW-MAGPIG, LLC, a Delaware limited liability company

By: MW-MAGPIG OWNER, LLC, a Delaware limited liability company, its sole member

By: _____
Name: Michael S. Wasserman
Title: Member

EXHIBIT B

Mortgage

[attached hereto]

Book 1288-3842
2007018822 03/06/2007 10:42:30:813 Mortgage
Fee:$66.00 County Tax: $0.00 State Tax: $0.00

2007018822 Richard W. Rodden Richland County ROD

MERS MIN: 8000101-0000004106-0

AW-MAGPIG, LLC, HW-MAGPIG, LLC and MW-MAGPIG, LLC, as mortgagor
(Borrower)

to

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., as mortgagee
(Mortgagee)

MORTGAGE, FIXTURE FILING AND SECURITY AGREEMENT

This document serves as a fixture filing under the Uniform Commercial Code.

Dated: March 1, 2007

Location: Columbia, South Carolina
County: Richland
Borrower's Federal Tax I.D. No. [redacted]

PREPARED BY AND UPON
RECORDATION RETURN TO:
Katten Muchin Rosenman LLP
401 South Tryon Street, Suite 2600
Charlotte, North Carolina 28202
Attention: Daniel S. Huffenus, Esq.

THIS MORTGAGE, FIXTURE FILING AND SECURITY AGREEMENT COVERS FIXTURES AND CONSTITUTES A FIXTURE FILING FINANCING STATEMENT IN ACCORDANCE WITH THE PROVISIONS OF 36-9-502(c) OF THE CODE OF LAWS OF SOUTH CAROLINA.

TO THE EXTENT PROVIDED IN THE NOTE, INTEREST OR DISCOUNT WILL BE DEFERRED, ACCRUED OR CAPITALIZED.

THE BORROWER MAY HEREAFTER BECOME INDEBTED TO THE LENDER FOR AN ADDITIONAL SUM OR SUMS FOR ANY PURPOSE, INCLUDING FUTURE ADVANCES AND RE-ADVANCES IN ACCORDANCE WITH SECTION 29-3-50, S.C. CODE ANN. (1976), AS AMENDED, AND FOR SUCH FURTHER SUMS AS MAY BE ADVANCED TO OR FOR THE BORROWER'S ACCOUNT FOR TAXES, INSURANCE PREMIUMS, PUBLIC ASSESSMENTS AND NECESSARY REPAIRS. THE INDEBTEDNESS SECURED BY THIS SECURITY INSTRUMENT SHALL NOT EXCEED AT ANY ONE TIME THE MAXIMUM PRINCIPAL AMOUNT OF $4,500,000.00 PLUS INTEREST THEREON, REASONABLE ATTORNEYS' FEES AND COURT COSTS, AND PLUS TAXES, INSURANCE PREMIMUMS, PUBLIC ASSESSMENTS AND NECESSARY REPAIRS MADE BY LENDER. INTEREST ON THE INDEBTEDNESS SECURED HEREBY WILL BE DEFERRED, ACCRUED, OR CAPITALIZED, BUT LENDER SHALL NOT BE REQUIRED TO DEFER, ACCRUE, OR CAPITALIZE ANY INTEREST EXCEPT AS PROVIDED IN THE NOTE.

THIS MORTGAGE, FIXTURE FILING AND SECURITY AGREEMENT (this "Security Instrument") is made as of the 1st day of March, 2007, by AW-MAGPIG, LLC, HW-MAGPIG, LLC, and MW-MAGPIG, LLC, each a Delaware limited liability company and each having its principal place of business at 11 East Hawthorne Avenue, Valley Stream, New York, 11580 as mortgagor (collectively, "Borrower"), to MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a Delaware stock corporation, having an address at 1595 Spring Hill Road, Vienna, Virginia, as mortgagee and Lender's nominee ("Mortgagee").

RECITALS:

Borrower by its promissory note of even date herewith given to Bear Stearns Commercial Mortgage, Inc., a New York corporation, having an address at 383 Madison Avenue, New York, New York 10179 (together with its successors and assigns, "Lender") is indebted to Lender in the principal sum of FOUR MILLION FIVE HUNDRED THOUSAND AND 00/100 DOLLARS ($4,500,000.00) in lawful money of the United States of America (the note together with all extensions, renewals, modifications, substitutions and amendments thereof shall collectively be referred to as the "Note"), with interest from the date thereof at the rates set forth in the Note, principal and interest to be payable in accordance with the terms and conditions provided in the Note, and for final payment of principal and interest thereunder, if not sooner paid or payable as provided therein, to be due on March 1, 2017.

Borrower desires to secure the payment of the Debt (as defined in Article 2) and the performance of all of its obligations under the Note and the Other Obligations (as defined in Article 2).

ARTICLE 1 - GRANTS OF SECURITY

Section 1.1 PROPERTY MORTGAGED. Borrower does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Mortgagee, as Lender's nominee, its successors and assigns, and grant a security interest to Mortgagee, as Lender's nominee, all of Borrower's rights, title and interest in and to the following property,

owned, or hereafter acquired by Borrower (collectively, the "Property"):

(a) the real property described in Exhibit A attached hereto and made a part hereof (the "Land");

(b) all additional lands, estates and development rights hereafter acquired by Borrower for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Security Instrument;

(c) the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (the "Improvements");

(d) all easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e) all machinery, equipment, fixtures (including, but not limited to, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Land and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Land and the Improvements (collectively, the "Personal Property"), and the right, title and interest of Borrower in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (the "Uniform Commercial Code"), superior in lien to the lien of this Security Instrument and all proceeds and products of the above;

(f) all leases and other agreements affecting the use, enjoyment or occupancy of the Land and the Improvements heretofore or hereafter entered into, including a guaranty of any such lease (a "Lease" or "Leases") and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements (the "Rents") and all proceeds from the sale or other disposition of the Leases and the

right to receive and apply the Rents to the payment of the Debt;

(g) all awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including but not limited to any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(h) all proceeds of and any unearned premiums on any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

(i) all refunds, rebates or credits in connection with a reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction;

(j) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing including, without limitation, proceeds of insurance and condemnation awards, into cash or liquidation claims;

(k) the right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Mortgagee or Lender in the Property;

(l) all agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Borrower therein and thereunder, including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Borrower thereunder;

(m) all tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(n) all letter-of-credit rights (whether or not the letter of credit is evidenced by a writing) Borrower now has or hereafter acquires relating to the properties, rights, titles and interest referred to in this Section 1.1;

(o) all commercial tort claims Borrower now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.1;

(p) the Cash Management Account (as defined in the Cash Management Agreement) and the Lockbox Account (as defined in the Cash Management Agreement) and all deposits at any time contained in such accounts and the proceeds thereof;

(q) the Replacement Reserve (as defined in the Replacement Reserve and Security Agreement executed by Borrower and dated of even date hereof) and any and all monies now or

hereafter deposited in the Replacement Reserve;

(r) all rights in and to that certain Co-Tenancy Agreement by and among AW-MAGPIG, LLC, HW-MAGPIG, LLC and MW-MAGPIG, LLC (together with any amendment, modification or extension, the "TIC Agreement");

(s) all tenancy in common interests currently held or hereinafter acquired by any Borrower with respect to the Property;

(t) all rights, remedies, interests and title (including, but not limited to (i) any and all rights of first refusal, (ii) option to purchase an interest in the Property, and (iii) any and all similar right of first refusal, including 363(i) of Section 11 of the United States Bankruptcy Code) of Borrower now or hereinafter arising under or pursuant to the TIC Agreement; and

(u) any and all other rights of Borrower in and to the items set forth in Subsections (a) through (t) above.

Section 1.2 ASSIGNMENT OF RENTS. Borrower hereby absolutely and unconditionally assigns to Mortgagee Borrower's right, title and interest in and to all current and future Leases, Rents, Lease Guaranties and Bankruptcy Claims; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of this Section 1.2 and Section 3.7 and the terms of that certain Cash Management Agreement among Borrower, Lender and The Bank of New York Trust Company, N.A., dated as of even date herewith (the "Cash Management Agreement"), Mortgagee grants to Borrower a revocable license to collect and receive the Rents, Lease Guaranties and Bankruptcy Claims. Borrower shall hold the Rents, Lease Guaranties and Bankruptcy Claims or a portion thereof sufficient to discharge all current sums due on the Debt, for use in the payment of such sums. For purposes of this Section 1.2, the terms "Lease Guaranties" and "Bankruptcy Claims" shall have the meanings ascribed to such terms in that certain Assignment of Leases and Rents by and between Borrower and Mortgagee dated as of even date herewith.

Section 1.3 SECURITY AGREEMENT; FIXTURE FILING. This Security Instrument is a "security agreement" with respect to such components of the Property as to which a security interest may attach under the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Security Instrument, Borrower hereby grants to Mortgagee, as security for the Obligations (defined in Section 2.1), a security interest in the Property to the full extent that the Property may be subject to the Uniform Commercial Code and authorizes Lender to file this Security Instrument as a fixture filing in the real property records of Richland County, South Carolina in accordance with Sections 36-9-502 of the South Carolina Code and to file a financing statement in any other location, including without limitation the office of the Secretary of State of the State of South Carolina, necessary under the Uniform Commercial Code to evidence Lender's security interest in the Personal Property. The information contained in this Section 1.3 is provided in order that this Security Instrument shall comply with the requirements of the Uniform Commercial Code for security deeds to be effective as financing statements filed as a fixture filing. The name of the "Debtor" is the name of Borrower as set forth in the introductory paragraph of this Security Instrument; and the name of the "Secured Party" is the name of Lender as set forth in the introductory paragraph of this

Security Instrument: the mailing address of the "Secured Party" from which information concerning the security interest may be obtained and the mailing address of the "Debtor" are as set forth in the preamble to this Security Instrument. The types, or the items, of collateral covered hereby consist of the Personal Property and all other items set forth hereinabove in Section 1.1 which constitute fixtures or personal property. Borrower is the record owner of the Land.

Section 1.4 PLEDGE OF MONIES HELD. Borrower hereby pledges to Mortgagee and, grants to Mortgagee a security interest in, any and all monies now or hereafter held by Lender, including, without limitation, any sums deposited in the Escrow Fund (as defined in Section 3.5), Net Proceeds (as defined in Section 4.4) and condemnation awards or payments described in Section 3.6 and any accounts established pursuant to the Cash Management Agreement, as additional security for the Obligations until expended or applied as provided in this Security Instrument.

Section 1.5 GRANTS TO MORTGAGEE. This Security Instrument and the grants, assignments and transfers made to Mortgagee in this Article 1 shall inure to Mortgagee solely in its capacity as Lender's nominee.

CONDITIONS TO GRANT

TO HAVE AND TO HOLD the Property unto Mortgagee, its successors and assigns, forever, subject, however, to the Permitted Exceptions (defined below); PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall well and truly pay to Lender the Debt and other obligations at the time and in the manner provided in the Note, this Security Instrument or the other Security Documents, shall well and truly perform the Other Obligations as set forth in this Security Instrument and shall well and truly abide by and comply with each and ever covenant and condition set forth herein and in the Note, this Security Instrument and the Other Security Documents, these presents and the estate hereby granted shall cease, terminate and be void; provided, however, that Borrower's obligation to indemnify and hold harmless Lender pursuant to the provisions hereof shall survive any such payment or release. And Borrower does hereby bind Borrower, Borrower's successors and assigns to warrant and forever defend the said premises unto the said Mortgagee, its substitutes or successors and assigns forever, against the claim, or claims, of all persons claiming or to claim the same or any part thereof..

ARTICLE 2 - PAYMENTS

Section 2.1 DEBT AND OBLIGATIONS SECURED. This Security Instrument and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the following, in such order of priority as Lender may determine in its sole discretion (the "Debt"): (a) the payment of the indebtedness evidenced by the Note in lawful money of the United States of America; (b) the payment of interest, prepayment premiums, default interest, late charges and other sums, as provided in the Note, this Security Instrument or the Other Security Documents (defined below); (c) the payment of all other moneys agreed or provided to be paid by Borrower in the Note, this Security Instrument or the

Other Security Documents; (d) the payment of all sums advanced pursuant to this Security Instrument to protect and preserve the Property and the lien and the security interest created hereby; and (e) to secure in accordance with Section 29-3-50, Code of Laws of South Carolina (1976), as amended, all future advances and re-advances that may subsequently be made to Borrower by Lender, evidenced by the aforesaid Note or other instruments, and all modifications, renewals and extensions thereof (provided, however, that nothing contained herein shall create an obligation on the part of the Lender to make future advances or re-advances to Borrower), plus interest thereon, and all charges and expenses of collection incurred by Lender or Mortgagee, including court costs and attorney's fees. This Security Instrument and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the performance of all other obligations of Borrower contained herein and the performance of each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of this Security Instrument, the Note or the Other Security Documents (collectively, the "Other Obligations"). Borrower's obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively below as the "Obligations."

Section 2.2 PAYMENTS. Unless payments are made in the required amount in immediately available funds at the place where the Note is payable, remittances in payment of all or any part of the Debt shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Lender in funds immediately available at the place where the Note is payable (or any other place as Lender, in Lender's sole discretion, may have established by delivery of written notice thereof to Borrower) and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Lender of any payment in an amount less than the amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be an Event of Default (defined below).

ARTICLE 3 - BORROWER COVENANTS

Borrower covenants and agrees that:

Section 3.1 PAYMENT OF DEBT. Borrower will pay the Debt at the time and in the manner provided in the Note and in this Security Instrument.

Section 3.2 INCORPORATION BY REFERENCE. All the covenants, conditions and agreements contained in (a) the Note and (b) all and any of the documents other than the Note or this Security Instrument now or hereafter executed by Borrower and/or others and by or in favor of Lender, which wholly or partially secure or guaranty payment of the Note (the "Other Security Documents"), are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

Section 3.3 INSURANCE.

(a) Borrower, at its sole cost and expense, for the mutual benefit of Borrower and Lender, shall obtain and maintain, or cause to be maintained, during the entire term of this Security Instrument policies of insurance for Borrower and the Property providing at least the following coverages:

(i) comprehensive all risk insurance ("Special Form") including, but not limited to, loss caused by any type of windstorm or hail on the Improvements and the Personal Property, (A) in an amount equal to one hundred percent (100%) of the "Full Replacement Cost," which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation, but the amount shall in no event be less than the outstanding principal balance of the Note; (B) containing an agreed amount endorsement with respect to the Improvements and Personal Property waiving all co-insurance provisions or to be written on a no co-insurance form; (C) providing for no deductible in excess of Ten Thousand and No/100 Dollars ($10,000.00) for all such insurance coverage and (D) if any of the Improvements or the use of the Property shall at any time constitute legal non-conforming structures or uses, coverage for loss due to operation of law in an amount equal to the Full Replacement Cost, coverage for demolition costs and coverage for increased costs of construction. In addition, Borrower shall obtain: (x) if any portion of the Improvements is currently or at any time in the future located in a federally designated "special flood hazard area", flood hazard insurance in an amount equal to the lesser of (1) the outstanding principal balance of the Note or (2) the maximum amount of such insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended or such greater amount as Lender shall require; (y) [intentionally omitted]; and (z) earthquake insurance in amounts and in form and substance satisfactory to Lender in the event the Property is located in an area with a high degree of seismic activity;

(ii) business income insurance (A) with loss payable to Lender; (B) covering all risks required to be covered by the insurance provided for in subsection (i) above; and (C) in an annual aggregate amount equal to all rents or estimated gross revenues from the operation of the Properties (as reduced to reflect expenses not incurred during a period of Restoration) and covering rental losses or business interruption, as may be applicable, for a period of at least twelve (12) months, after the date of the casualty, and notwithstanding that the Policy may expire prior to the end of such period. The amount of such business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on Borrower's reasonable estimate of the gross income from the Property for the succeeding twelve (12) month period. All proceeds payable to Lender pursuant to this subsection shall be held by Lender and shall be applied to the Obligations from time to time due and payable hereunder and under the Note; provided, however, that nothing herein contained shall be deemed to relieve Borrower of its obligations to pay the Obligations on the respective dates of payment provided for in the Note, this Security Instrument, and the Other Security Documents except to the extent such amounts are actually paid out of the proceeds of such business income insurance;

(iii) at all times during which structural construction, repairs or alterations are being made with respect to the Improvements, and only if the Property coverage form does not otherwise apply, (A) owner's contingent or protective liability insurance, otherwise known as Owner Contractor's Protective Liability, covering claims not covered by or under the terms or provisions of the commercial general liability insurance policy in (v) below; and (B) the insurance provided for in subsection (i) above written in a so-called builder's risk completed value form (1) on a non-reporting basis, (2) against all risks insured against pursuant to subsection (i) above, (3) including permission to occupy the Property, and (4) with an agreed

amount endorsement waiving co-insurance provisions;

(iv) comprehensive boiler and machinery insurance, if steam boilers or other pressure-fixed vessels are in operation, in amounts as shall be reasonably required by Lender on terms consistent with the commercial property insurance policy required under subsection (i) above;

(v) 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 limit of not less than Two Million and No/100 Dollars ($2,000,000.00) in the aggregate and One Million and No/100 Dollars ($1,000,000.00) per occurrence; (B) to continue at not less than the aforesaid limit until required to be changed by Lender in writing by reason of changed economic conditions making such protection inadequate; and (C) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations on an "if any" basis; (3) independent contractors; (4) blanket contractual liability for all legal contracts and (5) contractual liability covering the indemnities contained in Article 13.1 to the extent the same is available;

(vi) automobile liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence of One Million and No/100 Dollars ($1,000,000.00);

(vii) worker's compensation and employee's liability subject to the worker's compensation laws of the applicable state;

(viii) umbrella liability insurance in an amount not less than Three Million and No/100 Dollars ($3,000,000.00) per occurrence on terms consistent with the commercial general liability insurance policy required under subsection (v) above, including, but not limited to, supplemental coverage for workers' compensation and automobile liability, which umbrella liability coverage shall apply in excess of the automobile liability coverage in clause (vi) above;

(ix) upon sixty (60) days' written notice, such other reasonable insurance such as sinkhole or land subsidence insurance, and in such reasonable amounts as Lender from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against for property similar to the Property located in or around the region in which the Property is located; and

(x) Borrower shall use commercially reasonable efforts, consistent with those of prudent owners of commercial real estate to maintain insurance against damage resulting from acts of terrorism, or an insurance policy without a terrorism exclusion, on terms consistent with the commercial property insurance policy required under subsection (a) above and otherwise reasonably satisfactory to Lender; provided, however, if such terrorism insurance is obtainable from any insurer or the United States of America or any agency or instrumentality thereof and the lack of such insurance in and of itself will result in a downgrade by any rating agency issuing any statistical rating in any Secondary Market Transaction to the then current ratings assigned, or to be assigned, to the Securities (as hereinafter defined) or any class thereof, Borrower shall obtain

such insurance.

(b) All insurance provided for in Section 3.3(a) shall be obtained under valid and enforceable policies (collectively, the "Policies" or in the singular, the "Policy"), shall be satisfactory in form and substance to Lender and shall be subject to the approval of Lender as to insurance companies, amounts, deductibles, loss payees and insureds. The Policies (i) shall be issued by financially sound and responsible insurance companies approved by Lender and authorized or licensed to do business in the state where the Property is located, with a claims paying ability rating of "A" or better by Standard & Poor's Corporation or a rating of "A:VII" or better in the current Best's Insurance Reports; (ii) except for the Policy referenced in Section 3.3(a)(vii) shall name Borrower as the insured and Lender as an additional insured, as its interests may appear; (iii) in the case of property damage, boiler and machinery, flood and earthquake insurance, shall contain a so-called New York Non-Contributory Standard Mortgagee Clause and (other than those strictly limited to liability protection) a Lender's Loss Payable Endorsement (Form 438 BFU NS), or their equivalents, naming Lender as the person to which all payments made by such insurance company shall be paid; (iv) shall contain a waiver of subrogation against Lender; (v) shall be maintained throughout the term of this Security Instrument without cost to Lender; (vi) shall be assigned and the originals (or duplicate originals certified to be true and correct by the related insurer) delivered to Lender; and (vii) shall contain such provisions as Lender deems reasonably necessary or desirable to protect its interest including, without limitation, endorsements providing that neither Borrower, Lender nor any other party shall be a co-insurer under said Policies and that Lender shall receive at least thirty (30) days prior written notice of any modification, reduction or cancellation. Any blanket Policy shall specifically allocate to the Property the amount of coverage from time to time required hereunder and shall otherwise provide the same protection as would a separate Policy insuring only the Property in compliance with the provisions of Section 3.3(a). Borrower shall pay the premiums for such Policies (the "Insurance Premiums") as the same become due and payable and shall furnish to Lender evidence of the renewal of each of the new Policies with receipts for the payment of the Insurance Premiums or other evidence of such payment reasonably satisfactory to Lender (provided that such Insurance Premiums have not been paid to Lender or Lender's servicing agent pursuant to Section 3.5 hereof). If Borrower does not furnish such evidence and receipts at least thirty (30) days prior to the expiration of any apparently expiring Policy, then Lender may procure, but shall not be obligated to procure, such insurance and pay the Insurance Premiums therefor, and Borrower agrees to reimburse Lender for the cost of such Insurance Premiums promptly on demand. Within thirty (30) days after request by Lender, Borrower shall obtain such increases in the amounts of coverage required hereunder as may be reasonably requested by Lender, taking into consideration changes in the value of money over time, changes in liability laws, changes in prudent customs and practices, and the like.

(c) If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, Borrower shall give prompt notice of such damage to Lender and shall promptly commence and diligently prosecute the completion of the repair and restoration of the Property as nearly as possible to the condition the Property was in immediately prior to such fire or other casualty, with such alterations as may be reasonably approved by Lender (the "Restoration") and otherwise in accordance with Section 4.4 of this Security Instrument. Borrower shall pay all costs of such Restoration whether or not such costs are covered by insurance. In case of loss covered by Policies, Lender may either (1) settle and adjust any claim without the consent of Borrower, or (2) allow Borrower to agree with the insurance company or companies on the amount to be paid upon the loss; provided, that (A) Borrower may adjust

losses aggregating not in excess of $100,000 if such adjustment is carried out in a competent and timely manner and (B) if no Event of Default shall have occurred, Lender shall not settle or adjust any such claim without the consent of Borrower, which consent shall not be unreasonably withheld or delayed. In any case Lender shall and is hereby authorized to collect and receipt for any such insurance proceeds; and the reasonable expenses incurred by Lender in the adjustment and collection of insurance proceeds shall become part of the Debt and be secured hereby and shall be reimbursed by Borrower to Lender upon demand.

Section 3.4 PAYMENT OF TAXES, ETC.

(a) Borrower shall pay all taxes, assessments, water rates, sewer rents, governmental impositions, and other charges, including without limitation vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Land, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "Taxes"), all ground rents, maintenance charges and similar charges, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "Other Charges"), and all charges for utility services provided to the Property prior to the same becoming delinquent. Borrower will deliver to Lender, promptly upon Lender's request, evidence reasonably satisfactory to Lender that the Taxes, Other Charges and utility service charges have been so paid or are not then delinquent. Borrower shall not suffer and shall promptly cause to be paid and discharged any lien or charge whatsoever which may be or become a lien or charge against the Property. Except to the extent sums sufficient to pay all Taxes and Other Charges have been deposited with Lender in accordance with the terms of this Security Instrument, Borrower shall furnish to Lender paid receipts for the payment of the Taxes and Other Charges prior to the date the same shall become delinquent.

(b) After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Taxes, provided that (i) no Event of Default has occurred under the Note, this Security Instrument or any of the Other Security Documents, (ii) Borrower is permitted to do so under the provisions of any other mortgage, deed of trust or deed to secure debt affecting the Property, (iii) such proceeding shall suspend the collection of the Taxes from Borrower and from the Property or Borrower shall have paid all of the Taxes under protest, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder, (v) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost, (vi) Borrower shall have deposited with Lender adequate reserves for the payment of the Taxes, together with all interest and penalties thereon, unless Borrower has paid all of the Taxes under protest, and (vii) Borrower shall have furnished the security as may be required in the proceeding, or as may be requested by Lender to insure the payment of any contested Taxes, together with all interest and penalties thereon.

Section 3.5 ESCROW FUND. In addition to the initial deposits with respect to Taxes and Insurance Premiums made by Borrower to Lender on the date hereof to be held by Lender in escrow, Borrower shall pay to Lender on the first day of each calendar month (a) one-twelfth of an amount which would be sufficient to pay the Taxes payable, or reasonably estimated by Lender to be payable, during the next ensuing twelve (12) months and (b) one-twelfth of an amount which would be sufficient to pay the Insurance Premiums due for the renewal of the coverage afforded by the Policies upon the expiration

thereof (the amounts in (a) and (b) above shall be called the "Escrow Fund"). Borrower agrees to notify Lender immediately of any changes to the amounts, schedules and instructions for payment of any Taxes and Insurance Premiums of which it has obtained knowledge and authorizes Lender or its agent to obtain the bills for Taxes and Other Charges directly from the appropriate taxing authority. The Escrow Fund and the payments of interest or principal or both, payable pursuant to the Note shall be added together and shall be paid as an aggregate sum by Borrower to Lender. Lender will apply the Escrow Fund to payments of Taxes and Insurance Premiums required to be made by Borrower pursuant to Sections 3.3 and 3.4 hereof. If the amount of the Escrow Fund shall exceed the amounts due for Taxes and Insurance Premiums pursuant to Sections 3.3 and 3.4 hereof, Lender shall, in its discretion, return any excess to Borrower or credit such excess against future payments to be made to the Escrow Fund. In allocating such excess, Lender may deal with the person shown on the records of Lender to be the owner of the Property. If the Escrow Fund is not sufficient to pay the items set forth in (a) and (b) above, Borrower shall promptly pay to Lender, upon demand, an amount which Lender shall reasonably estimate as sufficient to make up the deficiency. Lender will place the Escrow Fund in a money market account, if available. The Escrow Fund shall not constitute a trust fund and may be commingled with other monies held by Lender. Any interest earned on the Escrow Fund shall accrue for the benefit of Borrower but shall remain a part of the Escrow Fund.

Section 3.6 CONDEMNATION. Borrower shall promptly give Lender notice of the actual or threatened commencement of any condemnation or eminent domain proceeding and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Lender is hereby irrevocably appointed as Borrower's attorney-in-fact coupled with an interest, with exclusive powers to collect, receive and retain any award or payment for any taking accomplished through a condemnation or eminent domain proceeding and to make any compromise or settlement in connection therewith. All condemnation awards or proceeds shall be either (a) paid to Lender for application against the Debt or (b) applied to Restoration of the Property in accordance with Section 4.4 hereof. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Security Instrument and the Debt shall not be reduced until any award or payment therefor shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Lender shall not be limited to the interest paid on the award by the condemning authority but shall be entitled to receive out of the award interest at the rate or rates provided herein or in the Note. Any award or payment to be applied without penalty to the reduction or discharge of the Debt or any portion thereof may be so applied whether or not the Debt or such portion thereof is then due and payable. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the award or payment, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been or may be sought, recovered or denied, to receive the award or payment, or a portion thereof sufficient to pay the Debt.

Section 3.7 LEASES AND RENTS.

(a) Borrower does hereby absolutely and unconditionally assign to Lender, Borrower's right, title and interest in all current and future Leases and Rents, it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only.

Such assignment to Lender shall not be construed to bind Lender to the performance of any of the covenants, conditions or provisions contained in any such Lease or otherwise impose any obligation upon Lender. Borrower agrees to execute and deliver to Lender such additional instruments, in form and substance reasonably satisfactory to Lender, as may hereafter be requested by Lender to further evidence and confirm such assignment. Nevertheless, subject to the terms of this Section 3.7, Lender grants to Borrower a revocable license to operate and manage the Property and to collect the Rents. Borrower shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, in trust for the benefit of Lender for use in the payment of such sums. Upon an Event of Default, without the need for notice or demand, the license granted to Borrower herein shall automatically be revoked, and Lender shall immediately be entitled to possession of all Rents, whether or not Lender enters upon or takes control of the Property. Lender is hereby granted and assigned by Borrower the right, at its option, upon revocation of the license granted herein, to enter upon the Property in person, by agent or by court-appointed receiver to collect the Rents. Any Rents collected after the revocation of the license may be applied toward payment of the Debt in such priority and proportions as Lender in its sole discretion shall deem proper.

(b) All Leases entered into from and after the date of this Security Instrument shall be written on the standard form of lease which has been approved by Lender. No changes may be made to the Lender-approved standard lease without the prior written consent of Lender except for commercially reasonable changes agreed to in the ordinary course of Borrower's business. All Leases shall provide that they are subordinate to this Security Instrument and that the tenant thereunder agrees to attorn to Lender.

(c) 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 impair the value of the Leases as security for the Debt; (ii) shall promptly send copies to Lender of all notices of default which Borrower shall receive thereunder; (iii) shall not collect any of the Rents more than one (1) month in advance; and (iv) shall not execute any other assignment of the lessor's interest in the Leases or the Rents. Borrower shall promptly send copies to Lender of all notices of default which Borrower shall send under any Lease in excess of 5,000 square feet; and, (A) shall enforce all of the material terms, covenants and conditions contained in the Lease upon the part of the lessee thereunder to be observed or performed, short of termination thereof; (B) shall not alter, modify or change the terms of the Leases in any material respect without the prior written consent of Lender, which consent shall not be unreasonably withheld; (C) shall not convey or transfer or suffer or permit a conveyance or transfer of the Property or of any interest therein so as to effect a merger of the estates and rights, or a termination or diminution of the obligations of, tenants under the Leases; (D) shall not consent to any assignment of or subletting under the Leases not in accordance with the terms of the Leases, without the prior written consent of Lender; and (E) shall not cancel or terminate the Leases or accept a surrender thereof, except that any Lease of less than 5,000 square feet may be canceled if at the time of the cancellation thereof a new Lease is entered into on substantially the same terms or more favorable terms as the canceled Lease.

(d) Borrower, as the lessor thereunder, may enter into proposed lease renewals and new leases without the prior written consent of Lender, provided each such proposed lease: (i) is not for greater than or equal to 5,000 square feet of the net rentable area of the Property; (ii) shall have an initial term of not less than three (3) years or greater than ten (10) years; (iii) shall provide for rental rates comparable to then-existing local market rates and shall be an arm's-length transaction; (iv) shall not contain any options for renewal or expansion by the tenant thereunder at rental rates which are either

below comparable market levels or less than the rental rates paid by the tenant during the initial lease term; (v) shall be to a tenant which is experienced, creditworthy and reputable; and (vi) shall comply with the provisions of subsection (b) above. Borrower may enter into a proposed lease which does not satisfy all of the conditions set forth in clauses (i) through (v) immediately above, provided Lender consents in writing to such proposed lease, such consent not to be unreasonably withheld or delayed. Borrower expressly understands that any and all proposed leases are included in the definition of "Lease" or "Leases" as such terms may be used throughout this Security Instrument, the Note and the Other Security Documents. Borrower shall furnish Lender with executed copies of all Leases and any amendments or other agreements pertaining thereto within ten (10) days of the execution thereof.

(e) All security deposits of tenants, whether held in cash or any other form, shall not be commingled with any other funds of Borrower and, if cash, shall be deposited by Borrower at such commercial or savings bank or banks as may be reasonably satisfactory to Lender. Any bond or other instrument which Borrower is permitted to hold in lieu of cash security deposits under any applicable legal requirements shall be maintained in full force and effect in the full amount of such deposits unless replaced by cash deposits as hereinabove described, shall be issued by an institution reasonably satisfactory to Lender, shall, if permitted pursuant to any legal requirements, name Lender as payee or lender thereunder (or at Lender's option, be fully assignable to Lender) and shall, in all respects, comply with any applicable legal requirements and otherwise be reasonably satisfactory to Lender. Borrower shall, upon request, provide Lender with evidence reasonably satisfactory to Lender of Borrower's compliance with the foregoing. Following the occurrence and during the continuance of any Event of Default, Borrower shall, upon Lender's request, if permitted by any applicable legal requirements, turn over to Lender the security deposits (and any interest theretofore earned thereon) with respect to all or any portion of the Property, to be held by Lender subject to the terms of the Leases.

Section 3.8 MAINTENANCE OF PROPERTY. Borrower shall cause the Property to be maintained in a good and safe condition and repair. The Improvements and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of the Personal Property) without the consent of Lender. Borrower shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any casualty, or become damaged, worn or dilapidated or which may be affected by any proceeding of the character referred to in Section 3.6 hereof and shall complete and pay for any structure at any time in the process of construction or repair on the Land. Borrower shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Property or any part thereof which may have a material adverse affect on the use, operation or value of the Property. If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, Borrower will not cause or permit the nonconforming use to be discontinued or abandoned without the express written consent of Lender, which consent shall not be unreasonably withheld.

Section 3.9 WASTE. Borrower shall not commit or suffer any waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or give cause for cancellation of any Policy, or do or permit to be done thereon anything that may in any way impair the value of the Property or the security of this Security Instrument. Borrower will not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal, or production of

any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

Section 3.10 COMPLIANCE WITH LAWS. Borrower shall promptly comply with all existing and future federal, state and local laws, orders, ordinances, governmental rules and regulations or court orders affecting or which may be interpreted to affect the Property, or the use thereof ("Applicable Laws"). Borrower shall from time to time, upon Lender's request, provide Lender with evidence reasonably satisfactory to Lender that the Property complies with all Applicable Laws or is exempt from compliance with Applicable Laws. Borrower shall give prompt notice to Lender of the receipt by Borrower of any notice related to a violation of any Applicable Laws and of the commencement of any proceedings or investigations which relate to compliance with Applicable Laws.

Section 3.11 BOOKS AND RECORDS.

(a) Borrower shall keep adequate books and records of account in accordance with methods reasonably acceptable to Lender in its sole discretion, consistently applied and furnish to Lender:

(i) monthly rent rolls signed, dated and certified by Borrower (or an officer, general partner or principal of Borrower if Borrower is not an individual) under penalty of perjury to be true and complete to the best knowledge of such person after having made due inquiry, detailing the names of all tenants of the Improvements, the portion of Improvements occupied by each tenant, the base rent and any other charges payable under each Lease and the term of each Lease, including the expiration date, and any other information as is reasonably required by Lender, within fifteen (15) days after the end of each calendar month;

(ii) a monthly operating statement of the Property certified by Borrower (or an officer, general partner or principal of Borrower if Borrower is not an individual) under penalty of perjury to be true and complete to the best knowledge of such person after having made due inquiry, detailing the total revenues received, total expenses incurred, total capital expenditures (including, but not limited to, all capital improvements (including, but not limited to, tenant improvements)), leasing commissions and other leasing costs, total debt service and total cash flow, and if available, any quarterly operating statement prepared by an independent certified public accountant, within thirty (30) days after the close of each calendar month; and

(iii) an annual balance sheet and profit and loss statement of Borrower, in the form reasonably required by Lender, prepared and certified by Borrower, and, if available, any financial statements prepared by an independent certified public accountant within ninety (90) days after the close of each fiscal year of Borrower.

(b) Upon request from Lender, Borrower and its affiliates shall furnish to Lender: (i) a property management report for the Property, showing the number of inquiries made and/or rental applications received from tenants or prospective tenants and deposits received from tenants and any other information requested by Lender, in reasonable detail and certified by Borrower (or an officer, general partner or principal of Borrower if Borrower is not an individual) under penalty of perjury to be true and complete to the best knowledge of such person, but no more frequently than quarterly; (ii) an accounting of all security deposits held in connection with any Lease of any part of the Property,

including the name and identification number of the accounts in which such security deposits are held, the name and address of the financial institutions in which such security deposits are held and the name of the person to contact at such financial institution, along with any authority or release necessary for Lender to obtain information regarding such accounts directly from such financial institutions; and (iii) an annual operating budget presented on a monthly basis consistent with the annual operating statement described above for the Property and all proposed capital replacements and improvements at least fifteen (15) days prior to the start of each calendar year.

(c) Borrower and its affiliates shall furnish Lender with such other additional financial or management information as may, from time to time, be reasonably required by Lender in form and substance reasonably satisfactory to Lender.

Section 3.12 PAYMENT FOR LABOR AND MATERIALS. Borrower will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property and never permit to exist beyond the due date thereof in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests hereof, except for the Permitted Exceptions (defined below). Nothing contained herein shall affect or impair Borrower's ability to diligently and in good faith contest any lien or bill for labor or materials, provided that any lien placed upon the Property must be fully and irrevocably discharged (by bond or otherwise) within 60 days after the date the same is first placed upon the Property.

Section 3.13 PERFORMANCE OF OTHER AGREEMENTS. Borrower shall observe and perform each and every material term to be observed or performed by Borrower pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Property, or given by Borrower to Lender for the purpose of further securing an obligation secured hereby and any amendments, modifications or changes thereto.

Section 3.14 PROPERTY MANAGEMENT. In the event that Lender determines that the Property is not being managed in accordance with generally accepted management practices for properties similar to the Property, Lender shall deliver written notice thereof to Borrower, which notice shall specify with particularity the grounds for Lender's determination. If Lender determines that the conditions specified in Lender's notice are not remedied to Lender's reasonable satisfaction by Borrower within thirty (30) days from receipt of such notice or that Borrower has failed to diligently undertake correcting such conditions within such thirty (30) day period, Borrower shall, at Lender's direction, terminate any existing management agreement for the Property and enter into a property management agreement acceptable to Lender with a management company reasonably acceptable to Lender.

Section 3.15 EXCESS CASH FLOW RESERVE FUND. Borrower authorizes Agent (as defined in the Cash Management Agreement) to deposit Excess Cash Flow (as defined in the Cash Management Agreement) in an account established with Lender (the "Excess Cash Flow Reserve Fund") for funds received in accordance with Section 4.1(g) of the Cash Management Agreement. Interest thereon shall accrue for the benefit of Borrower, but shall remain in and constitute part of the Excess Cash Flow Reserve Fund. Such Excess Cash Flow Reserve Fund shall be additional collateral for the Debt and may be applied by Lender in any manner as Lender may so elect. The balance of such account

shall be promptly released to Borrower (i) upon payment in full of the Debt and release of this Security Instrument, (ii) upon the defeasance of the Loan, or (iii) within fourteen (14) Business Days of Agent's confirmation that Agent has received notification from Lender of the occurrence of a Cash Management Termination Event.

ARTICLE 4 - SPECIAL COVENANTS

Borrower covenants and agrees that:

Section 4.1 PROPERTY USE. The Property shall be used only for retail purposes and for no other use without the prior written consent of Lender, which consent may not be unreasonably withheld.

Section 4.2 ERISA.

(a) Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Note, this Security Instrument and the Other Security Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

(b) Borrower further covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of the Security Instrument, as requested by Lender in its sole discretion, that (i) Borrower is not an "employee benefit plan" as defined in Section 3(3) of ERISA, or other retirement arrangement, which is subject to Title I of ERISA or Section 4975 of the Internal Revenue Code of 1986, as amended (the "Code"), or a "governmental plan" within the meaning of Section 3(32) of ERISA; (ii) Borrower is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (iii) one or more of the following circumstances is true:

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

(ii) Less than 25 percent of each outstanding class of equity interests in Borrower are held by "benefit plan investors" within the meaning of 29 C.F.R. § 2510.3-101(f)(2); 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) or an investment company registered under The Investment Company Act of 1940.

Section 4.3 SINGLE PURPOSE ENTITY. Borrower has not and shall not: (a) engage in any business or activity other than the ownership, development, operation and maintenance of the Property, and activities incidental thereto; (b) acquire or own any material assets other than (i) the Property, and (ii) such incidental Personal Property as may be necessary for the operation of the Property; (c) merge into or consolidate with any person or entity or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure, without

in each case Lender's consent; (d) fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, or without the prior written consent of Lender, amend, modify, terminate or fail to comply with the provisions of Borrower's Partnership Agreement, Articles or Certificate of Incorporation or similar organizational documents, as the case may be, as same may be further amended or supplemented, if such amendment, modification, termination or failure to comply would adversely affect the ability of Borrower to perform its obligations hereunder, under the Note or under the Other Security Documents; (e) own any subsidiary or make any investment in, any person or entity without the consent of Lender; (f) commingle its assets with the assets of any of its general partners, affiliates, principals or of any other person or entity; (g) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Debt, except with respect to trade payables in the ordinary course of its business of owning and operating the Property, provided that such debt is paid within sixty (60) days of when incurred; (h) become insolvent and fail to pay its debts and liabilities from its assets as the same shall become due; (i) fail to maintain its records, books of account and bank accounts separate and apart from those of the general partners, principals and affiliates of Borrower, the affiliates of a general partner of Borrower, and any other person or entity; (j) enter into any contract or agreement with any general partner, principal or affiliate of Borrower, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any general partner, principal or affiliate of Borrower; (k) seek the dissolution or winding up in whole, or in part, of Borrower; (l) maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any general partner, principal or affiliate of Borrower, or any general partner, principal or affiliate thereof or any other person; (m) hold itself out to be responsible for the debts of another person; (n) make any loans or advances to any third party, including any general partner, principal or affiliate of Borrower, or any general partner, principal or affiliate thereof; (o) fail to file its own tax returns; (p) agree to, enter into or consummate any transaction which would render Borrower unable to furnish the certification or other evidence referred to in Section 4.2(b) hereof; (q) fail either to hold itself out to the public as a legal entity separate and distinct from any other entity or person or to conduct its business solely in its own name in order not (i) to mislead others as to the identity with which such other party is transacting business, or (ii) to suggest that Borrower is responsible for the debts of any third party (including any general partner, principal or affiliate of Borrower, or any general partner, principal or affiliate thereof); (r) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; or (s) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, or make an assignment for the benefit of creditors.

Section 4.4 RESTORATION AFTER CASUALTY/CONDEMNATION. In the event of a casualty or a taking by eminent domain, the following provisions shall apply in connection with the Restoration of the Property:

(a) If the Net Proceeds (defined below) shall be less than $225,000 and the costs of completing the Restoration shall be less than $225,000, the Net Proceeds will be disbursed by Lender to Borrower upon receipt, provided that all of the conditions set forth in Subsection 4.4(b)(i) are met and Borrower delivers to Lender a written undertaking to expeditiously commence and to satisfactorily complete with due diligence the Restoration in accordance with the terms of this Security Instrument.

(b) If the Net Proceeds are equal to or greater than $225,000 or the costs of completing the Restoration is equal to or greater than $225,000, Lender shall make the Net Proceeds available for the Restoration in accordance with the provisions of this Subsection 4.4(b). The term "Net Proceeds" for purposes of this Section 4.4(b) shall mean: (i) the net amount of all insurance proceeds received by Lender pursuant to Subsections 3.3(a) (i), (iv), (ix), and (x) of this Security Instrument as a result of such damage or destruction, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting the same or (ii) the net amount of all awards and payments received by Lender with respect to a taking referenced in Section 3.6 of this Security Instrument, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting the same, whichever the case may be.

(i) The Net Proceeds shall be made available to Borrower for the Restoration provided that each of the following conditions are met: (A) no Event of Default shall have occurred under the Note, this Security Instrument or any of the Other Security Documents which has not been cured and no event shall have occurred which after the passage of time or the giving of notice would constitute an Event of Default; (B) Borrower shall deliver or cause to be delivered to Lender a signed detailed budget approved in writing by Borrower's architect or engineer stating the reasonably estimated cost of completing the Restoration, reasonably satisfactory to Lender; (C) the Net Proceeds together with any cash or cash equivalent deposited by Borrower with Lender are sufficient in Lender's reasonable discretion to cover the cost of the Restoration; (D) Borrower shall deliver to Lender, at its expense, the insurance set forth in Subsection 3.3(a)(iii) hereof; (E) less than fifty percent (50%) of the total floor area of the Improvements has been damaged, destroyed, taken, or rendered unusable as a result of such fire or other casualty or taking, whichever the case may be; (F) Leases demising in the aggregate at least 50% of the total rentable space in the Property which has been demised under executed and delivered Leases in effect as of the date of the occurrence of such fire or other casualty or taking, whichever the case may be, shall remain in full force and effect during and after the completion of the Restoration; (G) Borrower shall commence the Restoration as soon as reasonably practicable and shall diligently pursue the same to reasonably satisfactory completion; (H) Lender shall be reasonably satisfied that any operating deficits, including all scheduled payments of principal and interest under the Note at the Applicable Interest Rate (as defined in the Note), which will be incurred with respect to the Property as a result of the occurrence of any such fire or other casualty or taking, whichever the case may be, will be covered out of (1) the Net Proceeds, (2) the insurance coverage referred to in Subsection 3.3(a)(ii), if applicable, or (3) by other funds of Borrower which are deposited with Lender prior to the commencement of the Restoration; (I) Lender shall be reasonably satisfied that, upon the completion of the Restoration, the gross cash flow and the net cash flow of the Property will be restored to a level sufficient to cover all carrying costs and operating expenses of the Property, including, without limitation, debt service on the Note at a coverage ratio (after deducting replacement reserve requirements and reserves for tenant improvements and leasing commissions from net operating income) of at least 1.50:1.00, which coverage ratio shall be determined by Lender in its reasonable discretion on the basis of the Applicable Interest Rate (as defined in the Note); (J) Lender shall be reasonably satisfied that the Restoration will be completed on or before the earliest to occur of (1) six (6) months prior to the Maturity Date (as defined in the Note), (2) one (1) year after the occurrence of such fire or other casualty or taking, whichever the case may be, (3) the earliest

date required for such completion under the terms of any Leases which are required to remain in effect subsequent to the occurrence of such fire or other casualty or taking in accordance with the provisions of this Subsection 4.4(b), or (4) such time as may be required under applicable zoning law, ordinance, rule or regulation in order to repair and restore the Property to the condition it was in immediately prior to such fire or other casualty or to as nearly as possible the condition it was in immediately prior to such taking, as applicable; (K) the Property and the use thereof after the Restoration will be in compliance with and permitted under all applicable zoning laws, ordinances, rules and regulations; (L) the Restoration shall be done and completed by Borrower in an expeditious and diligent fashion and in compliance with all applicable governmental laws, rules and regulations (including, without limitation, all applicable Environmental Laws (defined below)); and (M) such fire or other casualty or taking, as applicable, does not result in the loss of access to the Property or the Improvements.

(ii) The Net Proceeds shall be held by Lender, and until disbursed in accordance with the provisions of this Subsection 4.4(b), shall constitute additional security for the Obligations. The Net Proceeds shall be disbursed by Lender to, or as directed by, Borrower from time to time during the course of the Restoration, upon receipt of evidence reasonably satisfactory to Lender that (A) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with the Restoration have been paid for in full, and (B) there exist no notices of pendency, stop orders, mechanic's or materialmen's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Property arising out of the Restoration which have not either been fully bonded to the reasonable satisfaction of Lender and discharged of record or in the alternative fully insured to the reasonable satisfaction of Lender by the title company insuring the lien of this Security Instrument.

(iii) All plans and specifications required in connection with the Restoration shall be subject to prior reasonable review and acceptance in all respects by Lender and by an independent consulting engineer selected by Lender (the "Casualty Consultant"). Lender shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with the Restoration. The identity of the contractors, subcontractors and materialmen engaged in the Restoration, as well as the contracts under which they have been engaged, shall be subject to prior reasonable review and acceptance by Lender and the Casualty Consultant. All costs and expenses incurred by Lender in connection with making the Net Proceeds available for the Restoration including, without limitation, reasonable counsel fees and disbursements and the reasonable and actual Casualty Consultant's fees, shall be paid by Borrower.

(iv) In no event shall Lender be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the costs actually incurred from time to time for work in place as part of the Restoration, as certified by the Casualty Consultant, minus the Casualty Retainage. The term "Casualty Retainage" as used in this Subsection 4.4(b) shall mean an amount equal to 10% of the costs actually incurred for work in place as part of the Restoration, as certified by the Casualty Consultant, until such time as the Casualty Consultant certifies to Lender that 50% of the required Restoration has been completed. There shall be no Casualty Retainage with respect to costs actually incurred by Borrower for work in place in completing the

last 50% of the required Restoration. The Casualty Retainage shall in no event, and notwithstanding anything to the contrary set forth above in this Subsection 4.4(b), be less than the amount actually held back by Borrower from contractors, subcontractors and materialmen engaged in the Restoration. The Casualty Retainage shall not be released until the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Subsection 4.4(b) and that all approvals necessary for the re-occupancy and use of the Property have been obtained from all appropriate governmental and quasi-governmental authorities, and Lender receives evidence reasonably satisfactory to Lender that the costs of the Restoration have been paid in full or will be paid in full out of the Casualty Retainage, provided, however, that Lender will release the portion of the Casualty Retainage being held with respect to any contractor, subcontractor or materialman engaged in the Restoration as of the date upon which the Casualty Consultant certifies to Lender that the contractor, subcontractor or materialman has satisfactorily completed all work and has supplied all materials in accordance with the provisions of the contractor's, subcontractor's or materialman's contract, and the contractor, subcontractor or materialman delivers the lien waivers and evidence of payment in full of all sums due to the contractor, subcontractor or materialman as may be reasonably requested by Lender or by the title company insuring the lien of this Security Instrument. If required by Lender, the release of any such portion of the Casualty Retainage shall be approved by the surety company, if any, which has issued a payment or performance bond with respect to the contractor, subcontractor or materialman.

(v) Lender shall not be obligated to make disbursements of the Net Proceeds more frequently than once every calendar month.

(vi) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the reasonable opinion of Lender, be sufficient to pay in full the balance of the costs which are estimated by the Casualty Consultant to be incurred in connection with the completion of the Restoration, Borrower shall deposit the deficiency (the "Net Proceeds Deficiency") with Lender before any further disbursement of the Net Proceeds shall be made. The Net Proceeds Deficiency deposited with Lender shall be held by Lender and shall be disbursed for costs actually incurred in connection with the Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this Subsection 4.4(b) shall constitute additional security for the Obligations.

(vii) With respect to Restorations related to casualties, the excess, if any, of the Net Proceeds, and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Lender after the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Subsection 4.4(b), and the receipt by Lender of evidence satisfactory to Lender that all costs incurred in connection with the Restoration have been paid in full, shall be remitted by Lender to Borrower, provided no Event of Default shall have occurred under the Note, this Security Instrument or any of the Other Security Documents.

(c) All Net Proceeds not required (i) to be made available for the Restoration or (ii) to be returned to Borrower as excess Net Proceeds pursuant to Subsection 4.4(b)(vii) may, at Lender's election, be retained and applied by Lender toward the payment of the Debt whether or not then due and payable in such order, priority and proportions as Lender in its discretion shall deem proper or be paid,

either in whole or in part, to Borrower for such purposes as Lender shall designate, in its discretion. If Lender shall receive and retain Net Proceeds, the lien of this Security Instrument shall be reduced only by the amount thereof received and retained by Lender and actually applied by Lender in reduction of the Debt.

Section 4.5 TENANCY-IN-COMMON.

(a) Borrower and each tenant-in-common comprising Borrower shall comply in all material respects with the terms and provisions of the TIC Agreement. Neither Borrower nor any of the tenants-in-common comprising Borrower shall take any action or omit to take any action, in their capacity as tenants-in-common, the effect of which will impair or tend to impair the rights and security granted to Lender under this Security Instrument.

(b) Neither Borrower nor any of the tenants-in-common comprising Borrower shall bring any action for partition, or other action of a similar nature, with respect to the Property.

(c) Neither Borrower nor any of the tenants-in-common comprising Borrower shall amend the TIC Agreement without the prior written consent of Lender. Borrower and each tenant-in-common comprising Borrower declares that Lender is intended as, and shall be, a third-party beneficiary of the TIC Agreement.

(d) Borrower and each tenant-in-common comprising Borrower shall give Lender prompt (and in all events within five (5) days) written notice of any default by any party under the TIC Agreement or the receipt of any notice of such a default. Borrower and each tenant-in-common comprising Borrower will promptly (and in all events within five (5) days) furnish to Lender an exact copy of any notice, communication, or other instrument or document received or given by Borrower or any of the tenants-in-common comprising Borrower which may concern or affect the estate or interest of Borrower or any such tenant-in-common in or to the Property or under the TIC Agreement.

(e) Borrower and each tenant-in-common comprising Borrower covenants and agrees that its rights under the TIC Agreement are and shall at all times be subject and subordinate to the lien and rights of Lender under this Security Instrument and the Other Security Documents. Borrower and each tenant-in-common comprising Borrower waives any lien or other rights under the TIC Agreement regarding the Property until such time, if any, as the Debt has been paid in full. Without limitation to the foregoing, Borrower and each of the tenants-in-common comprising Borrower agrees that shall not (i) demand or sue for any payment, or commence any legal proceeding to enforce any right, under the TIC Agreement, (ii) vote or take any action in respect of any Bankruptcy Action (as defined below) without Lender's prior written consent unless and until the Debt shall have been paid in full, or (iii) accept or obtain any lien, pledge or security interest as security for its rights under the TIC Agreement except as provided in the TIC Agreement.

(f) Borrower and each tenant-in-common comprising Borrower agrees that upon any distribution of the assets or readjustment of the indebtedness of any tenant-in-common comprising Borrower, whether by reason of liquidation, composition, bankruptcy, arrangement,

receivership, assignment for the benefit of creditors or any other action or proceeding involving the readjustment of all or any of the Debt, or the application of the assets of any tenant-in-common comprising Borrower to the payment or liquidation thereof (each of the foregoing being referred to herein as a "Bankruptcy Action"), Lender shall be entitled to receive payment in full of any and all Debt prior to the payment of all or any part of any amount payable under the TIC Agreement, and in order to enable Lender to enforce Lender's rights hereunder in any such action or proceeding, Lender is hereby irrevocably authorized and empowered in its discretion (in Lender's name or in the name of any of the tenants-in-common comprising Borrower) to make and to present for and on behalf of any such tenant-in-common such proofs of claim against any other tenant-common on account of the TIC Agreement as Lender may deem expedient or proper and to receive and collect any and all distributions or other payments or disbursements made with respect to the TIC Agreement in whatever form the same may be paid or issued and to apply the same to the Debt. Borrower and each tenant-in-common comprising Borrower further agrees to execute and deliver to Lender such assignments or other instruments as may be required by Lender in order to enable Lender to enforce any and all claims, and to collect any and all payments or disbursements which may be made, on account of the TIC Agreement.

(g) Without limitation to the rights provided to Lender in this Section 4.5, Borrower and each tenant-in-common comprising Borrower irrevocably grants Lender the right (in Lender's name or in the name of such tenant-in-common) to exercise any and all rights of such tenant-in-common in any Bankruptcy Action to make elections with respect to the TIC Agreement including, without limitation, elections with respect to any proposed plan of reorganization. Borrower and each tenant-in-common comprising Borrower hereby further agrees to consent to any motion made by or on behalf of Lender in any Bankruptcy Action for relief against any stay or injunction therein against collection of the Debt, including, but not limited to, any motion made by or on behalf of Lender therein to lift such stay or injunction for the purposes of foreclosing the Security Instrument.

(h) Borrower and each tenant-in-common comprising Borrower agrees that any payments or proceeds received by any such tenant-in-common in contravention of the terms and provisions of this Section 4.5 will be held in trust for Lender and promptly delivered to Lender.

ARTICLE 5 - REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Lender that:

Section 5.1 WARRANTY OF TITLE. Borrower has good title to the Property and has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the same and that Borrower possesses an unencumbered fee simple absolute estate in the Land and the Improvements and that it owns the Property free and clear of all liens, encumbrances and charges whatsoever except for those exceptions (other than standard printed exceptions) shown in the title insurance policy insuring the lien of this Security Instrument (the "Permitted Exceptions"). Borrower shall forever warrant, defend and preserve the title and the validity and priority of the lien of this Security Instrument and shall forever warrant and defend the same to Lender against the claims of all persons whomsoever.

Section 5.2 AUTHORITY. Borrower (and the undersigned representative of Borrower, if any) has full power, authority and legal right to execute this Security Instrument, and to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the Property pursuant to the terms hereof and to keep and observe all of the terms of this Security Instrument on Borrower's part to be performed.

Section 5.3 LEGAL STATUS AND AUTHORITY. Borrower (a) is duly organized, validly existing and in good standing under the laws of its state of organization or incorporation; (b) is duly qualified to transact business and is in good standing in the State where the Property is located; and (c) has all necessary approvals, governmental and otherwise, and full power and authority to own the Property and carry on its business as now conducted and proposed to be conducted. Borrower now has and shall continue to have the full right, power and authority to operate and lease the Property, to encumber the Property as provided herein and to perform all of the other obligations to be performed by Borrower under the Note, this Security Instrument and the Other Security Documents. Borrower's exact legal name and Borrower's organizational identification number assigned by its state of formation, if any, is correctly set forth on the first page of this Security Instrument. Borrower shall notify Lender (i) of any change of its organizational identification number, or (ii) if Borrower does not now have an organizational identification number and later obtains one, of such organizational identification number.

Section 5.4 VALIDITY OF DOCUMENTS.

(a) The execution, delivery and performance by Borrower of the Note, this Security Instrument and the Other Security Documents and the borrowing evidenced by the Note (i) are within the corporate/ partnership/limited liability company (as the case may be) power of Borrower; (ii) have been authorized by all requisite corporate/partnership/limited liability company (as the case may be) action; (iii) have received all necessary approvals and consents, corporate, governmental or otherwise; (iv) will not violate, conflict with, result in a breach of or constitute (with notice or lapse of time, or both) a default under any provision of law, any order or judgment of any court or governmental authority, the articles of incorporation, by-laws, partnership, trust or operating agreement, or other governing instrument of Borrower, or any indenture, agreement or other instrument to which Borrower is a party or by which it or any of its assets or the Property is or may be bound or affected; (v) will not result in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of its assets, except the lien and security interest created hereby; and (vi) will not require any authorization or license from, or any filing with, any governmental or other body (except for the recordation of this instrument in appropriate land records in the State where the Property is located and except for Uniform Commercial Code filings relating to the security interest created hereby); and (b) the Note, this Security Instrument and the Other Security Documents constitute the legal, valid and binding obligations of Borrower.

Section 5.5 LITIGATION. There is no action, suit or proceeding, or any governmental investigation or any arbitration, in each case pending or, to the knowledge of Borrower, threatened against Borrower or the Property before any governmental or administrative body, agency or official which (i) challenges the validity of this Security Instrument, the Note or any of the Other Security Documents or the authority of Borrower to enter into this Security Instrument, the Note or any of the Other Security Documents or to perform the transactions contemplated hereby or thereby or (ii) if adversely determined would have a material adverse effect on the occupancy of the Property or the business, financial condition or results of operations of Borrower or the Property.

Section 5.6 STATUS OF PROPERTY.

(a) No portion of the Improvements is located in an area identified by the Secretary of Housing and Urban Development or any successor thereto as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, as amended, or any successor law, or, if located within any such area, Borrower has obtained and will maintain the insurance prescribed in Section 3.3 hereof.

(b) Borrower has obtained all necessary certificates, licenses and other approvals, governmental and otherwise, necessary for the operation of the Property and the conduct of its business and all required zoning, building code, land use, environmental and other similar permits or approvals, all of which are in full force and effect as of the date hereof and not subject to revocation, suspension, forfeiture or modification.

(c) The Property and the present and contemplated use and occupancy thereof are in compliance in all material respects with all applicable zoning ordinances, building codes, land use and environmental laws and other similar laws.

(d) The Property is served by all utilities required for the current or contemplated use thereof. All utility service is provided by public utilities and the Property has accepted or is equipped to accept such utility service.

(e) All public roads and streets necessary for service of and access to the Property for the current or contemplated use thereof have been completed, are serviceable and all-weather and are physically and legally open for use by the public.

(f) The Property is served by public water and sewer systems.

(g) The Property is free from damage caused by fire or other casualty.

(h) All costs and expenses of any and all labor, materials, supplies and equipment used in the construction of the Improvements have been paid in full.

(i) Borrower has paid in full for, and is the owner of, all furnishings, fixtures and equipment (other than tenants' property) used in connection with the operation of the Property, free and clear of any and all security interests, liens or encumbrances, except the lien and security interest created hereby.

(j) All liquid and solid waste disposal, septic and sewer systems located on the Property are in a good and safe condition and repair and in compliance with all Applicable Laws.

Section 5.7 NO FOREIGN PERSON. Borrower is not a "foreign person" within the meaning of Sections 1445(f)(3) of the Code and the related Treasury Department regulations, including temporary regulations.

Section 5.8 SEPARATE TAX LOT. The Property is assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements not constituting a part of such lot or lots, and no other land or improvements is assessed and taxed together

with the Property or any portion thereof.

Section 5.9 ERISA COMPLIANCE.

(a) As of the date hereof and throughout the term of this Security Instrument, (i) Borrower is not and will not be an "employee benefit plan" as defined in Section 3(3) of ERISA, or other retirement arrangement, which is subject to Title I of ERISA or Section 4975 of the Code, and (ii) the assets of Borrower do not and will not constitute "plan assets" of one or more such plans for purposes of Title I of ERISA or Section 4975 of the Code; and

(b) As of the date hereof and throughout the term of this Security Instrument (i) Borrower is not and will not be a "governmental plan" within the meaning of Section 3(32) of ERISA and (ii) transactions by or with Borrower are not and will not be subject to state statutes applicable to Borrower regulating investments of and fiduciary obligations with respect to governmental plans.

Section 5.10 LEASES.

(a) Borrower is the sole owner of the entire lessor's interest in the Leases;

(b) the Leases are valid and enforceable;

(c) the terms of all alterations, modifications and amendments to the Leases are reflected in the certified occupancy statement delivered to and approved by Lender;

(d) none of the Rents reserved in the Leases have been assigned or otherwise pledged or hypothecated (other than to Lender);

(e) none of the Rents have been collected for more than one (1) month in advance;

(f) the premises demised under the Leases have been completed and the tenants under the Leases have accepted the same and have taken possession of the same on a rent-paying basis; and

(g) there exist no offsets or defenses to the payment of any portion of the Rents.

Section 5.11 FINANCIAL CONDITION.

(a) Borrower is solvent, and no bankruptcy, reorganization, insolvency or similar proceeding under any state or federal law with respect to Borrower has been initiated, and

(b) Borrower has received reasonably equivalent value for the granting of this Security Instrument.

Section 5.12 BUSINESS PURPOSES. The loan evidenced by the Note is solely for the business purpose of Borrower, and is not for personal, family, household, or agricultural purposes.

Section 5.13 TAXES. Borrower has filed all federal, state, county, municipal, and city income and other tax returns required to have been filed by them and have paid all taxes and related liabilities which have become due pursuant to such returns or pursuant to any assessments received by them.

Borrower does not know of any basis for any additional assessment in respect of any such taxes and related liabilities for prior years.

Section 5.14 MAILING ADDRESSES. Borrower's mailing address, as set forth in the opening paragraph hereof or as changed in accordance with the provisions hereof, is true and correct.

Section 5.15 NO CHANGE IN FACTS OR CIRCUMSTANCES. All information submitted to Lender in connection with any request by Borrower for the loan evidenced by the Note and/or any letter of application, preliminary commitment letter, final commitment letter or other application or letter of intent (including, but not limited to, all financial statements, rent rolls, reports and certificates) are accurate, complete and correct in all respects. There has been no adverse change in any condition, fact, circumstance or event that would make any such information inaccurate, incomplete or otherwise misleading.

Section 5.16 DISCLOSURE. Borrower has disclosed to Lender all material facts and has not failed to disclose any material fact that could cause any representation or warranty made herein to be materially misleading.

Section 5.17 LETTER-OF-CREDIT RIGHTS. If Borrower is at any time a beneficiary under a letter of credit relating to the properties, rights, titles and interests referenced in Section 1.1 of this Security Instrument now or hereafter issued in favor of Borrower, Borrower shall promptly notify Lender thereof and, at the request and option of Lender, Borrower shall, pursuant to an agreement in form and substance reasonably satisfactory to Lender, either (i) arrange for the issuer and any confirmer of such letter of credit to consent to an assignment to Lender of the proceeds of any drawing under the letter of credit or (ii) arrange for the Lender to become the transferee beneficiary of the letter of credit, with Lender agreeing in each case that the proceeds of any drawing under the letter of credit are to be applied as provided in Section 11.2 of this Security Instrument.

Section 5.18 AUTHORIZATION TO FILE FINANCING STATEMENTS, POWER OF ATTORNEY. The Borrower hereby authorizes the Lender at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements with or without the signature of the Borrower as authorized by applicable law, as applicable to all or part of the fixtures or Personal Property. For purposes of such filings, the Borrower agrees to furnish any information reasonably requested by the Lender promptly upon request by the Lender. The Borrower also ratifies its authorization for the Lender to have filed any like initial financing statements, amendments thereto and continuation statements, if filed prior to the date of this Security Instrument. The Borrower herby irrevocably constitutes and appoints the Lender and any officer or agent of the Lender, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of the Borrower or in the Borrower's own name to execute in the Borrower's name any documents and otherwise to carry out the purposes of this Section 5.18, to the extent that the Borrower authorization above is not sufficient. To the extent permitted by law, Borrower hereby ratifies all acts said attorneys-in-fact have lawfully done in the past or shall lawfully do or cause to be done in the future by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable.

ARTICLE 6 - OBLIGATIONS AND RELIANCES

Section 6.1 RELATIONSHIP OF BORROWER AND LENDER. The relationship between Borrower and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Borrower, and no term or condition of any of the Note, this Security Instrument and the Other Security Documents shall be construed so as to deem the relationship between Borrower and Lender to be other than that of debtor and creditor.

Section 6.2 NO RELIANCE ON LENDER. The general partners, officers, shareholders, members, principals or other beneficial owners of Borrower are experienced in the ownership and operation of properties similar to the Property, and Borrower and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Borrower is not relying on Lender's expertise, business acumen or advice in connection with the Property.

Section 6.3 NO LENDER OBLIGATIONS.

(a) Notwithstanding any of the provisions of this Security Instrument (including, but not limited to, the provisions of Subsections 1.1(f) and (l), Section 1.2 or Section 3.7), Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender pursuant to this Security Instrument, the Note or the Other Security Documents, including without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Lender.

Section 6.4 RELIANCE. Borrower recognizes and acknowledges that in accepting the Note, this Security Instrument and the Other Security Documents, Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Article 5 without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; that such reliance existed on the part of Lender prior to the date hereof; that the warranties and representations are a material inducement to Lender in accepting the Note, this Security Instrument and the Other Security Documents; and that Lender would not be willing to make the loan evidenced by the Note, this Security Instrument and the Other Security Documents and accept this Security Instrument in the absence of the warranties and representations as set forth in Article 5.

ARTICLE 7 - FURTHER ASSURANCES

Section 7.1 RECORDING OF SECURITY INSTRUMENT, ETC. Borrower forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the Other Security Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect (i) the conveyance of good and marketable

title in the Property to Lender and (ii) the lien or security interest hereof upon, and the interest of Lender in, the Property. Borrower will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Security Instrument, the Other Security Documents, any note or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

Section 7.2 FURTHER ACTS, ETC. Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby mortgaged, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted, transferred and set over or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Applicable Laws. Borrower, promptly upon demand thereof, will execute and deliver and hereby authorizes Lender to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Lender in the Property. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including without limitation such rights and remedies available to Lender pursuant to this Section 7.2.

Section 7.3 CHANGES IN TAX, DEBT, CREDIT AND DOCUMENTARY STAMP LAWS.

(a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Borrower will pay the tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of tax by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then Lender shall have the option by written notice of not less than ninety (90) days to declare the Debt immediately due and payable.

(b) Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction shall be required by law, Lender shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

(c) If at any time the United States of America, any State thereof or any subdivision of any

such State shall require revenue or other stamps to be affixed to the Note, this Security Instrument, or any of the Other Security Documents or impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any.

Section 7.4 ESTOPPEL CERTIFICATES.

(a) After request by Lender, Borrower, within ten (10) days, shall furnish Lender or any proposed assignee or Investor (as defined in Section 19.1) 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 rate of interest of the Note, (iv) the terms of payment and maturity date of the Note, (v) the date installments of interest and/or principal were last paid, (vi) that, except as provided in such statement, there are no defaults or events which with the passage of time or the giving of notice or both, would constitute an event of default under the Note or the Security Instrument, (vii) that the Note and this Security Instrument are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification, (viii) whether any offsets or defenses exist against the obligations secured hereby and, if any are alleged to exist, a detailed description thereof, (ix) that all Leases are in full force and effect and (provided the Property is not a residential multifamily property) have not been modified (or if modified, setting forth all modifications), (x) the date to which the Rents thereunder have been paid pursuant to the Leases, (xi) whether or not, to the best knowledge of Borrower, any of the lessees under the Leases are in default under the Leases, and, if any of the lessees are in default, setting forth the specific nature of all such defaults, (xii) the amount of security deposits held by Borrower under each Lease and that such amounts are consistent with the amounts required under each Lease, and (xiii) as to any other matters reasonably requested by Lender and reasonably related to the Leases, the obligations secured hereby, the Property or this Security Instrument.

(b) Borrower shall use best efforts to deliver to Lender, promptly upon request (provided such request is not made more than twice in any calendar year), duly executed estoppel certificates from any one or more commercial lessees as required by Lender attesting to such facts regarding the Lease as Lender may reasonably require, including but not limited to attestations that each Lease covered thereby is in full force and effect with no defaults thereunder on the part of any party, that none of the Rents have been paid more than one month in advance, and that the lessee claims no defense or offset against the full and timely performance of its obligations under the Lease.

(c) Lender, by its acceptance of this Security Instrument, agrees to deliver to Borrower promptly upon Borrower's request therefor (provided such request is not made more than twice in any calendar year) a written statement setting forth the unpaid principal amount of the Note, the accrued and unpaid interest thereon and the date on which an installment of interest and/or principal were last paid thereunder.

Section 7.5 FLOOD INSURANCE. After Lender's reasonable request, Borrower shall deliver evidence satisfactory to Lender that no portion of the Improvements is situated in a federally designated "special flood hazard area."

Section 7.6 SPLITTING OF SECURITY INSTRUMENT. This Security Instrument and the Note shall, at any time until the same shall be fully paid and satisfied, at the sole election of Lender, be split or divided into two or more notes and two or more security instruments, each of which shall cover

all or a portion of the Property to be more particularly described therein. To that end, Borrower, upon written request of Lender and at Lender's sole cost and expense, shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered by the then owner of the Property, to Lender and/or its designee or designees substitute notes and security instruments in such principal amounts, aggregating not more than the then unpaid principal amount of this Security Instrument, and containing terms, provisions and clauses similar to those contained herein and in the Note, and such other documents and instruments as may be required by Lender.

Section 7.7 REPLACEMENT DOCUMENTS. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note or any Other Security Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or Other Security Document, Borrower will issue, in lieu thereof, a replacement Note or Other Security Document, dated the original date of such lost, stolen, destroyed or mutilated Note or Other Security Document in the same principal amount thereof and otherwise of like tenor.

ARTICLE 8 - DUE ON SALE/ENCUMBRANCE

Section 8.1 LENDER RELIANCE. Borrower acknowledges that Lender has examined and relied on the experience of Borrower and its general partners, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the loan secured hereby, and will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Debt and the performance of the Other Obligations. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Debt or the performance of the Other Obligations, Lender can recover the Debt by a sale of the Property.

Section 8.2 NO SALE/ENCUMBRANCE. Borrower agrees that Borrower shall not, without the prior written consent of Lender, sell, convey, mortgage, grant, bargain, encumber, pledge, assign, or otherwise transfer the Property or any part thereof or permit the Property or any part thereof to be sold, conveyed, mortgaged, granted, bargained, encumbered, pledged, assigned, or otherwise transferred.

Section 8.3 SALE/ENCUMBRANCE DEFINED. A sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer within the meaning of this Article 8 shall be deemed to include, but not limited to, (a) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments; (b) 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; (c) if Borrower or any general partner of Borrower is a corporation, the voluntary or involuntary sale, conveyance, transfer or pledge of such corporation's stock or the creation or issuance of new stock by which an aggregate of more than 49% of the ownership of such corporation's stock shall be vested in or pledged to a party or parties who are not now stockholders; (d) if Borrower or any general partner of Borrower is a limited liability company, the voluntary or involuntary sale, conveyance, transfer or pledge of membership interests in the capital or profits of such company or the creation or issuance of new membership interests by which an aggregate of more than 49% of the ownership of such company's membership interests shall be vested in or pledged to a party or parties who do not now hold membership interests in such company; (e) if

Borrower or any general partner of Borrower is a limited or general partnership or joint venture, (i) the change, removal or resignation of a general partner or managing partner, (ii) the transfer or pledge of the partnership interest of any general partner or managing partner or any profits or proceeds relating to such partnership interest, (iii) the transfer or pledge of more than 49% of the capital or profits of the partnership or (iv) the creation or issuance of new partnership interests by Borrower or its general partner which an aggregate of more than 49% of the ownership of partnership interests in such partnership shall be vested in a party or parties who do not now hold partnership interests in such partnership or joint venture; and (f) without limitation to the foregoing, any voluntary or involuntary sale, transfer, conveyance or pledge by any person or entity which directly or indirectly controls Borrower (by operation or law or otherwise) (a "Principal") of its direct or indirect controlling interest in Borrower. Notwithstanding the foregoing, the following transfers shall not be deemed to be a sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment or transfer within the meaning of this Article 8: (A) transfer by devise or descent or by operation of law upon the death of a partner, member, shareholder or stockholder of Borrower or any general partner thereof, and (B) a sale, transfer or hypothecation of a partnership, shareholder or membership interest in Borrower, whichever the case may be, by the current partner(s), shareholder(s) or member(s), as applicable, to an immediate family member (i.e., parents, spouses, siblings, children or grandchildren) of such partner, or shareholder or member or to a Principal (or a trust for the benefit of any such persons). Notwithstanding anything to the contrary contained herein (including, without limitation, the terms of the immediately preceding sentence), any sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment or transfer permitted or consented to which shall result in any party not now owning more than 49% of the ownership interests in Borrower acquiring more than 49% of the ownership interests in Borrower shall require the receipt by Lender of a substantive non-consolidation opinion reasonably acceptable to Lender.

Section 8.4 LENDER'S RIGHTS. Lender reserves the right to condition the consent required hereunder upon a modification of the terms hereof and, if required, on assumption of the Note, this Security Instrument and the Other Security Documents as so modified by the proposed transferee, on payment of a transfer fee of one percent (1%) of the principal balance of the Note and all of Lender's expenses incurred in connection with such transfer, including without limitation the approval by any and all Rating Agencies, required by Lender, of the proposed transferee, the proposed transferee's continued compliance with the covenants set forth in Section 4.3 hereof, or such other conditions as Lender shall determine in its sole discretion to be in the interest of Lender. An assignment and assumption of the Note shall not be permitted within the first twelve (12) months from the date hereof. 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 Borrower's sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Property without Lender's consent. This provision shall apply to every sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Property regardless of whether voluntary or not, or whether or not Lender has consented to any previous sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Property.

ARTICLE 9 - PREPAYMENT

Section 9.1 PREPAYMENT BEFORE EVENT OF DEFAULT. The Debt may be prepaid only in strict accordance with the express terms and conditions of the Note including the payment of any

prepayment consideration or premium due under the Note.

Section 9.2 PREPAYMENT ON CASUALTY AND CONDEMNATION. Provided no Event of Default exists under the Note, this Security Instrument or the Other Security Documents, in the event of any prepayment of the Debt pursuant to the terms of Sections 4.4 hereof, no prepayment consideration or premium shall be due in connection therewith, but Borrower shall be responsible for all other amounts due under the Note, this Security Instrument and the Other Security Documents. Any prepayment made pursuant to this Section 9.2 that is not made on a Payment Date shall be accompanied by interest that would be due and payable through the next scheduled Payment Date.

Section 9.3 PREPAYMENT AFTER EVENT OF DEFAULT. Following an Event of Default and acceleration of the Debt, if Borrower or anyone on Borrower's behalf makes a tender of payment of the amount necessary to satisfy the Debt at any time prior to foreclosure sale, or during any redemption period after foreclosure, (i) the tender of payment shall constitute an evasion of Borrower's obligation to pay any prepayment consideration or premium due under the Note and such payment shall, therefore, to the maximum extent permitted by law, include a premium equal to the prepayment consideration or premium that would have been payable on the date of such tender had the Debt not been so accelerated, or (ii) if at the time of such tender a prepayment would have been prohibited under the Note had the Debt not been so accelerated, the tender of payment shall constitute an evasion of such prepayment prohibition and shall, therefore, to the maximum extent permitted by law, include an amount equal to the greater of (i) 3% of the then principal amount of the Note and (ii) an amount equal to the excess of (A) the sum of the present values of a series of payments payable at the times and in the amounts equal to the payments of principal and interest (including, but not limited to the principal and interest payable on the Maturity Date (as defined in the Note)) which would have been scheduled to be payable after the date of such tender under the Note had the Debt not been accelerated, with each such payment discounted to its present value at the date of such tender at the rate which when compounded monthly is equivalent to the Prepayment Rate (as defined in the Note), over (B) the then principal amount of the Note.

ARTICLE 10 - DEFAULT

Section 10.1 EVENTS OF DEFAULT. The occurrence of any one or more of the following events shall constitute an "Event of Default":

(a) if any portion of the Debt is not paid within five (5) days following the date the same is due or if the entire Debt is not paid on or before the Maturity Date;

(b) if any of the Taxes or Other Charges is not paid within ten (10) days following the date the same is due and payable except to the extent sums sufficient to pay such Taxes and Other Charges have been deposited with Lender in accordance with the terms of this Security Instrument;

(c) if the Policies are not kept in full force and effect, or if the Policies are not delivered to Lender within five (5) days of Lender's request;

(d) if the Property is subject to actual waste;

(e) if Borrower violates or does not comply with any of the provisions of Sections 3.7 and 4.3 and Articles 8, 12 and 13;

(f) if any representation or warranty of Borrower or any person guaranteeing payment of the Debt or any portion thereof or performance by Borrower of any of the terms of this Security Instrument or any general partner, managing member, principal or beneficial owner of any of the foregoing, made herein or any guaranty or indemnity, or in any certificate, report, financial statement or other instrument or document furnished to Lender shall have been false or misleading in any material respect when made;

(g) if (i) Borrower or any general partner or managing member of Borrower shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or the Borrower, or any general partner or managing member of Borrower, shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against Borrower, or any general partner or managing member of Borrower, any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of sixty (60) days; or (iii) there shall be commenced against the Borrower, or any general partner or managing member of Borrower, any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of any order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof; or (iv) the Borrower, or any general partner or managing member of Borrower, shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) the Borrower, or any general partner of Borrower, shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due;

(h) if Borrower shall be in default under any other mortgage, deed of trust, deed to secure debt or other security agreement covering any part of the Property whether it be superior or junior in lien to this Security Instrument;

(i) if the Property becomes subject to any mechanic's, materialman's or other lien other than a lien for local real estate taxes and assessments not then due and payable and the lien shall remain undischarged of record (by payment, bonding or otherwise) for a period of sixty (60) days;

(j) if any federal tax lien is filed against Borrower, any general partner or managing member of Borrower, or the Property and same is not discharged of record within sixty (60) days after same is filed;

(k) if Borrower fails to cure any violations of Applicable Laws within sixty (60) days of first having received notice thereof;

(l) if (i) Borrower fails to timely provide Lender with the written certification and evidence referred to in Section 4.2 hereof, or (ii) Borrower consummates a transaction which would cause the Security Instrument or Lender's exercise of its rights under this Security Instrument, the Note or the

Other Security Documents to constitute a nonexempt prohibited transaction under ERISA or result in a violation of a state statute regulating governmental plans, subjecting Lender to liability for a violation of ERISA or a state statute;

(m) if Borrower shall fail to reimburse Lender on demand, with interest calculated at the Default Rate (defined below), for all Insurance Premiums or Taxes, together with interest and penalties imposed thereon, paid by Lender pursuant to this Security Instrument;

(n) if Borrower shall fail to timely deliver to Lender an estoppel certificate pursuant to the terms of Subsection 7.4(a);

(o) if Borrower shall fail to timely deliver to Lender, after request by Lender, the statements referred to in Section 3.11 in accordance with the terms thereof;

(p) if any default occurs in the performance of any guarantor's or indemnitor's obligations under any guaranty or indemnity executed in connection herewith and such default continues after the expiration of applicable grace periods set forth in such guaranty or indemnity, or if any representation or warranty of any guarantor or indemnitor thereunder shall be false or misleading in any material respect when made;

(q) if for more than thirty (30) days after notice from Lender, Borrower shall continue to be in default under any other term, covenant or condition of the Note, this Security Instrument or the Other Security Documents in the case of any default which can be cured by the payment of a sum of money or for sixty (60) days after notice from Lender in the case of any other default, provided that if such default cannot reasonably be cured within such sixty (60) day period and Borrower shall have commenced to cure such default within such sixty (60) day period and thereafter diligently and expeditiously proceeds to cure the same, such sixty (60) day period shall be extended for so long as it shall require Borrower in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of one hundred twenty (120) days;

(r) if any of the tenants-in-common comprising Borrower shall be in default under the TIC Agreement;

(s) if any of the tenants-in-common comprising Borrower shall bring a partition action or other action of a similar nature with respect to the Property; or

(t) a default beyond applicable notice or cure periods (if any) shall occur under any Other Security Documents.

(u) if the property management agreement is altered or terminated without Lender's prior consent.

Section 10.2 LATE PAYMENT CHARGE. If any sum payable under this Security Instrument or any of the Other Security Documents is not paid prior to the fifth (5th) day after the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of five percent (5%) of such unpaid sum or the maximum amount permitted by applicable law, to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the

use of such delinquent payment, and such amount shall be secured by this Security Instrument and the Other Security Documents.

Section 10.3 DEFAULT INTEREST. Borrower will pay, from the date of an Event of Default through the earlier of the date upon which the Event of Default is cured or the date upon which the Debt is paid in full, interest on the unpaid principal balance of the Note at a per annum rate equal to the lesser of (a) five percent (5%) plus the Applicable Interest Rate (as defined in the Note), and (b) the maximum interest rate which Borrower may by law pay or Lender may charge and collect (the "Default Rate").

ARTICLE 11 - RIGHTS AND REMEDIES

Section 11.1 REMEDIES. Upon the occurrence of any Event of Default, Borrower agrees that Lender or Mortgagee, acting on behalf of and at the sole discretion of Lender in its capacity as Lender's nominee, may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

(a) declare the entire unpaid Debt to be immediately due and payable;

(b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;

(c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority;

(d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entity or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;

(e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note or in the Other Security Documents;

(f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the Other Security Documents;

(g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower or of any person, firm or other entity liable for the payment of the Debt;

(h) subject to any applicable law, the license granted to Borrower under Section 1.2 shall

automatically be revoked and Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower; (vi) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees;

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Personal Property or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Personal Property, and (ii) request Borrower at its expense to assemble the Personal Property and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Personal Property sent to Borrower in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Borrower;

(j) apply any sums then deposited in the Escrow Fund and any other sums held in escrow or otherwise by Lender in accordance with the terms of this Security Instrument or any Other Security Document to the payment of the following items in any order in its discretion: (i) Taxes and Other Charges; (ii) Insurance Premiums; (iii) Interest on the unpaid principal balance of the Note; (iv) Amortization of the unpaid principal balance of the Note; (v) All other sums payable pursuant to the Note, this Security Instrument and the Other Security Documents, including without limitation advances made by Lender pursuant to the terms of this Security Instrument;

(k) surrender the Policies maintained pursuant to Article 3 hereof, collect the unearned Insurance Premiums and apply such sums as a credit on the Debt in such priority and proportion as Lender in its discretion shall deem proper, and in connection therewith, Borrower hereby appoints Lender as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Borrower to collect such Insurance Premiums;

(l) pursue such other remedies as Lender may have under applicable law; or

(m) apply the undisbursed balance of any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Lender shall deem to be appropriate in its discretion.

In the event of a sale by foreclosure or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority. In the event of a sale, by foreclosure or otherwise, Lender may bid for and acquire the Property and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting against the Obligations the amount of the bid made therefor, after deducting therefrom the expenses of the sale, the cost of any enforcement proceeding hereunder and any other sums which Lender is authorized to deduct under the terms hereof, to the extent necessary to satisfy such bid. Notwithstanding the provisions of this Section 11.1 to the contrary, if any Event of Default as described in clause (i) or (ii) of Subsection 10.1(g) shall occur, the entire unpaid Debt shall be automatically due and payable, without any further notice, demand or other action by Lender.

Section 11.2 APPLICATION OF PROCEEDS. The purchase money, proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Lender pursuant to the Note, this Security Instrument or the Other Security Documents, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper. Upon any foreclosure sale, Lender may bid for and purchase the Property and shall be entitled to apply all or any part of the Debt as a credit to the purchase price.

Section 11.3 RIGHT TO CURE DEFAULTS. Upon the occurrence of any Event of Default or if Borrower fails to make any payment or to do any act as herein provided, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, make or do the same in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 11.3, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the Other Security Documents and shall be immediately due and payable upon demand by Lender therefor.

Section 11.4 ACTIONS AND PROCEEDINGS. Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its discretion, decides should be brought to protect its interest in the Property.

Section 11.5 RECOVERY OF SUMS REQUIRED TO BE PAID. Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

Section 11.6 EXAMINATION OF BOOKS AND RECORDS. Lender, its agents, accountants and attorneys shall have the right to examine the records, books, management and other papers of Borrower and its affiliates which reflect upon their financial condition, at the Property or at any office regularly maintained by Borrower or its affiliates or where the books and records are located. Lender and its agents shall have the right to make copies and extracts from the foregoing records and other papers. In addition, Lender, its agents, accountants and attorneys shall have the right to examine and audit the books and records of Borrower and its affiliates pertaining to the income, expenses and operation of the Property during reasonable business hours at any office of Borrower and its affiliates where the books and records are located.

Section 11.7 OTHER RIGHTS, ETC.

(a) The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Borrower to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the Other Security Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the Other Security Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Borrower, and Lender shall have no liability whatsoever for decline in value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Lender shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Property or collateral not in Lender's possession.

(c) Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Mortgagee or Lender thereafter to foreclose this Security Instrument. The rights of Lender under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Mortgagee or Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Mortgagee or Lender shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

Section 11.8 RIGHT TO RELEASE ANY PORTION OF THE PROPERTY. Lender may release any portion of the Property for such consideration as Lender may require without, as to the

remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may reasonably require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

Section 11.9 VIOLATION OF LAWS. If the Property is not in compliance with Applicable Laws, Lender may impose additional reasonable requirements upon Borrower in connection herewith including, without limitation, monetary reserves or financial equivalents.

Section 11.10 RIGHT OF ENTRY. Lender and its agents shall have the right to enter and inspect the Property at all reasonable times.

ARTICLE 12 - ENVIRONMENTAL HAZARDS

Section 12.1 ENVIRONMENTAL REPRESENTATIONS AND WARRANTIES. Borrower represents and warrants, based upon an environmental assessment of the Property and information that Borrower knows or should reasonably have known, that: (a) there are no Hazardous Substances (defined below) or underground storage tanks in, on, or under the Property, except those that are both (i) in compliance with Environmental Laws (defined below) and with permits issued pursuant thereto and (ii) fully disclosed to Lender in writing pursuant to the written reports resulting from the environmental assessments of the Property delivered to Lender (the "Environmental Report"); (b) there are no past, present or threatened Releases (defined below) of Hazardous Substances in, on, under or from the Property except as described in the Environmental Report; (c) there is no threat of any Release of Hazardous Substances migrating to the Property except as described in the Environmental Report; (d) there is no past or present non-compliance with Environmental Laws, or with permits issued pursuant thereto, in connection with the Property except as described in the Environmental Report; (e) Borrower does not know of, and has not received, any written or oral notice or other communication from any person or entity (including but not limited to a governmental entity) relating to Hazardous Substances or Remediation (defined below) thereof, of possible liability of any person or entity pursuant to any Environmental Law, other environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with any of the foregoing; and (f) Borrower has truthfully and fully provided to Lender, in writing, any and all information relating to conditions in, on, under or from the Property that is known to Borrower and that is contained in Borrower's files and records, including but not limited to any reports relating to Hazardous Substances in, on, under or from the Property and/or to the environmental condition of the Property.

"Environmental Law" means any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to protection of human health or the environment, relating to Hazardous Substances, relating to liability for or costs of Remediation or prevention of Releases of Hazardous Substances or relating to liability for or costs of other actual or threatened danger to human health or the environment. "Environmental Law" includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local

statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Substances Transportation Act; the Resource Conservation and Recovery Act (including but not limited to Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act. "Environmental Law" also includes, but is not limited to, any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law; conditioning transfer of property upon a negative declaration or other approval of a governmental authority of the environmental condition of the property; requiring notification or disclosure of Releases of Hazardous Substances or other environmental condition of the Property to any governmental authority or other person or entity, whether or not in connection with transfer of title to or interest in property; imposing conditions or requirements in connection with permits or other authorization for lawful activity; relating to nuisance, trespass or other causes of action related to the Property; and relating to wrongful death, personal injury, or property or other damage in connection with any physical condition or use of the Property. "Hazardous Substances" include but are not limited to any and all substances (whether solid, liquid or gas) defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present or future Environmental Laws or that may have a negative impact on human health or the environment, including but not limited to petroleum and petroleum products, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials, flammables and explosives provided, however, that "Hazardous Substances" shall not include cleaning materials customarily used at properties similar to the Property, to the extent such materials are used, stored and disposed of in accordance with Environmental Laws.

"Release" of any Hazardous Substance includes but is not limited to any release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Substances.

"Remediation" includes but is not limited to any response, remedial, removal, or corrective action, any activity to cleanup, detoxify, decontaminate, contain or otherwise remediate any Hazardous Substance, any actions to prevent, cure or mitigate any Release of any Hazardous Substance, any action to comply with any Environmental Laws or with any permits issued pursuant thereto, any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or evaluation relating to any Hazardous Substances or to anything referred to in Article 12.

Section 12.2 ENVIRONMENTAL COVENANTS. Borrower covenants and agrees that so long as the Borrower owns, manages, is in possession of, or otherwise controls the operation of the Property: (a) all uses and operations on or of the Property, shall be in compliance with all Environmental Laws and permits issued pursuant thereto; (b) there shall be no Releases of Hazardous Substances by Borrower, its agents or employees in, on, under or from the Property; (c) there shall be no Hazardous Substances in, on, or under the Property, except those that are in compliance with all

Environmental Laws and with permits issued pursuant thereto, if and to the extent required; (d) the Property shall be kept 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 or entity (the "Environmental Liens"); (e) Borrower shall, at its sole cost and expense, fully and expeditiously cooperate in all activities pursuant to Section 12.3 below, including but not limited to providing all relevant information and making knowledgeable persons available for interviews; (f) Borrower shall, at its sole cost and expense, perform any environmental site assessment or other investigation of environmental conditions in connection with the Property, pursuant to any written request of Lender (including but not limited to sampling, testing and analysis of soil, water, air, building materials and other materials and substances whether solid, liquid or gas), and share with Lender the reports and other results thereof, and Lender and other Indemnified Parties (as defined herein) shall be entitled to rely on such reports and other results thereof provided, however, that no such request shall be made by Lender unless Lender has reasonable grounds to believe that a Release of Hazardous Substances or a violation of Environmental Law has occurred; (g) Borrower shall, at its sole cost and expense, comply with all reasonable written requests of Lender to (i) reasonably effectuate Remediation of any condition (including but not limited to a Release of a Hazardous Substance) in, on, under or from the Property; (ii) comply with any Environmental Law; (iii) comply with any directive from any governmental authority; and (iv) take any other reasonable action necessary or appropriate for protection of human health or the environment; (h) Borrower shall not do or allow any tenant or other user of the Property to do any act that materially increases the dangers to human health or the environment, poses an unreasonable risk of harm to any person or entity (whether on or off the Property), impairs or may impair the value of the Property, is contrary to any requirement of any insurer, constitutes a public or private nuisance, constitutes waste, or violates any covenant, condition, agreement or easement applicable to the Property; and (i) Borrower shall immediately notify Lender in writing of (A) any presence or Releases or threatened Releases of Hazardous Substances in, on, under, from or migrating towards the Property; (B) any non-compliance with any Environmental Laws related in any way to the Property; (C) any actual or potential Environmental Lien; (D) any required or proposed Remediation of environmental conditions relating to the Property; and (E) any written or oral notice or other communication which Borrower becomes aware from any source whatsoever (including but not limited to a governmental entity) relating in any way to Hazardous Substances or Remediation thereof, possible liability of any person or entity pursuant to any Environmental Law, other environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with anything referred to in this Article 12. Any failure of Borrower to perform its obligations pursuant to this Section 12.2 shall constitute bad faith waste with respect to the Property.

Section 12.3 LENDER'S RIGHTS. Lender and any other person or entity designated by Lender, including but not limited to any receiver, any representative of a governmental entity, and any environmental consultant, shall have the right, but not the obligation, to enter upon the Property at all reasonable times to assess any and all aspects of the environmental condition of the 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. Borrower shall cooperate with and provide reasonable access to Lender and any such person or entity designated by Lender. The costs and expenses of such assessments shall be borne by Lender except in instances where such report or assessment is performed due to Borrower's failure to comply with its obligations under Section 12.2(f) or

following an Event of Default, in which cases the costs and expenses of such assessments shall be paid for by Borrower.

ARTICLE 13 - INDEMNIFICATION

Section 13.1 GENERAL INDEMNIFICATION. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement, punitive damages, foreseeable and unforeseeable consequential damages, of whatever kind or nature (including but not limited to attorneys' fees and other costs of defense) (the "Losses") imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following, except to the extent any of the following are attributable to the gross negligence or willful misconduct of an Indemnified Party: (a) ownership of this Security Instrument, the Property or any interest therein or receipt of any Rents; (b) any amendment to, or restructuring of, the Debt, and the Note, this Security Instrument, or any Other Security Documents; (c) any and all lawful action that may be taken by Lender in connection with the enforcement of the provisions of this Security Instrument or the Note or any of the Other Security Documents, whether or not suit is filed in connection with same, or in connection with Borrower and/or any partner, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding; (d) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (e) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (f) any failure on the part of Borrower to perform or be in compliance with any of the terms of this Security Instrument; (g) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (h) the failure of any person to file timely with the Internal Revenue Service an accurate Form 1099-B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions, which may be required in connection with this Security Instrument, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Security Instrument is made; (i) any failure of the Property to be in compliance with any Applicable Laws; (j) the enforcement by any Indemnified Party of the provisions of this Article 13; (k) any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; (l) the payment of any commission, charge or brokerage fee to anyone which may be payable in connection with the funding of the loan evidenced by the Note and secured by this Security Instrument; or (m) any misrepresentation made by Borrower in this Security Instrument or any Other Security Document. Any amounts payable to Lender by reason of the application of this Section 13.1 shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Lender until paid. For purposes of this Article 13, the term "Indemnified Parties" means Lender and any person or entity who is or will have been involved in the origination of the loan evidenced by the Note, any person or entity who is or will have been involved in the servicing of the loan evidenced by the Note, any person or entity in whose name the encumbrance created by this Security Instrument is or will have been recorded, persons and entities who may hold or acquire or will have held a full or partial interest in the loan evidenced by

the Note (including, but not limited to, Investors (as defined herein) or prospective Investors in the Securities (as defined herein), as well as custodians, trustees and other fiduciaries who hold or have held a full or partial interest in the loan evidenced by the Note as well as the respective directors, officers, shareholders, partners, employees, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing (including but not limited to any other person or entity who holds or acquires or will have held a participation or other full or partial interest in the loan evidenced by the Note or the Property, whether during the term of the loan evidenced by the Note or as a part of or following a foreclosure of the loan evidenced by the Note and including, but not limited to, any successors by merger, consolidation or acquisition of all or a substantial portion of Lender's assets and business).

Section 13.2 MORTGAGE AND/OR INTANGIBLE TAX. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Security Instrument, the Note or any of the Other Security Document, except for net income taxes and franchise taxes (imposed in lieu of net income taxes) imposed upon an Indemnified Party as a result of a present or former connection between the jurisdiction of the government or taxing authority imposing such tax and the Indemnified Party (excluding a connection arising solely from the Indemnified Party having executed, delivered, or performed its obligations or received a payment under, or enforced, this Security Instrument, the Note and the Other Security Documents) or any political subdivision or taxing authority thereof or therein.

Section 13.3 ERISA INDEMNIFICATION. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses (including, without limitation, attorneys' fees and costs incurred in the investigation, defense, and settlement of Losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Lender's sole discretion) that Lender may incur, directly or indirectly, as a result of a default under Sections 4.2 or 5.9 or Subsection 4.3(p).

Section 13.4 ENVIRONMENTAL INDEMNIFICATION. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses and costs of Remediation (whether or not performed voluntarily), engineers' fees, environmental consultants' fees, and costs of investigation (including but not limited to sampling, testing, and analysis of soil, water, air, building materials and other materials and substances whether solid, liquid or gas) imposed upon or incurred by or asserted against any Indemnified Parties, and directly or indirectly arising out of or in any way relating to any one or more of the following (except to the extent the same relate solely to Hazardous Substances first introduced to the Property by anyone other than Borrower, its agents or employees following the foreclosure of this Security Instrument (or the delivery and acceptance of a deed in lieu of such foreclosure), the expiration of any right of redemption with respect thereto and the obtaining by the purchaser at such foreclosure sale or grantee under such deed of possession of the Property): (a) any presence of any Hazardous Substances in, on, above, or under the Property; (b) any past, present or threatened Release of Hazardous Substances in, on, above, under or from the Property; (c) any activity by Borrower, any person or entity affiliated with Borrower or any tenant or other user of the Property in connection with any actual, proposed or threatened use,

treatment, storage, holding, existence, disposition or other Release, generation, production, manufacturing, processing, refining, control, management, abatement, removal, handling, transfer or transportation to or from the Property of any Hazardous Substances at any time located in, under, on or above the Property; (d) any activity by Borrower, any person or entity affiliated with Borrower or any tenant or other user of the Property in connection with any actual or proposed Remediation of any Hazardous Substances at any time located in, under, on or above the Property, whether or not such Remediation is voluntary or pursuant to court or administrative order, including but not limited to any removal, remedial or corrective action; (e) any past, present or threatened non-compliance or violations of any Environmental Laws (or permits issued pursuant to any Environmental Law) in connection with the Property or operations thereon, including but not limited to any failure by Borrower, any person or entity affiliated with Borrower or any tenant or other user of the Property to comply with any order of any governmental authority in connection with any Environmental Laws; (f) the imposition, recording or filing or the threatened imposition, recording or filing of any Environmental Lien encumbering the Property; (g) any administrative processes or proceedings or judicial proceedings in any way connected with any matter addressed in Article 12 and this Section 13.4; (h) any past, present or threatened injury to, destruction of or loss of natural resources in any way connected with the Property, including but not limited to costs to investigate and assess such injury, destruction or loss; (i) any acts of Borrower or other users of the Property in arranging for disposal or treatment, or arranging with a transporter for transport for disposal or treatment, of Hazardous Substances owned or possessed by such Borrower or other users, at any facility or incineration vessel owned or operated by another person or entity and containing such or similar Hazardous Materials; (j) any acts of Borrower or other users of the Property, in accepting any Hazardous Substances for transport to disposal or treatment facilities, incineration vessels or sites selected by Borrower or such other users, from which there is a Release, or a threatened Release of any Hazardous Substance which causes the incurrence of costs for Remediation; (k) any personal injury, wrongful death, or property damage arising under any statutory or common law or tort law theory, including but not limited to damages assessed for the maintenance of a private or public nuisance or for the conducting of an abnormally dangerous activity on or near the Property; and (l) any misrepresentation or inaccuracy in any representation or warranty or material breach or failure to perform any covenants or other obligations pursuant to Article 12.

Section 13.5 DUTY TO DEFEND; ATTORNEYS' FEES AND OTHER FEES AND EXPENSES. Upon written request by any Indemnified Party, Borrower shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals reasonably approved by the Indemnified Parties. Notwithstanding the foregoing, any Indemnified Parties may, in their sole and absolute discretion, engage their own attorneys and other professionals to defend or assist them, and, at the option of Indemnified Parties, their attorneys shall control the resolution of claim or proceeding. Upon demand, Borrower shall pay or, in the sole and absolute discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

ARTICLE 14 - WAIVERS

Section 14.1 WAIVER OF COUNTERCLAIM. Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with this Security Instrument, the Note, any

of the Other Security Documents, or the Obligations.

Section 14.2 MARSHALLING AND OTHER MATTERS. Borrower hereby waives, to the extent permitted by law, the benefit of all appraisement, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Borrower, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by applicable law.

Section 14.3 WAIVER OF NOTICE. Borrower shall not be entitled to any notices of any nature whatsoever from Mortgagee or Lender except with respect to matters for which this Security Instrument specifically and expressly provides for the giving of notice by Mortgagee or Lender to Borrower and except with respect to matters for which Mortgagee or Lender is required by applicable law to give notice, and Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Mortgagee or Lender to Borrower.

Section 14.4 SOLE DISCRETION OF LENDER. Wherever pursuant to this Security Instrument (a) Lender exercises any right given to it to approve or disapprove, (b) any arrangement or term is to be satisfactory to Lender, or (c) any other decision or determination is to be made by Lender, the decision of Lender to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory and all other decisions and determinations made by Lender, shall be in the sole and absolute discretion of Lender and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

Section 14.5 SURVIVAL. The indemnifications made pursuant to Sections 13.3 and 13.4 and the representations and warranties, covenants, and other obligations arising under Article 12, shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by: any satisfaction or other termination of this Security Instrument, any assignment or other transfer of all or any portion of this Security Instrument or Lender's interest in the Property (but, in such case, shall benefit both Indemnified Parties and any assignee or transferee), any exercise of Lender's rights and remedies pursuant hereto including but not limited to foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Note or any of the Other Security Documents, any transfer of all or any portion of the Property (whether by Borrower or by Lender following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), any amendment to this Security Instrument, the Note or the Other Security Documents, and any act or omission that might otherwise be construed as a release or discharge of Borrower from the obligations pursuant hereto.

Section 14.6 WAIVER OF TRIAL BY JURY. BORROWER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN EVIDENCED BY THE NOTE, THE APPLICATION FOR THE LOAN EVIDENCED BY THE NOTE, THE NOTE, THIS SECURITY INSTRUMENT OR THE OTHER SECURITY DOCUMENTS OR ANY ACTS OR OMISSIONS OF

LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.

Section 14.7 WAIVER OF BORROWER'S RIGHTS. BY EXECUTION OF THIS SECURITY INSTRUMENT AND PLACING ITS INITIALS AT THE END OF THIS SECTION 14.7 BORROWER EXPRESSLY: (A) ACKNOWLEDGES THE RIGHT OF LENDER TO ACCELERATE THE INDEBTEDNESS EVIDENCED BY THE NOTE AND THE POWER OF ATTORNEY GIVEN HEREIN TO LENDER TO SELL THE INDIVIDUAL PROPERTY BY NONJUDICIAL FORECLOSURE UPON DEFAULT BY BORROWER WITHOUT ANY JUDICIAL HEARING AND WITHOUT ANY NOTICE OTHER THAN SUCH NOTICE (IF ANY) AS IS SPECIFICALLY REQUIRED TO BE GIVEN UNDER THE PROVISIONS OF THIS SECURITY INSTRUMENT; (B) WAIVES TO THE EXTENT PERMITTED BY APPLICABLE LAW ANY AND ALL RIGHTS WHICH BORROWER MAY HAVE UNDER THE CONSTITUTION OF THE UNITED STATES (INCLUDING, WITHOUT LIMITATION, THE FIFTH AND FOURTEENTH AMENDMENTS THEREOF), THE VARIOUS PROVISIONS OF THE CONSTITUTIONS FOR THE SEVERAL STATES, OR BY REASON OF ANY OTHER APPLICABLE LAW, (1) TO NOTICE AND TO JUDICIAL HEARING PRIOR TO THE EXERCISE BY LENDER OF ANY RIGHT OR REMEDY HEREIN PROVIDED TO LENDER, EXCEPT SUCH NOTICE (IF ANY) AS IS SPECIFICALLY REQUIRED TO BE GIVEN UNDER THE PROVISIONS OF THIS SECURITY INSTRUMENT AND (2) CONCERNING THE APPLICATION, RIGHTS OR BENEFITS OR ANY STATUTE OF LIMITATION OR ANY MORATORIUM, REINSTATEMENT, MARSHALLING, FORBEARANCE, APPRAISEMENT, VALUATION, STAY, EXTENSION, HOMESTEAD, EXEMPTION OR REDEMPTION LAWS; (C) ACKNOWLEDGES THAT BORROWER HAS READ THIS SECURITY INSTRUMENT AND ANY AND ALL QUESTIONS REGARDING THE LEGAL EFFECT OF THIS SECURITY INSTRUMENT AND ITS PROVISIONS HAVE BEEN EXPLAINED FULLY TO BORROWER AND BORROWER HAS CONSULTED WITH COUNSEL OF BORROWER'S CHOICE PRIOR TO EXECUTING THIS SECURITY INSTRUMENT; AND (D) ACKNOWLEDGES THAT ALL WAIVERS OF THE AFORESAID RIGHTS OF BORROWER HAVE BEEN MADE KNOWINGLY, INTENTIONALLY AND WILLINGLY BY BORROWER AS PART OF A BARGAINED FOR LOAN TRANSACTION AND THAT THIS SECURITY INSTRUMENT IS VALID AND ENFORCEABLE BY LENDER AGAINST BORROWER IN ACCORDANCE WITH ALL THE TERMS AND CONDITIONS HEREOF.

BORROWER'S INITIALS: 

ARTICLE 15 - EXCULPATION

Section 15.1 EXCULPATION. Lender shall not enforce the liability and obligation of Borrower, to perform and observe the obligations contained in this Security Instrument, the Note, or the Other Security Documents by any action or proceeding wherein a money judgment shall be sought against Borrower or any partner or member of Borrower, except that Lender may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Lender to enforce and realize upon this Security Instrument, the Note, the Other Security Documents, and the interests in the Property; and any other collateral given to Lender pursuant to this Security Instrument and the Other Security Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against Borrower or any partner or

LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.

Section 14.7 WAIVER OF BORROWER'S RIGHTS. BY EXECUTION OF THIS SECURITY INSTRUMENT AND PLACING ITS INITIALS AT THE END OF THIS SECTION 14.7 BORROWER EXPRESSLY: (A) ACKNOWLEDGES THE RIGHT OF LENDER TO ACCELERATE THE INDEBTEDNESS EVIDENCED BY THE NOTE AND THE POWER OF ATTORNEY GIVEN HEREIN TO LENDER TO SELL THE INDIVIDUAL PROPERTY BY NONJUDICIAL FORECLOSURE UPON DEFAULT BY BORROWER WITHOUT ANY JUDICIAL HEARING AND WITHOUT ANY NOTICE OTHER THAN SUCH NOTICE (IF ANY) AS IS SPECIFICALLY REQUIRED TO BE GIVEN UNDER THE PROVISIONS OF THIS SECURITY INSTRUMENT; (B) WAIVES TO THE EXTENT PERMITTED BY APPLICABLE LAW ANY AND ALL RIGHTS WHICH BORROWER MAY HAVE UNDER THE CONSTITUTION OF THE UNITED STATES (INCLUDING, WITHOUT LIMITATION, THE FIFTH AND FOURTEENTH AMENDMENTS THEREOF), THE VARIOUS PROVISIONS OF THE CONSTITUTIONS FOR THE SEVERAL STATES, OR BY REASON OF ANY OTHER APPLICABLE LAW, (1) TO NOTICE AND TO JUDICIAL HEARING PRIOR TO THE EXERCISE BY LENDER OF ANY RIGHT OR REMEDY HEREIN PROVIDED TO LENDER, EXCEPT SUCH NOTICE (IF ANY) AS IS SPECIFICALLY REQUIRED TO BE GIVEN UNDER THE PROVISIONS OF THIS SECURITY INSTRUMENT AND (2) CONCERNING THE APPLICATION, RIGHTS OR BENEFITS OR ANY STATUTE OF LIMITATION OR ANY MORATORIUM, REINSTATEMENT, MARSHALLING, FORBEARANCE, APPRAISEMENT, VALUATION, STAY, EXTENSION, HOMESTEAD, EXEMPTION OR REDEMPTION LAWS; (C) ACKNOWLEDGES THAT BORROWER HAS READ THIS SECURITY INSTRUMENT AND ANY AND ALL QUESTIONS REGARDING THE LEGAL EFFECT OF THIS SECURITY INSTRUMENT AND ITS PROVISIONS HAVE BEEN EXPLAINED FULLY TO BORROWER AND BORROWER HAS CONSULTED WITH COUNSEL OF BORROWER'S CHOICE PRIOR TO EXECUTING THIS SECURITY INSTRUMENT; AND (D) ACKNOWLEDGES THAT ALL WAIVERS OF THE AFORESAID RIGHTS OF BORROWER HAVE BEEN MADE KNOWINGLY, INTENTIONALLY AND WILLINGLY BY BORROWER AS PART OF A BARGAINED FOR LOAN TRANSACTION AND THAT THIS SECURITY INSTRUMENT IS VALID AND ENFORCEABLE BY LENDER AGAINST BORROWER IN ACCORDANCE WITH ALL THE TERMS AND CONDITIONS HEREOF.

BORROWER'S INITIALS: 

ARTICLE 15 - EXCULPATION

Section 15.1 EXCULPATION. Lender shall not enforce the liability and obligation of Borrower, to perform and observe the obligations contained in this Security Instrument, the Note, or the Other Security Documents by any action or proceeding wherein a money judgment shall be sought against Borrower or any partner or member of Borrower, except that Lender may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Lender to enforce and realize upon this Security Instrument, the Note, the Other Security Documents, and the interests in the Property; and any other collateral given to Lender pursuant to this Security Instrument and the Other Security Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against Borrower or any partner or

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BORROWER'S INITIALS: 

ARTICLE 15 - EXCULPATION

Section 15.1 EXCULPATION. Lender shall not enforce the liability and obligation of Borrower, to perform and observe the obligations contained in this Security Instrument, the Note, or the Other Security Documents by any action or proceeding wherein a money judgment shall be sought against Borrower or any partner or member of Borrower, except that Lender may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Lender to enforce and realize upon this Security Instrument, the Note, the Other Security Documents, and the interests in the Property; and any other collateral given to Lender pursuant to this Security Instrument and the Other Security Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against Borrower or any partner or

member of Borrower only to the extent of Borrower's interest in the Property and in any other collateral given to Lender, and Lender, by accepting this Security Instrument, the Note and the Other Security Documents, agrees that it shall not sue for, seek or demand any deficiency judgment against Borrower or any partner or member of Borrower, in any such action or proceeding, under or by reason of or in connection with this Security Instrument, the Note, or the Other Security Documents. The provisions of this paragraph shall not, however, (i) constitute a waiver, release or impairment of any obligation evidenced or secured by this Security Instrument or the Other Security Documents, (ii) impair the right of Lender to name Borrower as a party defendant in any action or suit for foreclosure and sale under this Security Instrument, (iii) affect the validity or enforceability of any guaranty made in connection with this Security Instrument or the Other Security Documents, (iv) impair the right of Lender to obtain the appointment of a receiver, (v) impair the enforcement of any assignment, or, (vi) constitute a waiver of the right of Lender to enforce the liability and obligation of Borrower or any general partner of Borrower, by money judgment or otherwise, to the extent of any loss, damage, cost, expense, liability, claim or other obligation incurred by Lender (including attorneys' fees and costs reasonably incurred) arising out of or in connection with the following: (a) fraud or misrepresentation by Borrower in connection with this Security Instrument, the Note or the Other Security Documents; (b) the gross negligence or willful misconduct of Borrower; (c) material physical waste of the Property; (d) the breach of provisions in this Security Instrument or the Other Security Documents concerning Environmental Laws and Hazardous Substances and any indemnification of Lender with respect thereto in any document; (e) the removal or disposal of any portion of the Property after an Event of Default under the Note or the Other Security Documents; (f) the misapplication or conversion by Borrower of (i) any insurance proceeds paid by reason of any loss, damage or destruction to the Property, (ii) any awards or other amounts received in connection with the condemnation of all or a portion of the Property, or (iii) any Rents following default under this Security Instrument, the Note or the Other Security Documents; (g) failure to pay Taxes (provided that the liability of Borrower shall be only for amounts in excess of the amount held by Lender in escrow for the payment of Taxes), assessments, charges for labor or materials or other charges that can create liens on any portion of the Property; and (h) any security deposits collected with respect to the Property which are not delivered to Lender upon a foreclosure of the Property or action in lieu thereof, except to the extent any such security deposits were applied in accordance with the terms and conditions of any of the Leases prior to the occurrence of the Event of Default that gave rise to such foreclosure or action in lieu thereof.

Notwithstanding anything to the contrary in this Security Instrument, the Note or the Other Security Documents (i) the Debt shall be fully recourse to Borrower; and (ii) Lender shall not be deemed to have waived any right which Lender may have under Section 506(a), 506(b), 1111(b) or any other provisions of the U.S. Bankruptcy Code to file a claim for the full amount of the Debt or to require that all collateral shall continue to secure all of the Debt owing to Lender in accordance with this Security Instrument, the Note or the Other Security Documents, in the event that: (A) the first full monthly payment of principal and interest under the Note is not paid when due; (B) Borrower fails to permit on-site inspections of the Property, fails to provide financial information, or fails to comply with the terms of Section 4.3 hereof; (C) Borrower fails to obtain Lender's prior written consent to any subordinate financing or other voluntary lien encumbering the Property; (D) Borrower fails to obtain Lender's prior written consent to any assignment, transfer, or conveyance of the Property or any interest therein as required by this Security Instrument.

ARTICLE 16 - MORTGAGEE AND NOTICES

Section 16.1 REFERENCES TO LENDER. Notwithstanding anything to the contrary contained herein or in any of the Other Security Documents, all references herein and in any of the Other Security Documents to "Lender" shall be deemed to collectively or individually (as the context requires) refer to Lender or to Mortgagee, acting on behalf of and at the sole direction of Lender in its capacity as Lender's nominee, as each of their interests may appear; provided, that, unless Lender, in its sole discretion, shall determine otherwise, only Lender (and not Mortgagee) shall be deemed to be "Lender" with respect to (a) any consent or similar approval right granted to Lender hereunder or under any of the Other Security Documents (including, without limitation, any consent or similar approval right that is deemed granted if not approved or denied within a specified time period), (b) any items, documents or other information required to be delivered to Lender hereunder or under any of the Other Security Documents (other than notices expressly required to be sent to Mortgagee) or (c) any future funding or other obligations of Lender to Borrower or any affiliate of Borrower hereunder or under any of the Other Security Documents, if any.

Section 16.2 FAILURE TO ACT. Notwithstanding anything to the contrary contained herein or in any of the Other Security Documents, the failure of Mortgagee or Lender to take any action hereunder or under any of the Other Security Documents shall not (a) be deemed to be a waiver of any term or condition of this Security Instrument or any of the Other Security Documents, or (b) adversely affect any rights of Lender hereunder or under any of the Other Security Document.

Section 16.3 NOTICES. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person with receipt acknowledged by the recipient thereof, (ii) one (1) Business Day (defined below) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Borrower:	MW-MAGPIG, LLC 11 East Hawthorne Avenue Valley Stream, New York 11580 Attention: Mike Wasserman
With a copy to:	Ellis, Lawhorne & Sims, P.A. 1501 Main Street, 5th Floor P.O. Box 2285 (29202) Columbia, South Carolina 29201 Attention: William P. McElveen, Jr., Esq.
If to Lender:	Bear Stearns Commercial Mortgage, Inc. 383 Madison Avenue New York, New York 10179 Attention: J. Christopher Hoeffel

or addressed as such party may from time to time designate by written notice to the other parties.

Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

Notices to Mortgagee hereunder and under any of the Other Security Documents shall include a copy thereof to Lender (to be addressed and delivered in accordance with this Section 16.3) and shall be sent as follows:

Mortgagee:

MERS Commercial
P.O. Box 2300
Flint, Michigan 48501-2300

For purposes of this Security Instrument, "Business Day" shall mean any day other than Saturday, Sunday or any other day on which banks are authorized or required to close in New York, New York.

ARTICLE 17 - SERVICE OF PROCESS

Section 17.1 CONSENT TO SERVICE.

(a) Borrower will maintain a place of business or an agent for service of process in the State of South Carolina and give prompt notice to Lender of the address of such place of business and of the name and address of any new agent appointed by it, as appropriate. Borrower further agrees that the failure of its agent for service of process to give it notice of any service of process will not impair or affect the validity of such service or of any judgment based thereon. If, despite the foregoing, there is for any reason no agent for service of process of Borrower available to be served, and if it at that time has no place of business in the State of South Carolina, then Borrower irrevocably consents to service of process by registered or certified mail, postage prepaid, to it at its address given in or pursuant to the first paragraph hereof.

(b) Borrower initially and irrevocably designates William P. McElveen, Jr. with offices on the date hereof at Ellis, Lawhorne & Sims, P.A., 1501 Main Street, 5th Floor, Columbia, South Carolina 29201, to receive for and on behalf of Borrower service of process in the State of South Carolina with respect to this Security Instrument.

ARTICLE 18 - APPLICABLE LAW

Section 18.1 CHOICE OF LAW. THIS SECURITY INSTRUMENT SHALL BE DEEMED TO BE A CONTRACT ENTERED INTO PURSUANT TO THE LAWS OF THE STATE OF NEW YORK AND SHALL IN ALL RESPECTS BE GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, PROVIDED HOWEVER, THAT WITH RESPECT TO THE CREATION, PERFECTION, PRIORITY AND ENFORCEMENT OF THE LIEN OF THIS SECURITY INSTRUMENT, AND THE DETERMINATION OF DEFICIENCY JUDGMENTS, THE LAWS OF THE STATE WHERE THE PROPERTY IS LOCATED SHALL APPLY.

Section 18.2 USURY LAWS. This Security Instrument and the Note are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the Debt at a rate which could subject the holder of the Note to either civil or criminal liability as a result of being in excess of the maximum interest rate which Borrower is permitted by applicable law to contract or agree to pay. If by the terms of this Security Instrument or the Note, Borrower is at any time required or obligated to pay interest on the Debt at a rate in excess of such maximum rate, the rate of interest under the Security Instrument and the Note shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance of the Note. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the Debt shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Note until payment in full so that the rate or amount of interest on account of the Debt does not exceed the maximum lawful rate of interest from time to time in effect and applicable to the Debt for so long as the Debt is outstanding.

Section 18.3 PROVISIONS SUBJECT TO APPLICABLE LAW. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

ARTICLE 19 - SECONDARY MARKET

Section 19.1 TRANSFER OF LOAN. Lender may, at any time, sell, transfer or assign the Note, this Security Instrument and the Other Security Documents, and any or all servicing rights with respect thereto, or grant participations therein or issue mortgage passthrough certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement (the "Securities"). Lender may forward to each purchaser, transferee, assignee, servicer, participant or investor in such Securities or any Rating Agency rating such Securities (collectively, the "Investor") and each prospective Investor, all documents and information which Lender now has or may hereafter acquire relating to the Debt and to Borrower, and the Property, whether furnished by Borrower, or otherwise, as Lender determines necessary or desirable. Borrower agrees to cooperate with Lender in connection with any transfer made or any Securities created pursuant to this Security Instrument, including, without limitation, the delivery of an estoppel certificate in accordance therewith, and such other documents as may be reasonably requested by Lender. Borrower shall also furnish and Borrower consents to Lender furnishing to such Investors or such prospective Investors or Rating Agency any and all information concerning the Property, the Leases, the financial condition of Borrower as may be reasonably requested by Lender, any Investor or any prospective Investor or Rating Agency in connection with any sale, transfer or participation interest. Lender may retain or assign responsibility for servicing the Note, this Security Instrument, and the Other Security Documents, or may delegate some or all of such responsibility and/or obligations to a servicer including, but not limited to, any subservicer or master servicer. Lender may make such assignment or delegation on behalf of the Investors if the Note is sold or this Security Instrument or the Other Security Documents are assigned. All references to Lender herein shall refer to and include any such servicer to the extent applicable.

Section 19.2 CONVERSION TO REGISTERED FORM. At the request and the expense of Lender, Borrower shall appoint, as its agent, a registrar and transfer agent (the "Registrar") reasonably acceptable to Lender which shall maintain, subject to such reasonable regulations as it shall provide, such books and records as are necessary for the registration and transfer of the Note in a manner that shall cause the Note to be considered to be in registered form for purposes of Section 163(f) of the Code. The option to convert the Note into registered form once exercised may not be revoked. Any agreement setting out the rights and obligation of the Registrar shall be subject to the reasonable approval of Lender. Borrower may revoke the appointment of any particular person as Registrar, effective upon the effectiveness of the appointment of a replacement Registrar. The Registrar shall not be entitled to any fee from Lender or any other lender in respect of transfers of the Note and Security Instrument (other than Taxes and governmental charges and fees).

Section 19.3 COOPERATION. Borrower acknowledges that Lender and its successors and assigns may (a) sell this Security Instrument, the Note and Other Security Documents to one or more third parties as a whole loan, (b) participate the loan secured by this Security Instrument (the "Loan") to one or more third parties, (c) deposit, through one or a series of transactions, this Security Instrument, the Note and Other Security Documents with a trust, which trust may sell certificates to third parties evidencing an ownership interest in the trust assets or (d) otherwise sell the Loan or interest therein to third parties (the transactions referred to in clauses (a) through (d) are hereinafter referred to as "Secondary Market Transactions"). Borrower shall cooperate in good faith with Lender in effecting any such Secondary Market Transaction and shall cooperate in good faith to implement all requirements imposed by any rating agency issuing any statistical rating in any Secondary Market Transaction or the requirements of potential investors in any Secondary Market Transaction. Borrower agrees to make upon Lender's written request, without limitation, all structural or other changes to the Loan (including delivery of one or more new component notes to replace the original note or modify the original note to reflect multiple components of the Loan and such new notes or modified note may have different interest rates and amortization schedules), modifications to any documents evidencing or securing the Loan, delivery of opinions of counsel reasonably acceptable to the rating agency or potential investors and addressing such matters as the rating agency or potential investors may reasonably require, including, without limitation, an opinion from Delaware counsel that (i) Borrower is a limited liability company is a legal entity separate and apart from its Sole Member; (ii) creditors of Sole Member shall have no right to obtain possession of or to exercise legal or equitable remedies directly with respect to the Property; (iii) creditors of the Sole Member may only claim Sole Member's membership interest in Borrower and have no direct claim on the assets of Borrower; (iv) the existence of the Borrower as a separate legal entity shall continue until the cancellation of the Borrower's Certificate of Formation; (v) the bankruptcy or dissolution of the Sole Member will not, by itself, cause the Borrower to be dissolved or its affairs to be wound up; and (vi) other standard opinion rendered with respect to single-member limited liability companies organized under Delaware law; provided, however, that the Borrower shall not be required to modify (i) the initial weighted average interest rate payable under the Note, (ii) the stated maturity of the Note, (iii) the aggregate amortization of principal of the Note, (iv) any other material economic term of the Loan, or (v) decrease the time periods during which Borrower is permitted to perform its obligations under this Security Instrument or any of the Other Security Documents. Borrower shall provide such information and documents relating to Borrower, Indemnitor, if any, the Property and any tenants of the Improvements as Lender may reasonably request in connection with a Secondary Market Transaction. Lender shall have the right to provide to prospective investors or rating agencies any information in its

possession, including, without limitation, financial statements relating to Borrower, the Indemnitor, if any, the Property and any tenant of the Improvements. Borrower acknowledges that certain information regarding the Loan and the parties thereto and the Property may be included in a private placement memorandum, prospectus or other disclosure documents.

ARTICLE 20 - COSTS

Section 20.1 PERFORMANCE AT BORROWER'S EXPENSE. Borrower acknowledges and confirms that Lender shall impose certain administrative processing and/or commitment fees in connection with (a) the extension, renewal, modification, amendment and termination of its loan, (b) the release or substitution of collateral therefor, (c) obtaining certain consents, waivers and approvals with respect to the Property, (d) the review of any Lease or proposed Lease or the preparation or review of any subordination, non-disturbance agreement or (e) if the servicer, in its reasonable determination, anticipates that there will occur an Event of Default and the Loan is transferred to a special servicer (the occurrence of any of the above shall be called an "Event"). Borrower further acknowledges and confirms that it shall be responsible for the payment of all costs of reappraisal of the Property or any part thereof required by law, regulation, any governmental or quasi-governmental authority or, following an Event of Default, Lender. Borrower hereby acknowledges and agrees to pay, immediately, with or without demand, all such reasonable fees (as the same may be increased or decreased from time to time), and any additional reasonable fees of a similar type or nature which may be imposed by Lender from time to time, upon the occurrence of any Event or otherwise. Wherever it is provided for herein that Borrower pay any costs and expenses, such costs and expenses shall include, but not be limited to, all reasonable legal fees and disbursements of Lender, whether retained firms, the reimbursement for the expenses of in-house staff or otherwise.

Section 20.2 ATTORNEY'S FEES FOR ENFORCEMENT.

(a) Borrower shall pay all reasonable legal fees incurred by Lender in connection with (i) the preparation of the Note, this Security Instrument and the Other Security Documents and (ii) the items set forth in Section 20.1 above, and (b) Borrower shall pay to Mortgagee or Lender on demand any and all reasonable and actual expenses, including reasonable legal expenses and attorneys' fees, incurred or paid by Mortgagee or Lender in protecting its interest in the Property or Personal Property or in collecting any amount payable hereunder or in enforcing its rights hereunder with respect to the Property or Personal Property, whether or not any legal proceeding is commenced hereunder or thereunder and whether or not any default or Event of Default shall have occurred and is continuing, together with interest thereon at the Default Rate from the date paid or incurred by Mortgagee or Lender until such expenses are paid by Borrower.

ARTICLE 21 - DEFINITIONS

Section 21.1 DEFINITIONS. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "Borrower" shall mean "each Borrower, each party comprising Borrower (if Borrower consists of more than one person or entity) and any subsequent owner or owners of the Property or any part thereof or any interest therein"; the word "Lender" shall mean "Lender and any subsequent holder of the Note"; the word "Note" shall mean "the Note and any

other evidence of indebtedness secured by this Security Instrument"; the word "person" shall include an individual, corporation, limited liability company, partnership, trust, unincorporated association, government, governmental authority, and any other entity, the word "Property" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees" and "counsel fees" shall include any and all reasonable attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder.

ARTICLE 22 - MISCELLANEOUS PROVISIONS

Section 22.1 NO ORAL CHANGE. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower, Lender or Mortgagee, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 22.2 LIABILITY. If Borrower consists of more than one person or entity, the obligations and liabilities of each such person hereunder shall be joint and several. This Security Instrument shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

Section 22.3 INAPPLICABLE PROVISIONS. If any term, covenant or condition of the Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Note and this Security Instrument shall be construed without such provision.

Section 22.4 HEADINGS, ETC. The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 22.5 DUPLICATE ORIGINALS; COUNTERPARTS. This Security Instrument may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Security Instrument may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Security Instrument. The failure of any party hereto to execute this Security Instrument, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

Section 22.6 NUMBER AND GENDER. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 22.7 SUBROGATION. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as

cumulative security for the repayment of the Debt, the performance and discharge of Borrower's obligations hereunder, under the Note and the Other Security Documents and the performance and discharge of the Other Obligations.

ARTICLE 23 - STATE SPECIFIC PROVISIONS

Section 23.1 PRINCIPLES OF CONSTRUCTION. In the event of any inconsistencies between this Article 23 of this Security Instrument and any other terms and provisions of this Security Instrument, the terms and conditions of this Article 23 of this Security Instrument shall control and be binding.

Section 23.2 INSTRUMENT UNDER SEAL. This Security Instrument is intended to be and shall be construed as an instrument under seal.

Section 23.3 MATURITY DATE. The maturity date ("Maturity Date") of the Note secured by this Security Instrument is March 1, 2017.

Section 23.4 MAXIMUM INDEBTEDNESS. The maximum of all indebtedness outstanding at any one time secured hereby shall not exceed twice the face amount of the Note, plus interest thereon, all charges and expenses of collection incurred by Lender or Mortgagee including court costs and reasonable attorneys' fees, together with such amounts advanced by Lender under the terms hereof.

Section 23.5 FUTURE ADVANCES. This Security Instrument secures the payment of the Debt and Obligations under and through the Note and Other Security Documents, together with any renewals or extensions or modifications thereof upon the same or different terms or at the same or different rate of interest, and also secures in accordance with Section 29-3-50, as amended, Code of Laws of South Carolina (1976): (i) all future advances and readvances that may subsequently be made to Borrower by Lender, and all renewals and extensions thereof; and (ii) all other indebtedness of Borrower to Lender, now or hereafter existing, whether direct or indirect, plus interest thereon, all charges and expenses of collection incurred by Lender including court costs and reasonable attorney's fees.

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[SIGNATURE PAGE TO SECURITY INSTRUMENT]

Section 23.6 WAIVER OF APPRAISAL RIGHTS. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in

[SIGNATURE PAGE TO SECURITY INSTRUMENT]

Section 23.6 WAIVER OF APPRAISAL RIGHTS. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. Pursuant to Section 29-3-680 of the Code of Laws of South Carolina, THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY. The Borrower specifically acknowledges and affirms its waiver of appraisal rights as evidenced by its signature below.

IN WITNESS WHEREOF, this Security Instrument has been executed by Borrower the day and year first above written.

BORROWER:
AW-MAGPIG, LLC, a Delaware limited liability company

By: AW-MAGPIG OWNER, LLC, a Delaware limited liability company, its sole member

By: _____
Name: Alan B. Wasserman
Title: Member

WITNESSES:

_____
Name: _____

_____
Name: _____

Section 23.6 WAIVER OF APPRAISAL RIGHTS. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. Pursuant to Section 29-3-680 of the Code of Laws of South Carolina, THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY. The Borrower specifically acknowledges and affirms its waiver of appraisal rights as evidenced by its signature below.

IN WITNESS WHEREOF, this Security Instrument has been executed by Borrower the day and year first above written.

BORROWER:
HW-MAGPIG, LLC, a Delaware limited liability company

By: HW-MAGPIG OWNER, LLC, a Delaware limited liability company, its sole member

By: _____
Name: Harold Wasserman
Title: Member

WITNESSES:

_____
Name: _____

_____
Name: _____

Section 23.6 WAIVER OF APPRAISAL RIGHTS. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. Pursuant to Section 29-3-680 of the Code of Laws of South Carolina, THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY. The Borrower specifically acknowledges and affirms its waiver of appraisal rights as evidenced by its signature below.

IN WITNESS WHEREOF, this Security Instrument has been executed by Borrower the day and year first above written.

BORROWER:
MW-MAGPIG, LLC, a Delaware limited liability company

By: MW-MAGPIG OWNER, LLC, a Delaware limited liability company, its sole member

By: _____
Name: Michael S. Wasserman
Title: Member

WITNESSES:

_____
Name: _____

_____
Name: _____

ACKNOWLEDGEMENTS

THE STATE OF NEW YORK

COUNTY OF NASSAU

I, Phyllis Herschlag, a Notary Public for the County and State aforesaid do hereby certify that Alan B. Wasserman, as the member of AW-MAGPIG OWNER, LLC, a Delaware limited liability company, the sole member of a AW-MAGPIG, LLC, a Delaware limited liability company, personally appeared before me this day and acknowledged the voluntary due execution of the foregoing instrument. I further certify that I have personal knowledge of the identity of said person(s), or have received a copy of said person's driver's license which is satisfactory evidence of the person's identity.

Witness my hand and official seal this 28th day of February, 2007.

PHYLLIS HERSCHLAG
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01HE6129382
QUALIFIED IN NASSAU COUNTY
COMMISSION EXPIRES 6/20/09

Phyllis Herschlag

Notary Public, State of New York
Printed Name: Phyllis Herschlag
My Commission Expires: 6/20/09

THE STATE OF NEW YORK

COUNTY OF NASSAU

I, Phyllis Herschlag, a Notary Public for the County and State aforesaid do hereby certify that Harold Wasserman, as the member of HW-MAGPIG OWNER, LLC, a Delaware limited liability company, the sole member of a HW-MAGPIG, LLC, a Delaware limited liability company, personally appeared before me this day and acknowledged the voluntary due execution of the foregoing instrument. I further certify that I have personal knowledge of the identity of said person(s), or have received a copy of said person's driver's license which is satisfactory evidence of the person's identity.

Witness my hand and official seal this 28th day of February, 2007.

PHYLLIS HERSCHLAG
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01HE6129382
[NOTARY SEAL]
QUALIFIED IN NASSAU COUNTY
COMMISSION EXPIRES 6/20/09

Phyllis Herschlag

Notary Public, State of New York
Printed Name: Phyllis Herschlag
My Commission Expires: 6/20/09

THE STATE OF NEW YORK

COUNTY OF NASSAU

I, Phyllis Herschlag, a Notary Public for the County and State aforesaid do hereby certify that Michael S. Wasserman, as the member of MW-MAGPIG OWNER, LLC, a Delaware limited liability company, the sole member of a MW-MAGPIG, LLC, a Delaware limited liability company, personally appeared before me this day and acknowledged the voluntary due execution of the foregoing instrument. I further certify that I have personal knowledge of the identity of said person(s), or have received a copy of said person's driver's license which is satisfactory evidence of the person's identity.

Witness my hand and official seal this 28th day of February, 2007.

PHYLLIS HERSCHLAG
NOTARY PUBLIC, STATE OF NEW YORK
[NOTARY SEAL]
NO. 01HE6129382
QUALIFIED IN NASSAU COUNTY
COMMISSION EXPIRES 6/20/09

Phyllis Herschlag

Notary Public, State of New York
Printed Name: Phyllis Herschlag
My Commission Expires: 6/20/09

Exhibit "A"

BEGINNING AT A REBAR MARKER AT THE SOUTHWESTERNMOST CORNER OF THE PROPERTY WHEREAT SAID PROPERTY CORNERS WITH PROPERTY OF CIRCLE K STORES, INC. ALONG THE NORTHERN MARGIN OF THE RIGHT-OF-WAY OF CLEMSON ROAD A DISTANCE OF 191.42 FEET THE SOUTHERNMOST POINT OF THE SITE AREA FOR THE INTERSECTION OF CLEMSON ROAD AND HARD SCRABBLE ROAD, SAID CORNER BEING DESIGNATED "P.O.B." AND RUNNING ALONG PROPERTIES OF CIRCLE K STORES, INC. AND FIRST PALMETTO SAVINGS BANK (OUTPARCEL NO. 4) N 29°03'00" E - 337.62 FEET TO A MAGNETIC NAIL; THENCE TURNING AND RUNNING ALONG PROPERTY OF MALAIPATTY R. RANGASWAMI, ET AL (OUTPARCEL NO. 1) FROM MAGNETIC NAIL TO REBAR MARKER AS FOLLOWS: S 60° 34' 20" E - 11.74 FEET; N 28°58'25" E - 233.29 FEET; IN A CURVE TO THE LEFT HAVING A RADIUS OF 59.50 FEET, AN ARC DISTANCE OF 49.52 FEET, THE CHORD OF WHICH RUNS N 05°08'00" E - 48.10 FEET; N 18°42'20" W - 171.77 FEET; IN A CURVE TO THE RIGHT HAVING A RADIUS OF 125.50 FEET, AN ARC DISTANCE OF 48.58 FEET, THE CHORD OF WHICH RUNS N 07°37'00"W - 48.28 FEET; N 62°36'30" W - 55.90 FEET; THENCE TURNING AND RUNNING ALONG THE EASTERN MARGIN OF THE RIGHT-OF-WAY OF HARD SCRABBLE ROAD FROM REBAR MARKER TO REBAR MARKER AS FOLLOWS: IN A CURVE TO THE LEFT HAVING A RADIUS OF 5,326.70 FEET AN ARC DISTANCE OF 359.55 FEET, THE CHORD OF WHICH RUNS N 25°27'25" E - 359.48 FEET; N 24°46'15" E - 25.80 FEET; THENCE TURNING AND RUNNING ALONG PROPERTY OF CLEMSON UNIVERSITY SANDHILL EXPERIMENTAL STATION FROM REBAR MARKER TO REBAR MARKER AS FOLLOWS: S 66° 33' 05" E - 777.29 FEET AND S 28°53'45" W - 760.42 FEET; THENCE TURNING AND RUNNING ALONG PROPERTY OF BULL & JONSIE, INC. FROM REBAR MARKER TO "X" IN CONCRETE AS FOLLOWS: N 61°06'10" W - 141.45 FEET; IN A CURVE TO THE LEFT HAVING A RADIUS OF 61.07 FEET, AN ARC DISTANCE OF 94.61 FEET, THE CHORD OF WHICH RUNS S 73°03'00" W - 85.43 FEET; S 23°11'10" W - 159.12 FEET; IN A CURVE TO THE LEFT HAVING A RADIUS OF 59.50 FEET, AN ARC DISTANCE OF 57.32 FEET, THE CHORD OF WHICH RUNS S 04°24'35" E - 55.13 FEET; THENCE TURNING AND RUNNING ALONG THE NORTHERN MARGIN OF THE RIGHT-OF-WAY OF CLEMSON ROAD IN A CURVE TO THE RIGHT HAVING A RADIUS OF 5,684.58 FEET, AN ARC DISTANCE OF 88.08 FEET, THE CHORD OF WHICH RUNS S 89°59'25" W - 88.08 FEET; THENCE TURNING AND RUNNING ALONG PROPERTY OF FIRST NATIONAL BANK (OUTPARCEL NO. 2) FROM "X" IN CONCRETE TO "X" IN CONCRETE AS FOLLOWS: N 28°53'55" E - 66.39 FEET TO A REBAR; N 34°36'30" E - 52.26 FEET TO AN "X" IN CONCRETE; N 29°43'20" E - 55.61 FEET TO AN "X" IN CONCRETE; N 28°54'25"E - 118.94 FEET TO AN "X" IN CONCRETE; IN A CURVE TO THE LEFT HAVING A RADIUS OF 34.50 FEET, AN ARC DISTANCE OF 54.19 FEET, THE CHORD OF WHICH RUNS N 16°06'10" W - 48.79 FEET TO A REBAR MARKER; THENCE TURNING AND CONTINUING ALONG PROPERTY OF FIRST NATIONAL BANK (OUTPARCEL NO. 2) AND ALSO PROPERTY OF FIRST NATIONAL BANK (OUTPARCEL NO. 5); N 61°06'15" W - 221.57 FEET TO A REBAR MARKER; THENCE TURNING AND CONTINUING ALONG PROPERTY OF FIRST NATIONAL BANK (OUTPARCEL NO. 5); S 28°54'50" W - 210.90 FEET TO A "X" IN CONCRETE; THENCE TURNING AND RUNNING ALONG PROPERTY OF RIC 79 LTD, A CALIFORNIA LIMITED PARTNERSHIP ("LAPETITE ACADEMY") S 28°54'05" W - 247.86 FEET TO A REBAR MARKER; THENCE TURNING AND RUNNING ALONG THE NORTHERN MARGIN OF THE RIGHT-OF-WAY OF CLEMSON ROAD; N 88°39'45" W - 56.84 FEET TO THE POINT OF BEGINNING.

Together with all easements reserved to benefit the above property as stated in that certain Deed, Easement, Restrictions, and Reservation of Easements to Haralambos Bobby Ouzounidis and Larry Shirah, as recorded in Deed Book D1327 at page 763, Office of the Register of Deeds for Richland County.

Together with all easements that benefit the above property as stated in that certain Declaration of Easements, Covenants and Restrictions as recorded in Deed Book D1404 at page 726, Office of the Register of Deeds for Richland County.

Being the same property conveyed to AW-MAGPIG, LLC, HW-MAGPIG, LLC and MW-MAGPIG, LLC by deed of Hardscrabble, LLC, dated December 11, 2006, and recorded December 13, 2006 in Record Book 1262 at Page 1243 in the Office of the Register of Deeds for Richland County.

TMS#: 20200-02-07

EXHIBIT C

ALR

[attached hereto]

Book 1288-3902
2007018823 03/06/2007 10:42:30:910 Asgmt Lease Rent Profit
Fee:$22.00 County Tax: $0.00 State Tax: $0.00

2007018823 Richard W. Rodden Richland County ROD

MERS MIN: 8000101-0000004106-0

AW-MAGPIG, LLC, HW-MAGPIG, LLC, and MW-MAGPIG, LLC, as assignor
(Borrower)

to

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., as assignee
(Assignee)

ASSIGNMENT OF LEASES AND RENTS

Dated: March 1, 2007

Location: Columbia, South Carolina

County: Richland

UPON RECORDATION
RETURN TO:

Katten Muchin Rosenman LLP
401 South Tryon Street, Suite 2600
Charlotte, North Carolina 28202
Attention: Daniel S. Huffenus, Esq.

THIS ASSIGNMENT OF LEASES AND RENTS ("Assignment") made as of the 1st day of March, 2007, by **AW-MAGPIG, LLC, HW-MAGPIG, LLC, and MW-MAGPIG, LLC,** each a Delaware limited liability company, as assignor, each having its principal place of business at 11 East Hawthorne Avenue, Valley Stream, New York 11580 (collectively, "Borrower") to **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.,** a Delaware stock corporation, having an address at 1595 Spring Hill Road, Vienna, Virginia, as assignee and Lender's nominee ("Assignee").

RECITALS:

Borrower by its promissory note of even date herewith given to Bear Stearns Commercial Mortgage, Inc., a New York corporation, having an address at 383 Madison Avenue, New York, New York 10179 (together with its successors and assigns, "Lender") is indebted to Lender in the principal sum of FOUR MILLION FIVE HUNDRED THOUSAND AND 00/100 DOLLARS ($4,500,000.00) in lawful money of the United States of America (together with all extensions, renewals, modifications, substitutions and amendments thereof, the "Note"), with interest from the date thereof at the rates set forth in the Note, principal and interest to be payable in accordance with the terms and conditions provided in the Note.

Borrower desires to secure the payment of the Debt (defined below) and the performance of all its obligations under the Note and the Other Obligations as defined in Article 2 of the Security Instrument (defined below).

ARTICLE 1 - ASSIGNMENT

Section 1.1 PROPERTY ASSIGNED. Borrower hereby absolutely and unconditionally assigns and grants to Assignee the following property, rights, interests and estates, now owned, or hereafter acquired by Borrower:

(a) Leases. All existing and future leases affecting the use, enjoyment, or occupancy of all or any part of that certain lot or piece of land, more particularly described in Exhibit A annexed hereto and made a part hereof, together with the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (collectively, the "Property") and the right, title and interest of Borrower, its successors and assigns, therein and thereunder.

(b) Other Leases and Agreements. All other leases and other agreements, whether or not in writing, affecting the use, enjoyment or occupancy of the Property or any portion thereof now or hereafter made, together with any extension, renewal or replacement of the same, this Assignment of other present and future leases and present and future agreements being effective without further or supplemental assignment. The leases described in Subsection 1.1(a) and the leases and other agreements described in this Subsection 1.1(b), together with all other present and future leases and present and future agreements and any extension or renewal of the same are collectively referred to as the "Leases".

(c) Rents. All rents, additional rents, revenues, income, issues and profits arising from the Leases and renewals and replacements thereof and any cash or security deposited in connection therewith and together with all rents, revenues, income, issues and

profits (including all oil and gas or other mineral royalties and bonuses) from the use, enjoyment and occupancy of the Property (collectively, the "Rents").

(d) Bankruptcy Claims. All of Borrower's claims and rights (the "Bankruptcy Claims") to the payment of damages arising from any rejection by a lessee of any Lease under the Bankruptcy Code, 11 U.S.C. ' 101 et seq., as the same may be amended (the "Bankruptcy Code").

(e) Lease Guaranties. All of Borrower's right, title and interest in and to claims under any and all lease guaranties, letters of credit and any other credit support given by any guarantor in connection with any of the Leases (individually, a "Lease Guarantor", collectively, the "Lease Guarantors") to Borrower (individually, a "Lease Guaranty", collectively, the "Lease Guaranties").

(f) Proceeds. All proceeds from the sale or other disposition of the Leases, the Rents, the Lease Guaranties and the Bankruptcy Claims.

(g) Other. All rights, powers, privileges, options and other benefits of Borrower as lessor under the Leases and beneficiary under the Lease Guaranties, including without limitation, the immediate and continuing right to make claims for, receive, collect and receipt for, all Rents payable or receivable under the Leases and all sums payable under the Lease Guaranties or pursuant thereto (and to apply the same to the payment of the Debt or the Other Obligations), and to do all other things which Borrower or any lessor is or may become entitled to do under the Leases or the Lease Guaranties.

(h) Entry. The right, at Lender's option, upon revocation of the license granted herein, to enter upon the Property in person, by agent or by court-appointed receiver, to collect the Rents.

(i) Power of Attorney. Borrower's irrevocable power of attorney, coupled with an interest, to take any and all of the actions set forth in Section 3.1 of this Assignment and any or all other actions reasonably designated by Lender for the proper management and preservation of the Property.

(j) Other Rights and Agreements. Any and all other rights of Borrower in and to the items set forth in subsections (a) through (i) above, and all amendments, modifications, replacements, renewals and substitutions thereof.

Section 1.2CONSIDERATION. This Assignment is made in consideration of that certain loan made by Lender to Borrower evidenced by the Note and secured by that certain mortgage and security agreement, deed of trust and security agreement, deed to secure debt and security agreement or similar real estate security instrument given by Borrower to or for the benefit of Assignee, dated the date hereof, in the principal amount of the Note, covering the Property and intended to be duly recorded (the "Security Instrument"). The principal sum, interest and all other sums due and payable under the Note, the Security Instrument, this Assignment and the Other Security Documents (defined below) are collectively referred to as the "Debt". The documents other than this Assignment, the Note or the Security Instrument now or hereafter executed by Borrower and/or others and by or in favor of Lender which wholly or

partially secure or guarantee payment of the Debt are referred to herein as the "Other Security Documents".

Section 1.3GRANTS TO ASSIGNEE. This Assignment and the grants, assignments and transfers made to Assignee in this Article 1 shall inure to Assignee solely in its capacity as Lender's nominee.

ARTICLE 2 - TERMS OF ASSIGNMENT

Section 2.1PRESENT ASSIGNMENT AND LICENSE BACK. It is intended by Borrower that this Assignment constitute a present, absolute assignment of the Leases, Rents, Lease Guaranties and Bankruptcy Claims, and not an assignment for additional security only. Nevertheless, subject to the terms of this Section 2.1, Lender grants to Borrower a revocable license to collect and receive the Rents and other sums due under the Lease Guaranties and Bankruptcy Claims. Borrower shall hold the Rents and all sums received pursuant to any Lease Guaranty or Bankruptcy Claim, or a portion thereof sufficient to discharge all current sums due on the Debt, in trust for the benefit of Lender for use in the payment of such sums.

Section 2.2NOTICE TO LESSEES. Borrower hereby agrees to authorize and direct the lessees named in the Leases or any other or future lessees or occupants of the Property and all Lease Guarantors to pay over to Lender or to such other party as Lender directs all Rents and all sums due under any Lease Guaranties upon receipt from Lender of written notice to the effect that Lender is then the holder of the Security Instrument and that a Default (defined below) exists, and to continue so to do until otherwise notified by Lender.

Section 2.3INCORPORATION BY REFERENCE. All representations, warranties, covenants, conditions and agreements contained in the Security Instrument as same may be modified, renewed, substituted or extended are hereby made a part of this Agreement to the same extent and with the same force as if fully set forth herein.

ARTICLE 3 - REMEDIES

Section 3.1REMEDIES OF LENDER. Upon or at any time after the occurrence of a default under this Assignment beyond applicable notice and cure periods or an Event of Default (as defined in the Security Instrument) which has not been cured (a "Default"), the license granted to Borrower in Section 2.1 of this Assignment shall automatically be revoked, and Lender shall immediately be entitled to possession of all Rents and sums due under any Lease Guaranties, whether or not Lender enters upon or takes control of the Property. In addition, upon or at any time after the occurrence of a Default, Lender, or Assignee acting on behalf of and at the sole discretion of Lender in its capacity as Lender's nominee, may, at its option, without waiving such Default, without notice and without regard to the adequacy of the security for the Debt, either in person or by agent, nominee or attorney, with or without bringing any action or proceeding, or by a receiver appointed by a court, dispossess Borrower and its agents and servants from the Property, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of the Property and all books, records and accounts relating thereto and have, hold, manage, lease and operate the Property on such terms and for such period of time as Lender may deem proper and

either with or without taking possession of the Property in its own name, demand, sue for or otherwise collect and receive all Rents and sums due under all Lease Guaranties, including those past due and unpaid with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to Lender and may apply the Rents and sums received pursuant to any Lease Guaranties to the payment of the following in such order and proportion as Lender in its sole discretion may determine, any law, custom or use to the contrary notwithstanding: (a) all expenses of managing and securing the Property, including, without being limited thereto, the salaries, fees and wages of a managing agent and such other employees or agents as Lender may deem necessary or desirable and all expenses of operating and maintaining the Property, including, without being limited thereto, all taxes, charges, claims, assessments, water charges, sewer rents and any other liens, and premiums for all insurance which Lender may deem necessary or desirable, and the cost of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Property; and (b) the Debt, together with all costs and reasonable attorneys' fees. In addition, upon the occurrence of a Default, Lender at its option, may (1) complete any construction on the Property in such manner and form as Lender deems advisable, (2) exercise all rights and powers of Borrower, including, without limitation, the right to negotiate, execute, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents from the Property and all sums due under any Lease Guaranties, (3) either require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupancy of such part of the Property as may be in possession of Borrower or (4) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise.

Section 3.2OTHER REMEDIES. Nothing contained in this Assignment and no act done or omitted by Lender or Assignee pursuant to the power and rights granted to Lender hereunder shall be deemed to be a waiver by Lender of its rights and remedies under the Note, the Security Instrument, or the Other Security Documents and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Lender under the terms thereof. The right of Lender to collect the Debt and to enforce any other security therefor held by it may be exercised by Lender either prior to, simultaneously with, or subsequent to any action taken by it hereunder. Borrower hereby absolutely, unconditionally and irrevocably waives any and all rights to assert any setoff, counterclaim or crossclaim of any nature whatsoever with respect to the obligations of Borrower under this Assignment, the Note, the Security Instrument, the Other Security Documents or otherwise with respect to the loan secured hereby in any action or proceeding brought by Lender to collect same, or any portion thereof, or to enforce and realize upon the lien and security interest created by this Assignment, the Note, the Security Instrument, or any of the Other Security Documents (provided, however, that the foregoing shall not be deemed a waiver of Borrower's right to assert any compulsory counterclaim if such counterclaim is compelled under local law or rule of procedure, nor shall the foregoing be deemed a waiver of Borrower's right to assert any claim which would constitute a defense, setoff, counterclaim or crossclaim of any nature whatsoever against Lender in any separate action or proceeding).

Section 3.3OTHER SECURITY. Lender may take or release other security for the payment of the Debt, may release any party primarily or secondarily liable therefor and may

apply any other security held by it to the reduction or satisfaction of the Debt without prejudice to any of its rights under this Assignment.

Section 3.4NON-WAIVER. The exercise by Lender of the option granted it in Section 3.1 of this Assignment and the collection of the Rents and sums due under the Lease Guaranties and the application thereof as herein provided shall not be considered a waiver of any default by Borrower under the Note, the Security Instrument, the Leases, this Assignment or the Other Security Documents. The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Agreement. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (a) the failure of Lender to comply with any request of Borrower or any other party to take any action to enforce any of the provisions hereof or of the Security Instrument, the Note or the Other Security Documents, (b) the release regardless of consideration, of the whole or any part of the Property, or (c) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of this Assignment, the Note, the Security Instrument or the Other Security Documents. Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take any action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to enforce its rights under this Assignment. The rights of Lender under this Assignment shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

Section 3.5BANKRUPTCY. (a) Upon or at any time after the occurrence of a Default beyond applicable notice and cure periods, Lender shall have the right to proceed in its own name or in the name of Borrower in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Borrower, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code.

(a) If there shall be filed by or against Borrower a petition under the Bankruptcy Code, and Borrower, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Borrower shall give Lender not less than ten (10) days' prior notice of the date on which Borrower shall apply to the bankruptcy court for authority to reject the Lease. Lender shall have the right, but not the obligation, to serve upon Borrower within such ten-day period a notice stating that (i) Lender demands that Borrower assume and assign the Lease to Lender pursuant to Section 365 of the Bankruptcy Code and (ii) Lender covenants to cure or provide adequate assurance of future performance under the Lease. If Lender serves upon Borrower the notice described in the preceding sentence, Borrower shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Lender of the covenant provided for in clause (ii) of the preceding sentence.

ARTICLE 4 - NO LIABILITY, FURTHER ASSURANCES

Section 4.1NO LIABILITY OF LENDER. This Assignment shall not be construed to bind Lender to the performance of any of the covenants, conditions or provisions

contained in any Lease or Lease Guaranty or otherwise impose any obligation upon Lender. Lender shall not be liable for any loss sustained by Borrower resulting from Lender's failure to let the Property after a Default or from any other act or omission of Lender in managing the Property after a Default unless such loss is caused by the willful misconduct and bad faith of Lender. Lender shall not be obligated to perform or discharge any obligation, duty or liability under the Leases or any Lease Guaranties or under or by reason of this Assignment and Borrower shall, and hereby agrees, to indemnify Lender for, and to hold Lender harmless from, any and all liability, loss or damage which may or might be incurred under the Leases, any Lease Guaranties or under or by reason of this Assignment and from any and all claims and demands whatsoever, including the defense of any such claims or demands which may be asserted against Lender by reason of any alleged obligations and undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases or any Lease Guaranties. Should Lender incur any such liability, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured by this Assignment and by the Security Instrument and the Other Security Documents and Borrower shall reimburse Lender therefor immediately upon demand and upon the failure of Borrower so to do Lender may, at its option, declare all sums secured by this Assignment and by the Security Instrument and the Other Security Documents immediately due and payable. This Assignment shall not operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor for the carrying out of any of the terms and conditions of the Leases or any Lease Guaranties; nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or any other parties, or for any dangerous or defective condition of the Property, including without limitation the presence of any Hazardous Substances (as defined in the Security Instrument), or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger.

Section 4.2NO MORTGAGEE IN POSSESSION. Nothing herein contained shall be construed as constituting Lender or Assignee a "mortgagee in possession" in the absence of the taking of actual possession of the Property by Lender. In the exercise of the powers herein granted Lender, no liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Borrower.

Section 4.3FURTHER ASSURANCES. Borrower will, at the cost of Borrower, and without expense to Lender, do execute, acknowledge and deliver all and every such further acts, conveyances, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, require for the better assuring, conveying, assigning, transferring and confirming unto Lender the property and rights hereby assigned or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Assignment or for filing, registering or recording this Assignment and, on demand, will execute and deliver and hereby authorizes Lender to execute in the name of Borrower to the extent Lender may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien and security interest hereof in and upon the Leases.

ARTICLE 5 - SECONDARY MARKET

Section 5.1TRANSFER OF LOAN. Lender may, at any time, sell, transfer or assign the Note, the Security Instrument, this Assignment and the Other Security Documents, and any or all servicing rights with respect thereto, or grant participations therein or issue mortgage pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement (the "Securities"). Lender may forward to each purchaser, transferee, assignee, servicer, participant or investor in such Securities or any credit rating agency rating such Securities (collectively, the "Investor") and each prospective Investor, all documents and information which Lender now has or may hereafter acquire relating to the Debt and to Borrower and the Property, whether furnished by Borrower or otherwise, as Lender determines necessary or desirable. Borrower agrees to cooperate with Lender in connection with any transfer made or any Securities created pursuant to this Section, including, without limitation, the delivery of an estoppel certificate required in accordance with Subsection 7.4(c) of the Security Instrument and such other documents as may be reasonably requested by Lender. Borrower shall also furnish and Borrower consents to Lender furnishing to such Investors or such prospective Investors any and all information concerning the Property, the Leases, the financial condition of Borrower as may be requested by Lender, any Investor or any prospective Investors or credit rating agency in connection with any sale, transfer or participation interest. Lender may retain or assign responsibility for servicing the Note, this Assignment, the Security Instrument and the Other Security Documents or may delegate some or all of such responsibility and/or obligations to a servicer including, but not limited to, any servicer or master servicer. Lender may make such assignment or delegation on behalf of the Investors if the Note is sold or this Assignment, the Security Instrument or the Other Security Documents are assigned. All references to Lender herein shall refer to and include any such servicer to the extent applicable.

ARTICLE 6 - MISCELLANEOUS PROVISIONS

Section 6.1CONFLICT OF TERMS. In case of any conflict between the terms of this Assignment and the terms of the Security Instrument, the terms of the Security Instrument shall prevail.

Section 6.2NO ORAL CHANGE. This Assignment and any provisions hereof may not be modified, amended, waived, extended, changed, discharged or terminated orally, or by any act or failure to act on the part of Borrower, Lender or Assignee, but only by an agreement in writing signed by the party against whom the enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 6.3CERTAIN DEFINITIONS. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Assignment may be used interchangeably in singular or plural form and the word "Borrower" shall mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or interest therein," the word "Lender" shall mean "Lender and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by the Security Instrument," the word "person" shall include an individual, corporation, limited liability corporation, partnership, limited liability partnership, trust, unincorporated association, government, governmental authority, and any other entity, the word "Property" shall include any

portion of the Property and any interest therein, the phrases "attorneys' fees" and "counsel fees" shall include any and all reasonable, actual attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder, and the word "Debt" shall mean the principal balance of the Note with interest thereon as provided in the Note and the Security Instrument and all other sums due pursuant to the Note, the Security Instrument, this Assignment and the Other Security Documents; whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa. Any term not expressly defined herein shall have the meaning ascribed to such term in the Security Instrument unless the context clearly indicates otherwise.

Section 6.4AUTHORITY. Borrower represents and warrants that it has full power and authority to execute and deliver this Assignment and the execution and delivery of this Assignment has been duly authorized and does not conflict with or constitute a default under any law, judicial order or other agreement affecting Borrower or the Property.

Section 6.5INAPPLICABLE PROVISIONS. If any term, covenant or condition of this Assignment is held to be invalid, illegal or unenforceable in any respect, this Assignment shall be construed without such provision.

Section 6.6DUPLICATE ORIGINALS; COUNTERPARTS. This Assignment may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original. This Assignment may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Assignment. The failure of any party hereto to execute this Assignment, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder. Assignor hereby acknowledges receipt of a true and complete copy of this Assignment.

Section 6.7CHOICE OF LAW. THIS ASSIGNMENT SHALL BE DEEMED TO BE A CONTRACT ENTERED INTO PURSUANT TO THE LAWS OF THE STATE OF NEW YORK AND SHALL IN ALL RESPECTS BE GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, PROVIDED, HOWEVER, THAT WITH RESPECT TO THE CREATION, PERFECTION, PRIORITY AND ENFORCEMENT OF THE LIEN OF THIS ASSIGNMENT, THE LAWS OF THE STATE WHERE THE PROPERTY IS LOCATED SHALL APPLY.

Section 6.8TERMINATION OF ASSIGNMENT. Upon payment in full of the Debt and the delivery and recording of a satisfaction or discharge of the Security Instrument duly executed by Lender, this Assignment shall become and be void and of no effect.

Section 6.9NOTICES. All notices or other written communications to Borrower, Lender or Assignee hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person with receipt acknowledged by the recipient thereof, (ii) one (1) Business Day (hereinafter defined) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post

office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to Borrower, Lender or Assignee at their addresses set forth in the Security Instrument or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Assignment, the term "Business Day" shall mean any day other than Saturday, Sunday or any other day on which banks are required or authorized to close in New York, New York. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

Section 6.10 **WAIVER OF TRIAL BY JURY. BORROWER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN EVIDENCED BY THE NOTE, THE APPLICATION FOR THE LOAN EVIDENCED BY THE NOTE, THIS ASSIGNMENT, THE NOTE, THE SECURITY INSTRUMENT OR THE OTHER SECURITY DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.**

Section 6.11 REFERENCES TO LENDER. Notwithstanding anything to the contrary contained herein or in any of the Other Security Documents, all references herein and in any of the Other Security Documents to "Lender" shall be deemed to collectively or individually (as the context requires) refer to Lender or to Assignee, acting on behalf of and at the sole direction of Lender in its capacity as Lender's nominee, as each of their interests may appear; provided, that, unless Lender, in its sole discretion, shall determine otherwise, only Lender (and not Assignee) shall be deemed to be "Lender" with respect to (a) any consent or similar approval right granted to Lender hereunder or under any of the Other Security Documents (including, without limitation, any consent or similar approval right that is deemed granted if not approved or denied within a specified time period), (b) any items, documents or other information required to be delivered to Lender hereunder or under any of the Other Security Documents (other than notices expressly required to be sent to Assignee) or (c) any future funding or other obligations of Lender to Borrower or any affiliate of Borrower hereunder or under any of the Other Security Documents, if any.

Section 6.12 LIABILITY. If Borrower consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Assignment shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

Section 6.13 HEADINGS, ETC. The headings and captions of various paragraphs of this Assignment are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 6.14 NUMBER AND GENDER. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 6.15 SOLE DISCRETION OF LENDER. Wherever pursuant to this Assignment (a) Lender exercises any right given to it to approve or disapprove, (b) any arrangement or term is to be satisfactory to Lender, or (c) any other decision or determination is to be made by Lender, the decision of Lender to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory and all other decisions and determinations made by Lender, shall be in the sole and absolute discretion of Lender and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

Section 6.16 COSTS AND EXPENSES OF BORROWER. Wherever pursuant to this Assignment it is provided that Borrower pay any costs and expenses, such costs and expenses shall include, but not be limited to, reasonable and actual legal fees and disbursements of Lender, whether retained firms, the reimbursement of the expenses for in-house staff or otherwise.

Section 6.17 EXCULPATION. Borrower's obligations under this Agreement are subject to the provisions of Article 15 of the Security Instrument, and such provisions are incorporated herein by reference.

THIS ASSIGNMENT, together with the covenants and warranties therein contained, shall inure to the benefit of Lender and any subsequent holder of the Security Instrument and shall be binding upon Borrower, its heirs, executors, administrators, successors and assigns and any subsequent owner of the Property.

[remainder of page intentionally left blank; signature page follows]

[SIGNATURE PAGE TO ASSIGNMENT OF LEASES AND RENTS]

IN WITNESS WHEREOF, Borrower has executed this instrument the day and year first above written.

BORROWER:

AW-MAGPIG, LLC, a Delaware limited liability company

By: AW-MAGPIG OWNER, LLC, a Delaware limited liability company, its sole member

By: _____
Name: Alan B. Wasserman
Title: Member

WITNESSES:

_____
Name: _____

_____
Name: _____

CLT01_90364345_4

[SIGNATURE PAGE TO ASSIGNMENT OF LEASES AND RENTS]

IN WITNESS WHEREOF, Borrower has executed this instrument the day and year first above written.

BORROWER:

HW-MAGPIG, LLC, a Delaware limited liability company

By: HW-MAGPIG OWNER, LLC, a Delaware limited liability company, its sole member

By: _____
Name: Harold Wasserman
Title: Member

WITNESSES:

_____
Name: _____

_____
Name: _____

CLT01_90364345_4

[SIGNATURE PAGE TO ASSIGNMENT OF LEASES AND RENTS]

IN WITNESS WHEREOF, Borrower has executed this instrument the day and year first above written.

BORROWER:

MW-MAGPIG, LLC, a Delaware limited liability company

By: MW-MAGPIG OWNER, LLC, a Delaware limited liability company, its sole member

By: _____
Name: Michael S. Wasserman
Title: Member

WITNESSES:

_____
Name: _____

_____
Name: _____

ACKNOWLEDGEMENTS

THE STATE OF NEW YORK

COUNTY OF NASSAU

I, Phyllis Herschlag, a Notary Public for the County and State aforesaid do hereby certify that Alan B. Wasserman, as the member of AW-MAGPIG OWNER, LLC, a Delaware limited liability company, the sole member of a AW-MAGPIG, LLC, a Delaware limited liability company, personally appeared before me this day and acknowledged the voluntary due execution of the foregoing instrument. I further certify that I have personal knowledge of the identity of said person(s), or have received a copy of said person's driver's license which is satisfactory evidence of the person's identity.

Witness my hand and official seal this 28th day of February, 2007.

PHYLLIS HERSCHLAG
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01HE6129382
QUALIFIED IN NASSAU COUNTY
COMMISSION EXPIRES 6/20/09

Phyllis Herschlag

Notary Public, State of New York
Printed Name: Phyllis Herschlag
My Commission Expires: 6/20/09

CLT01_90364345_4

THE STATE OF NEW YORK

COUNTY OF NASSAU

I, Phyllis Herschlag, a Notary Public for the County and State aforesaid do hereby certify that Harold Wasserman, as the member of HW-MAGPIG OWNER, LLC, a Delaware limited liability company, the sole member of a HW-MAGPIG, LLC, a Delaware limited liability company, personally appeared before me this day and acknowledged the voluntary due execution of the foregoing instrument. I further certify that I have personal knowledge of the identity of said person(s), or have received a copy of said person's driver's license which is satisfactory evidence of the person's identity.

Witness my hand and official seal this 28th day of February, 2007.

PHYLLIS HERSCHLAG
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01HE6129382
QUALIFIED IN NASSAU COUNTY
[NOTARY SEAL]
COMMISSION EXPIRES 6/20/09

Phyllis Herschlag

Notary Public, State of New York
Printed Name: Phyllis Herschlag
My Commission Expires: 6/20/09

THE STATE OF NEW YORK

COUNTY OF NASSAU

I, Phyllis Herschlag, a Notary Public for the County and State aforesaid do hereby certify that Michael S. Wasserman, as the member of MW-MAGPIG OWNER, LLC, a Delaware limited liability company, the sole member of a MW-MAGPIG, LLC, a Delaware limited liability company, personally appeared before me this day and acknowledged the voluntary due execution of the foregoing instrument. I further certify that I have personal knowledge of the identity of said person(s), or have received a copy of said person's driver's license which is satisfactory evidence of the person's identity.

Witness my hand and official seal this 28th day of February, 2007.

PHYLLIS HERSCHLAG
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01HE6129382
QUALIFIED IN NASSAU COUNTY
[NOTARY SEAL]
COMMISSION EXPIRES 6/20/09

Phyllis Herschlag

Notary Public, State of New York
Printed Name: Phyllis Herschlag
My Commission Expires: 6/20/09

CLT01_90364345_4

Exhibit "A"

BEGINNING AT A REBAR MARKER AT THE SOUTHWESTERNMOST CORNER OF THE PROPERTY WHEREAT SAID PROPERTY CORNERS WITH PROPERTY OF CIRCLE K STORES, INC. ALONG THE NORTHERN MARGIN OF THE RIGHT-OF-WAY OF CLEMSON ROAD A DISTANCE OF 191.42 FEET THE SOUTHERNMOST POINT OF THE SITE AREA FOR THE INTERSECTION OF CLEMSON ROAD AND HARD SCRABBLE ROAD, SAID CORNER BEING DESIGNATED "P.O.B." AND RUNNING ALONG PROPERTIES OF CIRCLE K STORES, INC. AND FIRST PALMETTO SAVINGS BANK (OUTPARCEL NO. 4) N 29°03'00" E - 337.62 FEET TO A MAGNETIC NAIL; THENCE TURNING AND RUNNING ALONG PROPERTY OF MALAIPATTY R. RANGASWAMI, ET AL (OUTPARCEL NO. 1) FROM MAGNETIC NAIL TO REBAR MARKER AS FOLLOWS: S 60° 34' 20" E - 11.74 FEET; N 28°58'25" E - 233.29 FEET; IN A CURVE TO THE LEFT HAVING A RADIUS OF 59.50 FEET, AN ARC DISTANCE OF 49.52 FEET, THE CHORD OF WHICH RUNS N 05°08'00" E - 48.10 FEET; N 18°42'20" W - 171.77 FEET; IN A CURVE TO THE RIGHT HAVING A RADIUS OF 125.50 FEET, AN ARC DISTANCE OF 48.58 FEET, THE CHORD OF WHICH RUNS N 07°37'00"W - 48.28 FEET; N 62°36'30" W - 55.90 FEET; THENCE TURNING AND RUNNING ALONG THE EASTERN MARGIN OF THE RIGHT-OF-WAY OF HARD SCRABBLE ROAD FROM REBAR MARKER TO REBAR MARKER AS FOLLOWS: IN A CURVE TO THE LEFT HAVING A RADIUS OF 5,326.70 FEET AN ARC DISTANCE OF 359.55 FEET, THE CHORD OF WHICH RUNS N 25°27'25" E - 359.48 FEET; N 24°46'15" E - 25.80 FEET; THENCE TURNING AND RUNNING ALONG PROPERTY OF CLEMSON UNIVERSITY SANDHILL EXPERIMENTAL STATION FROM REBAR MARKER TO REBAR MARKER AS FOLLOWS: S 66° 33' 05" E - 777.29 FEET AND S 28°53'45" W - 760.42 FEET; THENCE TURNING AND RUNNING ALONG PROPERTY OF BULL & JONSIE, INC. FROM REBAR MARKER TO "X" IN CONCRETE AS FOLLOWS: N 61°06'10" W - 141.45 FEET; IN A CURVE TO THE LEFT HAVING A RADIUS OF 61.07 FEET, AN ARC DISTANCE OF 94.61 FEET, THE CHORD OF WHICH RUNS S 73°03'00" W - 85.43 FEET; S 23°11'10" W - 159.12 FEET; IN A CURVE TO THE LEFT HAVING A RADIUS OF 59.50 FEET, AN ARC DISTANCE OF 57.32 FEET, THE CHORD OF WHICH RUNS S 04°24'35" E - 55.13 FEET; THENCE TURNING AND RUNNING ALONG THE NORTHERN MARGIN OF THE RIGHT-OF-WAY OF CLEMSON ROAD IN A CURVE TO THE RIGHT HAVING A RADIUS OF 5,684.58 FEET, AN ARC DISTANCE OF 88.08 FEET, THE CHORD OF WHICH RUNS S 89°59'25" W - 88.08 FEET; THENCE TURNING AND RUNNING ALONG PROPERTY OF FIRST NATIONAL BANK (OUTPARCEL NO. 2) FROM "X" IN CONCRETE TO "X" IN CONCRETE AS FOLLOWS: N 28°53'55" E - 66.39 FEET TO A REBAR; N 34°36'30" E - 52.26 FEET TO AN "X" IN CONCRETE; N 29°43'20" E - 55.61 FEET TO AN "X" IN CONCRETE; N 28°54'25"E - 118.94 FEET TO AN "X" IN CONCRETE; IN A CURVE TO THE LEFT HAVING A RADIUS OF 34.50 FEET, AN ARC DISTANCE OF 54.19 FEET, THE CHORD OF WHICH RUNS N 16°06'10" W - 48.79 FEET TO A REBAR MARKER; THENCE TURNING AND CONTINUING ALONG PROPERTY OF FIRST NATIONAL BANK (OUTPARCEL NO. 2) AND ALSO PROPERTY OF FIRST NATIONAL BANK (OUTPARCEL NO. 5); N 61°06'15" W - 221.57 FEET TO A REBAR MARKER; THENCE TURNING AND CONTINUING ALONG PROPERTY OF FIRST NATIONAL BANK (OUTPARCEL NO. 5); S 28°54'50" W - 210.90 FEET TO A "X" IN CONCRETE; THENCE TURNING AND RUNNING ALONG PROPERTY OF RIC 79 LTD, A CALIFORNIA LIMITED PARTNERSHIP ("LAPETITE ACADEMY") S 28°54'05" W - 247.86 FEET TO A REBAR MARKER; THENCE TURNING AND RUNNING ALONG THE NORTHERN MARGIN OF THE RIGHT-OF-WAY OF CLEMSON ROAD; N 88°39'45" W - 56.84 FEET TO THE POINT OF BEGINNING.

Together with all easements reserved to benefit the above property as stated in that certain Deed, Easement, Restrictions, and Reservation of Easements to Haralambos Bobby Ouzounidis and Larry Shirah, as recorded in Deed Book D1327 at page 763, Office of the Register of Deeds for Richland County.

Together with all easements that benefit the above property as stated in that certain Declaration of Easements, Covenants and Restrictions as recorded in Deed Book D1404 at page 726, Office of the Register of Deeds for Richland County.

Being the same property conveyed to AW-MAGPIG, LLC, HW-MAGPIG, LLC and MW-MAGPIG, LLC by deed of Hardscrabble, LLC, dated December 11, 2006, and recorded December 13, 2006 in Record Book 1262 at Page 1243 in the Office of the Register of Deeds for Richland County.

TMS#: 20200-02-07

EXHIBIT D

Assignments of Mortgage and ALR

[attached hereto]

Book 2121-43
2016043567 06/14/2016 10:07:26:497 Assignment of Mortgage
Fee: $9.00 County Tax: $0.00 State Tax: $0.00



2016043567 John T. Hopkins II Richland County R.O.D.

[above space for recording information only]

After recording, please return to:
Kilpatrick Townsend & Stockton LLP
214 N. Tryon Street, Suite 2500
Charlotte, NC 28202
Attn: Capital Markets (DS)

MERS MIN: 8000101-0000004106-0

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

ASSIGNMENT OF MORTGAGE, FIXTURE FILING AND SECURITY AGREEMENT

THIS ASSIGNMENT OF MORTGAGE, FIXTURE FILING AND SECURITY AGREEMENT is made by **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.**, a Delaware stock corporation, having a mailing address at MERS Commercial, P.O. Box 2300, Flint, Michigan 45801-2300 ("***Assignor***") to **U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, AS SUCCESSOR-IN-INTEREST TO BANK OF AMERICA, N.A., AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE, FOR BEAR STEARNS COMMERCIAL MORTGAGE SECURITIES INC., COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-TOP26,** having a mailing address of 190 South LaSalle Street, 7th Floor, Chicago, Illinois 60603 ("***Assignee***");

KNOW ALL MEN BY THESE PRESENTS, that in consideration of the sum of TEN DOLLARS ($10.00) lawful money of the United States and other good and valuable consideration, to it in hand paid at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, Assignor has granted, bargained, sold, assigned, transferred and set over, and by these presents does grant, bargain, sell, assign, transfer and set over unto Assignee all right, title and interest, of any kind whatsoever, in and to of Assignor in and to the following:

MORTGAGE, FIXTURE FILING AND SECURITY AGREEMENT made as of March 1, 2007 (as same may have been amended, restated, extended, supplemented or otherwise modified from time to time, herein the "***Mortgage***") by AW-MAGPIG, LLC, HW-MAGPIG, LLC and MW-MAGPIG, LLC, each a Delaware limited liability company, to Assignor, as nominee for Bear Stearns

Commercial Mortgage, Inc., a New York corporation, together with its successors and assigns, and recorded with the Office of the Register of Deeds for Richland County, South Carolina on March 6, 2007, in **Book 1288 at Page 3842.**

TOGETHER WITH the subject promissory note(s), loan documents, obligations and collateral described in said Mortgage, and the moneys due and to grow due thereon with the interest and other amounts accruing thereon, and any and all other related security instruments which secure the indebtedness and/or obligations secured by said Mortgage.

TO HAVE AND TO HOLD the same unto Assignee, its successors and assigns, forever.

[*the remainder of this page is intentionally left blank*]

IN WITNESS WHEREOF, Assignor has caused these presents to be duly executed as of _____, 2016.

ASSIGNOR:

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a Delaware stock corporation

Witness #1

Witness #2

By: _____
Name: Wayne Ventus, Jr. _____
Title: Vice President _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

COUNTY OF _____)

On April _____, 2016, before me, _____, personally appeared _____, who signed the above-referenced instrument in my presence and who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her respective authorized capacity, and that by his/her signature on the instrument that person, to the entity upon behalf of which that person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____ (Notary Seal)
Signature of Notary

CALIFORNIA ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Alameda

On June 8, 2016, before me **Heidi Vleisides**, Notary Public, personally appeared **Wayne Ventus, Jr.**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

HEIDI VLEISIDES
Commission # 2139611
Notary Public - California
Alameda County
My Comm. Expires Feb 5, 2020

Signature _____
Signature of Notary Public

Book 2121-47
2016043568 06/14/2016 10:07:26:580 Asgmt Lease Rent Profit
Fee: $10.00 County Tax: $0.00 State Tax: $0.00
2016043568 John T. Hopkins II Richland County R.O.D.

[above space for recording information only]

After recording, please return to:
Kilpatrick Townsend & Stockton LLP
214 N. Tryon Street, Suite 2500
Charlotte, NC 28202
Attn: Capital Markets (DS)

MERS MIN: 8000101-0000004106-0

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

ASSIGNMENT OF ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF ASSIGNMENT OF LEASES AND RENTS is made by **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.**, a Delaware stock corporation, having a mailing address at MERS Commercial, P.O. Box 2300, Flint, Michigan 45801-2300 (*"Assignor"*) to **U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, AS SUCCESSOR-IN-INTEREST TO BANK OF AMERICA, N.A., AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE, FOR BEAR STEARNS COMMERCIAL MORTGAGE SECURITIES INC., COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-TOP26,** having a mailing address of 190 South LaSalle Street, 7th Floor, Chicago, Illinois 60603 (*"Assignee"*);

KNOW ALL MEN BY THESE PRESENTS, that in consideration of the sum of TEN DOLLARS ($10.00) lawful money of the United States and other good and valuable consideration, to it in hand paid at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, Assignor has granted, bargained, sold, assigned, transferred and set over, and by these presents does grant, bargain, sell, assign, transfer and set over unto Assignee all right, title and interest, of any kind whatsoever, in and to of Assignor in and to the following:

ASSIGNMENT OF LEASES AND RENTS made as of March 1, 2007 (as the same may have been amended, restated, extended, supplemented or otherwise modified form time to time, herein the *"ALR"*), by AW-MAGPIG, LLC, HW-MAGPIG, LLC and MW-MAGPIG, LLC, each a Delaware limited liability

company, to Assignor, as nominee for Bear Stearns Commercial Mortgage, Inc., a New York corporation, together with its successors and assigns, recorded with the Office of the Register of Deeds for Richland County, South Carolina on March 6, 2007 in **Book 1288 at Page 3902**.

TOGETHER WITH the subject promissory note(s), loan documents and obligations described in said ALR, and the moneys due and to grow due thereon with the interest, and any and all other related security instruments which secure the indebtedness and/or obligations secured by said ALR.

TO HAVE AND TO HOLD the same unto Assignee, its successors and assigns, forever.

[*the remainder of this page is intentionally left blank*]

IN WITNESS WHEREOF, Assignor has caused these presents to be duly executed as of _____, 2016.

ASSIGNOR:

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a Delaware stock corporation

Witness #1

Witness #2

By: _____

Name: Wayne Ventus, Jr.

Title: Vice President

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

COUNTY OF Alameda)

On April ____, 2016, before me, _____, personally appeared _____, who signed the above-referenced instrument in my presence and who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her respective authorized capacity, and that by his/her signature on the instrument that person, to the entity upon behalf of which that person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____ (Notary Seal)

Signature of Notary

CALIFORNIA ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Alameda

On June 8, 2016, before me **Heidi Vleisides**, Notary Public, personally appeared **Wayne Ventus, Jr.**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

HEIDI VLEISIDES
Commission # 2139611
Notary Public - California
Alameda County
My Comm. Expires Feb 5, 2020

Signature _____
Signature of Notary Public

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2017-000180

U.S. Bank National Association, as Trustee, as Successor-in-Interest to Bank of America, N.A., as Successor by Merger to Lasalle Bank National Association, as Trustee for the Registered Holders of Bear Stearns Commercial Mortgage Securities, Inc., Commercial Mortgage Pass-Through Certificates, Series 2007-TOP26,	.....	Respondents,
	v.	
AW-MAGPIG, LLC; HW-MAGPIG, LLC; and MW-MAGPIG, LLC,	.....	Appellants
	v.	
Wells Fargo Bank, N.A., and Meridian Capital Group, LLC,		Third-Party Defendants.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all materials proposed to be included by any of the parties and not any other material.

November 7, 2017

Robert D. Dodson
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Columbia, South Carolina 29201
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Attorney for Appellant