

KLEHR | HARRISON | HARVEY | BRANZBURG LLP

INS AND OUTS OF COMMERCIAL MORTGAGE LOAN PURCHASE AND SALE

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INS AND OUTS
OF COMMERCIAL MORTGAGE LOAN
PURCHASE AND SALE

1. What Is Being Assigned?
 - 1.1 Testing Value: See Attachment D
 - 1.1.1 Underlying real estate values and deficiencies - net operating income; feasibility/stability; lease audit; structural audit; environmental audit
 - 1.1.2 Underlying loan value – interest at premium or discount; loan enforceability and defenses; counter claims and lender liability; third party claims; consents to assignment (regulators, permitors)
 - 1.1.3 Assignment of loan value: assignor liabilities and judgments/liens on loan documents; consent requirements and restrictions.
 - 1.2 Documentation diligence and deficiencies; See Attachment A
 - 1.2.1 Is there a note physically in existence? The Note is the best evidence of title to the loan and related documents. Obtain an allonge given by the last identified payee.
 - 1.2.2 Are there documents for the other operative agreements, or if not will assignor indemnify for claims of ownership by third parties?
 - 1.2.3 What non-operative collateral needs to be transferred? Escrows, reserves, township approvals, regulated licenses.
 - 1.2.4 Claims of Assignor against borrower
 - 1.3 Distressed Debt vs. Performing Loan
 - 1.3.1 Allocation of any monies received after agreement execution (and effect on purchaser price)
 - 1.3.2 Allocation/Disposition of Escrow/Reserve Funds (and effect on purchase price)
 - 1.3.3 Likelihood of Borrower Cooperation
 - 1.3.4 Existing Litigation – Foreclosure Action/receiver in place/lender liability claims/substitution of plaintiff/control of litigation/indemnity
2. What Is Being Reserved?
 - 2.1 Indemnities and reimbursement rights: for losses relating to periods prior to the assignment closing; for Assignor costs relating to the loan after closing.

- 2.2 Occurrence based insurance. If claims based, can a tail be purchased to cover assignor
 - 2.3 Rights to documents to the extent necessary to maintain pre-existing protections
 - 2.4 Claims against borrower
 - 2.5 Right to reimbursement for post closing costs relating to assignee's discovery or litigation.
 - 2.6 Opinion reliance
 - 2.7 Third party reports
 - 2.8 Correspondence and emails: Borrower or Assignor confidentiality disclosure against self interest
3. What Is Being Released by Assignee?
- 3.1 Claims against Assignor for defective documents, lender liability, defective origination
 - 3.2 Acknowledgment of "as is" disclaimer and assumption of risk for diligence
4. Costs
- 4.1 Transfer tax
 - 4.2 Permit assignment
 - 4.3 Allocation of pre closing revenue collected post closing
 - 4.4 Pricing a pool with possible delinquencies
 - 4.5 Tax payment allocations at par or discount
5. Conditions
- 5.1 Assignor/assignee cross indemnity
 - 5.2 Borrower estoppel/attornment
 - 5.3 Credit tenant(s) estoppel/SNDA
 - 5.4 Manager estoppel
 - 5.5 Franchisor estoppel/attornment
 - 5.6 No change of conditions: Casualty/condemnation/title failure

- 5.7 Asset inspection; borrower interview
- 5.8 Subordinate/senior creditor
- 6. Representations:
 - 6.1 Generally
 - 6.1.1 Organization
 - 6.1.2 Authority
 - 6.1.3 Due Diligence
 - 6.1.4 Enforceability
 - 6.1.5 No consents or third party rights
 - 6.1.6 No broker
 - 6.1.7 Report as a sale
 - 6.1.8 No OFAC list
 - 6.2 Assignee Representations
 - 6.2.1 Acknowledge future funding liability
 - 6.2.2 Acknowledge existing property liens
 - 6.2.3 Acknowledge diligence defects
 - 6.2.4 Assignor's statement the loan documents are complete as to all material terms
 - 6.2.5 Outstanding balances are as scheduled
 - 6.3 Assignor Representations
 - 6.3.1 No undisclosed material default
 - 6.3.2 Good title free and clear to loan documents
 - 6.3.3 No notice of borrower bankruptcy
 - 6.3.4 Copies of all Event of Default Notices in file
 - 6.3.5 No Notice received by Lender of litigation/casualty/condemnation/violation of law

- 6.3.6 As is : without recourse, representation or warranty, except those that are express
- 6.3.7 Assignee is sophisticated with financial sufficient financial wherewithal for the transaction and also experienced owner and holder of commercial mortgage loans or commercial real property
- 6.3.8 Survival; limitation upon liability
- 6.3.9 Date down representations

7. Covenants

- 7.1 Indemnity
- 7.2 Release of claims
- 7.3 Waiver of defenses
- 7.4 Assignor no change in documents
- 7.5 Assignor no remedies under loans
- 7.6 Assignor continue performance as lender
- 7.7 Assignee due diligence termination; indemnity; insurance
- 7.8 Notices of material change
- 7.9 Post Closing cooperation

8. Remedies

- 8.1 Assignor
 - 8.1.1 Termination, keeps deposit
 - 8.1.2 Pursues damages
- 8.2 Assignee
 - 8.2.1 Specific performance, or if not available, then damages
 - 8.2.2 Termination, return of deposit and out of pocket expenses
 - 8.2.3 Put-back by repurchase after (a) notice of claim of "Material Breach" of Attachment C representations (See Attachment C) meaning, materially impairs the ability to realize on collateral, or costs more than 5% of Scheduled Price to cure, and (b) Assignor's option to cure or replace

- 8.2.3.1 Timing of exercise of option
 - 8.2.3.2 Repurchase price: equals scheduled price or revalued if overpaid at closing, plus costs, plus debt service received by Assignee
 - 8.2.3.3 Return of loan documents: recorded re-assignment, allonge, waiver of cross-default with other loans
 - 8.2.3.4 Conditions to repurchase no MAE, MAC, equivalent title as original assignment, no claims by or through Assignee, free and clear assignment
 - 8.2.3.5 Entire pool put back
 - 8.2.3.6 Indemnity by Assignee as re-assignor, equivalent to Assignor's
 - 8.2.3.7 Liability of Assignor limited to cure or repurchase
- 8.3 Carve-Out for Assignor
- 8.3.1 Misrepresentations known or knowable by Assignor, or contained in materials provided to purchaser by seller or third parties
 - 8.3.2 MAE
 - 8.3.3 Knowledge
 - 8.3.4 No recourse against Assignor for loan defects, deficiencies, loss, lock or failure
9. Title Insurance: Insuring assignment as free and clear; not for underlying loan in hands of assignee
10. Procedure
- 10.1 Pre Negotiation Letter
 - 10.2 Recording of Mortgage Assignment, UCC Assignment
 - 10.3 Notice to parties in interest: borrower/guarantor, insurers, vendors, regulators, tenants
 - 10.4 Settlement Sheet: Pricing from a formula
 - 10.5 Escrow closing and delivery of possession
 - 10.6 Closing Documents: See Attachment B

- 11. Special Issues
 - 11.1 Pool
 - 11.1.1 Cross collateralization
 - 11.1.2 Impaired loan – misrepresentation of MAE
 - 11.1.3 Loan schedule – cherry picking
 - 11.1.3.1 What yield as comparable
 - 11.1.3.2 “Materiality” for unimpaired loan
 - 11.1.3.3 Thresholds: face amount, geography, property type, NOI, credit rating
 - 11.1.4 Assignee right to terminate if more than 25% of loans are impaired
 - 11.1.5 Assignor right to terminate if Assignee rejects 25% of loans as impaired, or more than the minimum of required loans to be assigned
 - 11.1.6 Pool put back
 - 11.2 Participation
 - 11.2.1 Participant consents
 - 11.2.2 Indemnification of Assignee for objectors
 - 11.3 Table Flipping
 - 11.3.1 Payment without interest if forwarded 5 days after receipt
 - 11.3.2 Free assignability, designation rights
 - 11.3.3 Custodian instructions
 - 11.4 Warehousing/financing
 - 11.4.1 Custodianship of Mortgage Loan
 - 11.4.2 Notice to Mortgagor
 - 11.4.3 Mortgagor estoppel
 - 11.4.4 Re-assignments, allonges, in escrow
 - 11.4.5 “Disqualified” mortgages: percentage in arrears, other defaults, foreclosure, other real estate owned.

- 11.4.6 Lockbox
- 11.5 Condominium
 - 11.5.1 Association estoppel
 - 11.5.2 Permitted mortgagee notice for insurance and voting rights
 - 11.5.3 Operating and capital budget
 - 11.5.4 Special Declarant Rights and other Declarant Rights
- 11.6 Regulated Business
 - 11.6.1 Pledge not mortgage
 - 11.6.2 Replace professional managers for easier transition of ownership
 - 11.6.3 Notice to Regulator
- 11.7 LSTA Loan Assignment

ATTACHMENT A

LOAN DOCUMENT SUMMARY

CLIENT: _____

ASSET BEING PURCHASED: _____

A [first] mortgage loan in the amount of \$_____ (the "Loan") from _____ (the "Lender") to _____ (the "Borrower"), made pursuant to that certain Loan Agreement dated as of _____, 200_ between Lender and Borrower. The Loan is evidenced by Borrower's promissory note in the original principal amount of the Loan (the "Note") and is secured, inter alia, by a _____ mortgage and security agreement (the "Mortgage") encumbering the Borrower's interest in the real property located at _____ (the "Mortgaged Property") owned in _____ by Borrower.

[Set forth below is a summary of certain documents (the "Loan Documents") for the above-referenced Loan. This Abstract is intended to be a summary of selected provisions and is not a substitute for a review of the Loan Documents themselves. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Loan Documents.]

A. LOAN TRANSACTION OVERVIEW:

1. Loan:

a. Closing Date:

b. Original Principal Amount:

(1) Initial Advance:

(2) Future Advance Amounts:

c. Interest Rate:

(1) Fixed or floating:

(2) Any changes in stated rate:

(3) Payment in advance or arrears:

(4) Default rate:

(5) Interest Rate Cap Agreement (identify any rate cap agreement and current cap provider):

Does the notional amount equal the loan amount?
Is the interest rate cap agreement in effect through the maturity date of the Loan?

Is the Borrower obligated to replace or extend the interest rate cap agreement with the same or a substantially similar interest rate cap agreement upon and throughout any extension periods?

If the interest rate cap agreement terminates for any reason, is the Borrower required to replace the interest rate cap agreement with a substantially similar interest rate cap agreement?

The strike rate under the interest rate cap agreement is _____%.

Have the rights under the interest rate cap agreement been collaterally assigned to the Lender?

- d. Borrower:
- e. Lender:
 - (1) Originating Lender:
 - (2) Current Holder of A-Note:
 - (3) Current Holder of B-Note:
 - (4) Master Servicer:
 - (5) Special Servicer:
 - (6) Rating Agencies that Rated Securitization (if any):
- f. Is the Loan participated?:
 - (1) List each participant and percentage interest:
 - (2) Note any consent/notice requirements:
 - (3) Summarize transferability requirements:
- g. Scheduled Maturity Date:
- h. Extension Options:
- i. Prepayment/Defeasance:
 - (1) Lock-out Period:

- (2) Date open to defeasance:
- (3) Date Open to Prepayment:
- (4) Prepayment Premium:
- j. Recourse:
- 2. List Loan Documents:
- 3. Mezzanine Loan:
- 4. Describe Any Preferred Equity:
- 5. Separate Servicing Agreement:
 - a. Identify any Separate Servicing Agreement:
 - b. Is this agreement a securitization style pooling and servicing agreement, an interim servicing agreement or a servicing agreement particular to the Co-Lender interests?
 - c. Identify any material discrepancies with the Co-Lender Agreement:
 - d. Identify any other material issues:

B. OWNERSHIP STRUCTURE

- 1. Borrower:
 - a. Type of Entity:
 - b. State of Formation/Organization:
 - c. Management Structure (e.g., management by members, managing member or non-member manager(s)):
 - d. Independent Director(s):
 - e. Is Mortgage Borrower an SPE:
 - f. If Mortgage Borrower is a limited partnership, provide for the general partner in response to this question f. the same information provided for Mortgage Borrower pursuant to questions a.-e:
 - g. Other Issues:
- 2. Does the Borrower own fee simple title to the Mortgaged Property?

3. Attach Borrower's Organizational Chart (See Exhibit A):
4. Lien Searches:
 - a. Were lien searches from Loan closing obtained and reviewed? Note any issues:
 - b. Were updates of closing lien searches and additional lien searches, if necessary, ordered? Note any issues:

C. MORTGAGED PROPERTY/TITLE INSURANCE/ZONING

1. Location, address/name of Mortgaged Property:
2. Description of Mortgaged Property (e.g., 200 unit multifamily, multi-tenant office, etc.):
3. Note general physical condition of Mortgaged Property:
4. Confirm environmental report delivered at closing:
5. Is there a lender's policy of title insurance with respect to the Mortgage:
 - a. Name and address of title insurance company:
 - b. Policy Number:
 - c. Amount of Insurance (must be at least amount of all mortgage loans – when fully advanced):
6. Identify any title issues (See title review memo at Doc # _____ for detailed review):
7. Identify any zoning comfort in the file (e.g., zoning report, zoning letters, zoning endorsements to the policy of title insurance):
 - a. Note whether the Mortgaged Property is conforming and if non-conforming identify any non-conformities and whether they are legal or not:
 - b. If non-conformities exist, note restoration provisions under the zoning code, whether the Borrower is required to have law and ordinance insurance and the downside risk in the case of fire or other casualty together with any ameliorating factors:
 - c. Disclose any known zoning, building code or fire or health code violations:
 - d. Have certificates of occupancy been issued?

e. Describe any other zoning issues:

D. CROSS DEFAULT (identify any cross defaulted obligations):

E. CROSS COLLATERALIZATION (identify any cross collateralized obligations):

F. GROUND LEASE PROVISIONS (identify any ground lease and complete ground lease questionnaire attached as Exhibit C hereto):

G. TAXES/INSURANCE/ESCROWS:

1. Real estate tax escrow:

2. Other tax(es) escrow:

3. Insurance escrow:

4. Insurance (Generally):

a. Confirm that Lender is additional insured and loss payee and receives 30 days notice prior to cancellation:

b. Confirm insurance required to be prepaid and note any restrictions/prohibition on Borrower financing the insurance premiums:

c. Confirm Borrower required to maintain standard liability, casualty and other coverages:

(1) Special Form:

(2) Flood insurance:

(3) Earthquake:

(4) Business income/interruption:

(5) Boiler and machinery:

(6) Builder's risk:

(7) Commercial general liability:

(8) Worker's compensation:

(9) Environmental Liability:

(10) Catch all:

- d. Confirm Lender right to force place if necessary:
- 5. Review and briefly describe casualty and condemnation provisions under the Loan Documents:
 - a. Insurance: Identify circumstances in which Borrower is entitled to receive insurance proceeds and the mechanics of distribution of such proceeds. Identify circumstances in which the insurance proceeds are applied to the Loan.
 - b. Condemnation: Identify circumstances Borrower is entitled to receive insurance proceeds and the mechanics of distribution of such proceeds. Identify circumstances in which the condemnation proceeds are applied to the Loan.
- 6. Identify any other escrows:
 - a. Replacement reserve account:
 - b. Tenant improvements/Leasing commission reserve account:
 - c. Other(s):

H. CASH MANAGEMENT: Describe the lock box features of the Loan, including, type of accounts, sweeping features and the party (i.e., Borrower, tenant or manager) that deposits into lock box account.

I. TRANSFER PROVISIONS/DUE ON SALE ENCUMBRANCE:

- 1. Describe transfer restrictions contained in the Loan Documents upon the Mortgaged Property and the direct and indirect equity interests in Borrower. Note particularly Lender consent rights and the standards, if any provided therefore (e.g., sole and absolute discretion):
- 2. Confirm that transfer restrictions prohibit pledging, granting a security interest in or lien upon, mortgaging or otherwise encumbering the Mortgaged Property or any direct or indirect equity interests in Borrower:
- 3. Confirm the Loan Documents restrict liens upon the Mortgaged Property and note any grace periods for discharging the same:
- 4. Identify any provision permitting Borrower or any of its direct or indirect equity owners to obtain subordinate financing, mezzanine financing or preferred equity:

J. GUARANTEES AND ENVIRONMENTAL INDEMNITEES:

- 1. Guaranties:

- a. Name(s) and address(es) of Guarantor(s):
 - b. Summarize guaranteed obligations:
 - c. Describe any limitations on liability or other issues:
2. Environmental Indemnity Agreement:
 - a. Name(s) and address(es) of Indemnitor(s):
 - b. Identify any disclosed environmental problems:
 - c. Identify and atypical provisions that would limit the extent or time of indemnitors liability:
 - d. Identify any other issues:
 3. Identify any security for any guaranty or any environmental indemnity:

K. PROPERTY MANAGER:

1. Name and Address of Manager of Mortgaged Property:
2. Manager's compensation:
3. Confirm Manager's compensation is subordinate to the Loan (identify any subordination agreement):
4. (a) Confirm Lender's right to terminate the Manager, (b) specify the circumstance of such right (e.g., upon Event of Default), and (c) confirm Lender's right to approve any termination, amendment or execution of management contract for Mortgaged Property:

L. LEASES:

1. Rent roll (attach most recent current rent roll as Exhibit B):
2. Master Lease(s):
3. Major Leases (note whether reviewed):
4. List estoppels obtained and note any issues with them. Note the date of each estoppel (e.g., whether or not it is current or was obtained in connection with Loan closing):
5. Describe Lender's lease approval rights under the Loan Documents:

M. OTHER DOCUMENTS AND OTHER ISSUES:

1. Review organizational documents, legal opinions, and other materials in the file and identify any material documents and describe any issues raised by any of the foregoing:
2. Identify any other issues (including any and all issues raised by any other due diligence materials in the file (e.g., disclosed environmental matters, disclosed litigation matters, and material repair or renovation requirements or rights):
3. Confirm UCC financing statements were filed at closing:
4. Note any required consents or notices under the Loan Documents:

EXHIBIT A
ORGANIZATIONAL CHART

[See attached]

EXHIBIT B
RENT ROLL
[See attached]

EXHIBIT C

GROUND LEASE QUESTIONNAIRE

- | <u>Yes</u> | <u>No</u> | |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | 1. <u>Fee Encumbered.</u> The Loan is also secured by a mortgage on the fee interest in the Mortgaged Property, and the fee mortgage does not by its terms provide that it will be subordinated to the lien of any other mortgage or other lien upon such fee interest, and upon the occurrence of an event of default under the terms of the mortgage by the Borrower, the Lender has the right to foreclose or otherwise exercise its rights with respect to the fee interest within a commercially reasonable time. |
| <input type="checkbox"/> | <input type="checkbox"/> | 2. <u>Recording.</u> The ground lease or a memorandum thereof has been duly recorded, the ground lease permits the interest of the lessee thereunder to be encumbered by a leasehold mortgage, and there has not been a material change in the terms of the ground lease since its recordation, with the exception of written instruments which are part of the related mortgaged file. |
| <input type="checkbox"/> | <input type="checkbox"/> | 3. <u>No Senior Liens.</u> Except as indicated in the related title insurance policy or opinion of title, the ground lessee's interest in the ground lease is not subject to any liens or encumbrances superior to, or of equal priority with, the Mortgage. |
| <input type="checkbox"/> | <input type="checkbox"/> | 4. <u>Ground Lease Assignable.</u> The Borrower's interest in the ground lease is assignable to the Lender upon notice to, but without the consent of, the ground lessor (or, if any such consent is required, it has been obtained prior to the closing date) or, in the event that it is so assigned, it is further assignable by the Lender and its successors and assigns upon notice to, but without a need to obtain the consent of, the ground lessor. |
| <input type="checkbox"/> | <input type="checkbox"/> | 5. <u>Default.</u> As of _____, the ground lease is in full force and effect and no default has occurred under the ground lease and there is no existing condition which, but for the passage of time or the giving of notice or both, would result in a default under the terms of the ground lease. |
| <input type="checkbox"/> | <input type="checkbox"/> | 6. <u>Notice.</u> The ground lease requires the ground lessor to give notice of any default by the ground lessee to the Lender; or the ground lease, or an estoppel letter received by the Lender from the ground lessor further provides that notice of termination given under the ground lease is not effective against the Lender unless a copy of the notice has been delivered to the Lender in the manner described in such ground lease. |
| <input type="checkbox"/> | <input type="checkbox"/> | 7. <u>Cure.</u> The Lender is permitted a reasonable opportunity (including, where necessary, sufficient time to gain possession of the interest of the lessee under the ground lease) to cure any default under the ground lease, which is curable after the receipt of notice of any default before the ground lessor may |

terminate the ground lease.

- 8. Term. The ground lease has a term which extends not less than: (i) 20 years beyond the maturity date of the Loan; or (ii) 10 years beyond the maturity date of the Loan if the Loan: (a) fully amortizes by its maturity date; or (b) has a maturity date by which the Loan fully amortizes but has an anticipated repayment date on which the Borrower is expected and entitled to repay the Loan to avoid an increase of the interest rate after the anticipated repayment date).
- 9. New Lease. The ground lease requires the ground lessor to enter into a new ground lease with the Lender upon termination of the ground lease for any reason, including rejection of the ground lease in a bankruptcy proceeding, provided that the Lender cures any defaults which are reasonably susceptible to being cured by the Lender.
- 10. Insurance Proceeds. Under the terms of the ground lease and the Mortgage, taken together, any related insurance proceeds will be applied either to the repair or restoration of all or part of the Mortgaged Property, with the Lender or a trustee appointed by it having the right to hold and disburse the insurance proceeds as the repair or restoration progresses, or to the payment of the outstanding principal balance of the Loan together with any accrued interest thereon.
- 11. Subleasing. The ground lease does not impose restrictions on subletting that would be viewed as commercially unreasonable by a prudent commercial mortgage lender.
- 12. Amendments. The ground lease provides that no amendments, changes, cancellations, alterations, surrender or modifications may be made to the ground lease without the consent of the Lender.
- 13. Transfer Notices. To the extent required by any Loan Documents, or the ground lease, or the ground lessor estoppel certificate, all notices of the transfer of the Loan have been delivered or will be delivered contemporaneously with the closing.
- 14. Other Mortgages. The fee interest in the ground lease is not encumbered by a mortgage, and pursuant to the terms of the ground lease, cannot be encumbered by a mortgage.

ATTACHMENT B

1. Delivery of the Note endorsed substantially in the form of Exhibit [] attached hereto; provided, however, that the words "without recourse or warranty" in the endorsement shall not be construed to limit Seller's obligations under the Agreement and provided, further, that if the original of the Note is not in Seller's possession, Seller may deliver a true, correct and complete copy of the Note together with a Lost Note Certificate and Indemnity substantially in the form of Exhibit [] attached hereto;

2. Delivery of the Mortgage, or if the original Mortgage is not in the possession of Seller, a true, correct and complete copy thereof certified by the applicable recording office; and an executed and acknowledged assignment and assumption of the Mortgage prepared by Seller and in the form of Exhibit [] attached hereto (the "Mortgage Assignment"), with such modifications as shall be customary and appropriate under local laws for recording in the land records in the jurisdiction in which the Mortgaged Property is located;

3. Delivery of the original assignment of leases and rents related to a Loan (the "Assignment of L/R"), or if the original Assignment of L/R is not in Seller's possession, a true, correct and complete copy of the Assignment of L/R certified by the applicable recording office) with respect to a Loan for which an assignment of leases and rents was executed separate from the Mortgage, and an executed and acknowledged assignment and assumption of such Assignment of L/R prepared by Seller and substantially in the form of Exhibit [] attached hereto (the "Lease Assignment"), with such modifications as shall be customary and appropriate under local laws for recording in the land records in the jurisdiction in which the Mortgaged Property is located;

4. Delivery of the other original Loan Documents (or if the other original Loan Documents are not available, true, correct and complete copies thereof), and an executed and acknowledged assignment and assumption of the other Loan Documents by Seller in the form of Exhibit [] attached hereto (the "Loan Document Assignment");

5. Delivery of any copies of UCC financing statements related to any collateral that constitutes fixtures or personal property, and an executed assignment of such UCC financing statements prepared by Seller;

6. Delivery of an executed instruction letter addressed to the servicer of the Loan in the form of Exhibit [] attached hereto (the "Notice to Servicer"); and

7. Delivery of the Loan File.¹

8. Loan Specific: [OPEN]

¹ The definition of the "Loan File" should be set forth in the Loan purchase and sale agreement.

ATTACHMENT C²

1. Immediately prior to the sale, transfer and assignment of the Loan to Purchaser, Seller had good and marketable title to, and was the sole owner of, the Loan;

2. Seller is transferring the Loan free and clear of any and all liens, pledges, charges or security interests of any nature encumbering the Loan, and none of the Note, the Mortgage or any other Loan Documents prohibit the transfer;

3. The Note and other Loan Documents executed by the Borrower in connection with the Loan are valid and binding obligations of the Borrower (subject to any non-recourse provisions therein and any state anti-deficiency legislation), enforceable in accordance with their respective terms, except as the enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditor's rights generally, or by general principles of equity (regardless of whether the enforcement is considered in a proceeding in equity or at law), and any Lost Note Affidavit included in the Loan File in lieu of the original Note does not impair the ability of the holder thereof to enforce the terms of the Note;

4. The Assignment of L/R, or, if none, the assignment of leases and rents contained in the Mortgage, creates a valid, collateral or first priority assignment of, or a valid first priority security interest in, and the right to receive all payments due under, the Leases, and no other person owns any interest therein superior to or of equal priority with the interest created under the such assignment, subject to applicable bankruptcy, insolvency, reorganization, moratorium, and other laws affecting the enforcement of creditors' rights generally, and by the application of the rules of equity;

5. Since the date of the Note, the Loan has not been modified, altered, satisfied, canceled, subordinated or rescinded, except, in each of the foregoing instances, by written instruments that are a part of the Loan File, and, if required, recorded. in the applicable public recording office if necessary to maintain the priority of the lien of the related mortgage and security agreements, and delivered to Purchaser, and no material portion of the Mortgaged Property has been released from the lien of the Mortgage in any manner which materially and adversely affects the value of the Loan or materially interferes with the security intended to be provided by the mortgage, and none of the related mortgages contain terms which provide for release of any portion of the Mortgaged Property from the lien of the mortgage in any manner which materially and adversely affects the security provided by the Mortgaged Property;

6. The Mortgage is a valid first lien on the Mortgaged Property (subject to the matters described in Paragraph 7 below), and the Mortgaged Property is free and clear of any mechanics' and materialmen's liens which are prior to or equal with the lien of the Mortgage, except those which are insured against by a lender's title insurance policy (as described in Paragraph 7 below);

7. The lien of the Mortgage as a first priority lien in the outstanding principal amount of the Loan (as set forth on the Loan Schedule) after all advances of principal is insured by an ALTA lender's title insurance policy (or a binding commitment therefor) or its equivalent as adopted in the jurisdiction in which the Mortgage Property is located (the "Title Policy"), insuring Seller, its

² Various capitalized terms contained herein must be defined in the Loan purchase and sale agreement.

successors and assigns, subject only to: (a) the lien of current real property taxes, ground rents, water charges, sewer rents and assessments not-yet due and payable; (b) covenants, conditions and restrictions, rights of way, easements and other matters of public record, none of which, individually or in the aggregate, materially interferes with the current use of the Mortgaged Property or the security intended to be provided by the Mortgage or with the Borrower's ability to pay its obligations when they become due or materially and adversely affects the value of the Mortgaged Property; and (c) the exclusions and exceptions (general and specific) set forth in the Title Policy, all of which are generally acceptable to reasonably prudent mortgage lenders; the original holder of the Mortgage, and/or its successor or assigns, are the sole named insureds under the Title Policy; the Title Policy is assignable to Purchaser without the consent of or any notification to the insurer, and is now in full force and effect and will remain so upon the consummation of the transactions contemplated by this Agreement; no claims have been made under the Title Policy; and Seller has not done anything, by act or omission, and Seller has no knowledge of any matter, which would impair or diminish the coverage of the Title Policy;

8. The proceeds of the Loan have been fully disbursed and there is no requirement for future advances under the Loan Documents and Seller covenants that it will not make any future advances under the Loan Documents to the Borrower;

9. Seller has received no notice of any proceeding pending, nor to Seller's knowledge, is any proceeding threatened, for the total or partial condemnation of all or any material portion of the Mortgaged Property, and, to Seller's knowledge, the Mortgaged Property is free and clear of any material damage that would affect materially and adversely the value of the Mortgaged Property as security for the Loan;

10. Except as indicated on Exhibit [] attached hereto and made a part hereof, the Borrower has represented [or each Tenant under a Lease has covenanted that,] as of the date of the Note, and to Seller's knowledge, the Borrower [and each Tenant] was in possession of all material licenses, permits and other authorizations necessary and required by all applicable laws for the conduct of its business and all the licenses, permits and authorizations were valid and in full force and effect;

11. The Loan does not have a shared appreciation feature, other contingent interest feature or provide for hyper-amortization, a negative amortization feature, or any negative amortization which is continuing as of or arises after the Closing Date;

12. The Loan is a whole loan and no other party holds a participation interest in the Loan;

13. The interest rate (exclusive of any default interest, late charges, prepayment premiums or defeasance deposits) on the Loan complied as of the date of the Note with, or the Loan is exempt from, applicable state or federal laws, regulations and other requirements pertaining to usury; any and all other requirements of any federal, state or local laws, including, without limitation, truth-in-lending, real estate settlement procedures, equal credit opportunity or disclosure laws, applicable to the Loan have been complied with as of the date of the Note;

14. All taxes and governmental assessments which would be a lien on the Mortgaged Property and that prior to the Closing Date became due and owing in respect of the Mortgaged

Property have been paid, or an escrow of funds in an amount sufficient to cover the payments has been established [or each Tenant under a Lease is required to pay all the taxes, assessments or other charges];

15. All escrow deposits (other than escrow reserves for funding construction) and payments required pursuant to the Loan are in the possession, or under the control, of Seller or its agent and all amounts required to be deposited by the Borrower under the Loan Documents as of the date of this Agreement have been deposited and all the escrows and deposits [have been] [will be] conveyed by Seller to Purchaser and identified as such with appropriate detail;

16. As of the date of this Agreement, the Mortgaged Property is insured by a so-called "special form" property insurance policy in an amount not less than the lesser of (a) the outstanding principal balance of the Loan, and (b) the replacement cost of the Mortgaged Property, and in all events in the amount necessary to avoid the operation of any coinsurance provisions with respect to the Mortgaged Property; if a Tenant may, pursuant to the terms of its Lease, offset rent in the event of any casualty, the Mortgage or other Loan Documents provide that the Borrower shall maintain business income insurance (or loss of rents insurance) and commercial general liability insurance in amounts generally required by institutional lenders for similar properties; all premiums on the insurance policies required to be paid as of the date of this Agreement have been paid; the insurance policies require prior notice to the insured and to the mortgagee of termination or cancellation, and no such notice has been received as of the date of this Agreement; the Mortgage or other Loan Documents obligate the Borrower to maintain so-called "special form" property insurance and, at the Borrower's failure to do so, authorizes the mortgagee to maintain the insurance at the Borrower's cost and expense and to seek reimbursement therefor from the Borrower [, provided, however, the obligation of the Borrower pursuant to the Mortgage or other Loan Documents to maintain insurance is waived so long as the Tenant under the Lease is complying with the requirements through a program of Tenant self-insurance or the Tenant has secured third party insurance affording the coverage];

17. The Mortgage provides that any insurance proceeds in respect of a casualty, other than business income/rental income insurance, and any condemnation awards (or condemnation proceeds) or insurance proceeds, will be applied in accordance with the terms of the applicable Lease either to the repair or restoration of the Mortgaged Property or to the repayment of the outstanding principal balance of the Loan, except in the instance of any claims paid pursuant to any special risk casualty/condemnation insurance policies under which the lender is the "named insured" (as distinguished from a "loss payee"), in which case the proceeds may be applied at the discretion of the holder of the Note;

18. (a) To Seller's knowledge, there is no material default, breach, violation or event of acceleration existing under the Mortgage or the Note, and no event (other than payments due but not yet delinquent) which, with the passage of time or with notice and the expiration of any grace or cure period, would constitute a material default, breach, violation or event of acceleration; and (b) Seller has not waived in writing any material default, breach, violation or event of acceleration of any of the foregoing, and, pursuant to the terms of the Mortgage or the Note, no person or party other than the holder of the Note may declare any event of default or accelerate the related indebtedness under either of the Mortgage or Note;

19. No monthly payment on the Loan has been more than thirty (30) days delinquent from the later of one (1) year prior to the Closing Date, the date of the Note or, if applicable, the date of acquisition by Seller of the Loan, through the Closing Date;

20. The Mortgage contains customary and enforceable provisions such as to render the rights and remedies of the holder thereof adequate for the realization against the Mortgaged Property of the benefits of the security, including realization by judicial or, if applicable, nonjudicial foreclosure, subject to the effects of bankruptcy or other law affecting the right of creditors generally and the application of principles of equity, and there is no exemption available to the Borrower which would interfere with the right to foreclose;

21. One or more environmental site assessments were performed by an environmental consulting firm independent of Seller and Seller's affiliates with respect to the Mortgaged Property during the twelve (12) months prior to the date of the Note and Seller, having made no independent inquiry other than to review the reports prepared in connection with the assessments referred to herein, has no knowledge of any material and adverse environmental condition or circumstance affecting the Mortgaged Property that was not disclosed in the report(s); in each case where the report disclosed a condition, either: (a) the recommended action has been taken, including implementation of an O&M agreement; (b) funds sufficient to pay for the recommended action have been escrowed; or (c) the Tenant has the obligation to remedy the condition;

22. The Mortgage, Note or other Loan Documents contain provisions for the acceleration of the payment of the unpaid principal balance of the Loan if, without complying with the requirements of the Mortgage or other Loan Documents, as applicable, the Mortgaged Property, or any controlling interest therein, is directly or indirectly transferred or sold, or is encumbered in connection with subordinate financing (other than any existing, subordinate debt);

23. If transferred to a REMIC (within the meaning of Section 860D of the Internal Revenue Code of 1986, as amended ("Code")) on the "start-up day" in exchange for "regular interests" or "residual interests" (as such terms are defined in the Code) in the REMIC, the Loan would be a "qualified mortgage" within the meaning of Section [OPEN – VERIFY: 860G(a)(3)] of the Code;

24. As of _____, the Loan Schedule is true and correct in all material respects;

25. Prepayment premiums and yield maintenance charges payable with respect to the Loan, if any, constitute "customary prepayment penalties" within the meaning of Treasury Regulations Section 1.860G-1(b)(2);

26. The Loan File contains an appraisal of the Mortgaged Property, which appraisal is signed by a qualified appraiser who, to Seller's knowledge, had no interest, direct or indirect, in the Mortgaged Property or in any loan made on the security thereof, and whose compensation is not affected by the approval or disapproval of the Loan, and the appraisal and appraiser both satisfy the requirements of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and the regulations promulgated thereunder, all as in effect on the date of the Note;

27. None of the material improvements which were included for the purposes of determining the appraised value of the Mortgaged Property on the date of the Note lies outside of

the boundaries and building restriction lines of the property (except if the Mortgaged Property is a legal non-conforming use and/or except for immaterial encroachments or where the same is covered by the Title Policy), and no improvements on adjoining properties materially encroach upon the Mortgaged Property or such encroachment upon the Mortgaged Property is covered by the Title Policy;

28. The Borrower has covenanted in the Loan Documents [or the Tenant has covenanted in its Lease] to maintain the Mortgaged Property in compliance with all applicable laws, zoning, ordinances, rules, covenants and restrictions affecting the construction, occupancy, use and operation of the Mortgaged Property, and the originator of the Loan performed the type of due diligence in connection with the origination of the Loan customarily performed by prudent institutional commercial mortgage lenders or lenders on credit leased properties with respect to the foregoing matters; Seller has received no notice of any material violation of any applicable laws, zoning ordinances, rules, covenants or restrictions affecting the construction, occupancy, use or operation of the Mortgaged Property;

29. Borrower is an entity which has represented and covenanted in the Loan Documents that so long as the Loan is outstanding it will be a single-purpose entity. For this purpose, "single-purpose entity" shall mean a person, other than an individual, which does not engage in any business unrelated to the Mortgaged Property and its financing, does not have any material assets other than those related to its interest in the Mortgaged Property or its financing, or any indebtedness other than as permitted by the Mortgage or the other documents in the Loan File, and the Borrower has covenanted in the Loan Documents that it will maintain its own books and records separate and apart from any other person, and holds itself out as being a legal entity separate and apart from any other person;

30. The Loan complied, in all material respects, with all of the terms, conditions and requirements of Seller's applicable underwriting standards in effect at the time of Seller's origination or acquisition of the Loan;

31. Seller has no knowledge nor has it received any notice that Borrower is a debtor in any state or federal bankruptcy or insolvency proceeding;

32. To Seller's knowledge, as of the Closing Date, there is no right of rescission, offset, abatement, diminution, defense or counterclaim to the Loan (including the defense of usury), nor will the operation of any of the terms of the Note or the Mortgage, or the exercise of any rights thereunder, render the Note or the Mortgage unenforceable, in whole or in part (excluding provisions relating to default interest, yield maintenance charges, prepayment premiums or defeasance deposits), or subject to any right of rescission, offset, abatement, diminution, valid defense or counterclaim (including the defense of usury or the violation of any applicable disclosure or consumer credit laws), except in any such case as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally or by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law), and no such right of rescission, offset, abatement, diminution, defense or counterclaim has been asserted with respect thereto;

33. If the Mortgage is a deed of trust, a trustee, duly qualified under applicable law to serve as such, has been properly designated, and currently so serves and is named in the Mortgage or

has been substituted in accordance with applicable law, and no fees or expenses are, or will become, payable to the trustee under the Mortgage, except in connection with a trustee's sale after default by the Borrower or in connection with the release of the Mortgaged Property or related security for the Loan following the payment of the Loan in full;

34. The improvements located on the Mortgaged Property are either not located in a federally designated special flood hazard area or the Borrower [or Tenant] is required to maintain or the mortgagee maintains, flood insurance with respect to the improvements [or the Tenant has no right to abate, offset rent, or terminate its Lease in the event of flood];

35. The Borrower is the owner and holder of the landlord's interest under the Lease and the Mortgage or Assignment of L/R, upon an event of default, provides for the appointment of a receiver for rents (in accordance with applicable law) or allows the mortgagee (in accordance with applicable law) to enter into possession to collect rent or provides for rents to be paid directly to mortgagee;

36. The Note is not secured by any collateral that is not being transferred hereunder;

37. If the Loan is cross-collateralized, it is cross-collateralized only with one or more other loans being simultaneously transferred to Purchaser [hereunder];

38. The origination (or acquisition, as the case may be), servicing and collection practices used with respect to the Loan by Seller and, to Seller's knowledge, by any prior holder of the Loan, have been in all respects legal, proper and prudent in all material respects and have met customary industry standards;

39. No advance of funds has been made other than pursuant to the Loan Documents, directly or indirectly, by Seller to the Borrower and, to Seller's knowledge, no funds have been received from any person other than the Borrower, for or on account of payments due on the Note or the related mortgage (provided, however, rental payments or similar payments made by the Tenant(s) under the Lease(s) directly to Seller (or its loan servicer or agent) shall not be deemed a breach of this representation);

40. UCC financing statements have been filed and/or recorded in all places necessary to perfect a valid security interest in all material furniture, fixtures and equipment owned by the Borrower and located on the Mortgaged Property and for which perfection is accomplished by the filing of a UCC financing statement, and the Mortgage, security agreements, chattel mortgages or equivalent documents related to and delivered in connection with the Loan establish and create a valid and enforceable first lien and first priority security interest on the material furniture, fixtures and equipment except as enforceability may be limited by bankruptcy or other laws affecting creditor's rights generally or by the application of the rules of equity;

41. To Seller's knowledge, the Borrower has no indebtedness for borrowed money secured by a mortgage encumbering the Mortgaged Property other than the Loan. The Mortgage provides that the Borrower may not incur additional debt secured by the Mortgaged Property without (a) the mortgagee's prior written consent; or (b) written confirmation from each rating agency that the additional debt will not result in a withdrawal or downgrade of any ratings assigned to any securities secured by the Loan;

42. As of the Closing Date, the aggregate principal amount of the Loan is as set forth in the Loan Schedule;

43. The Loan has an interest rate of at least _____% per annum;

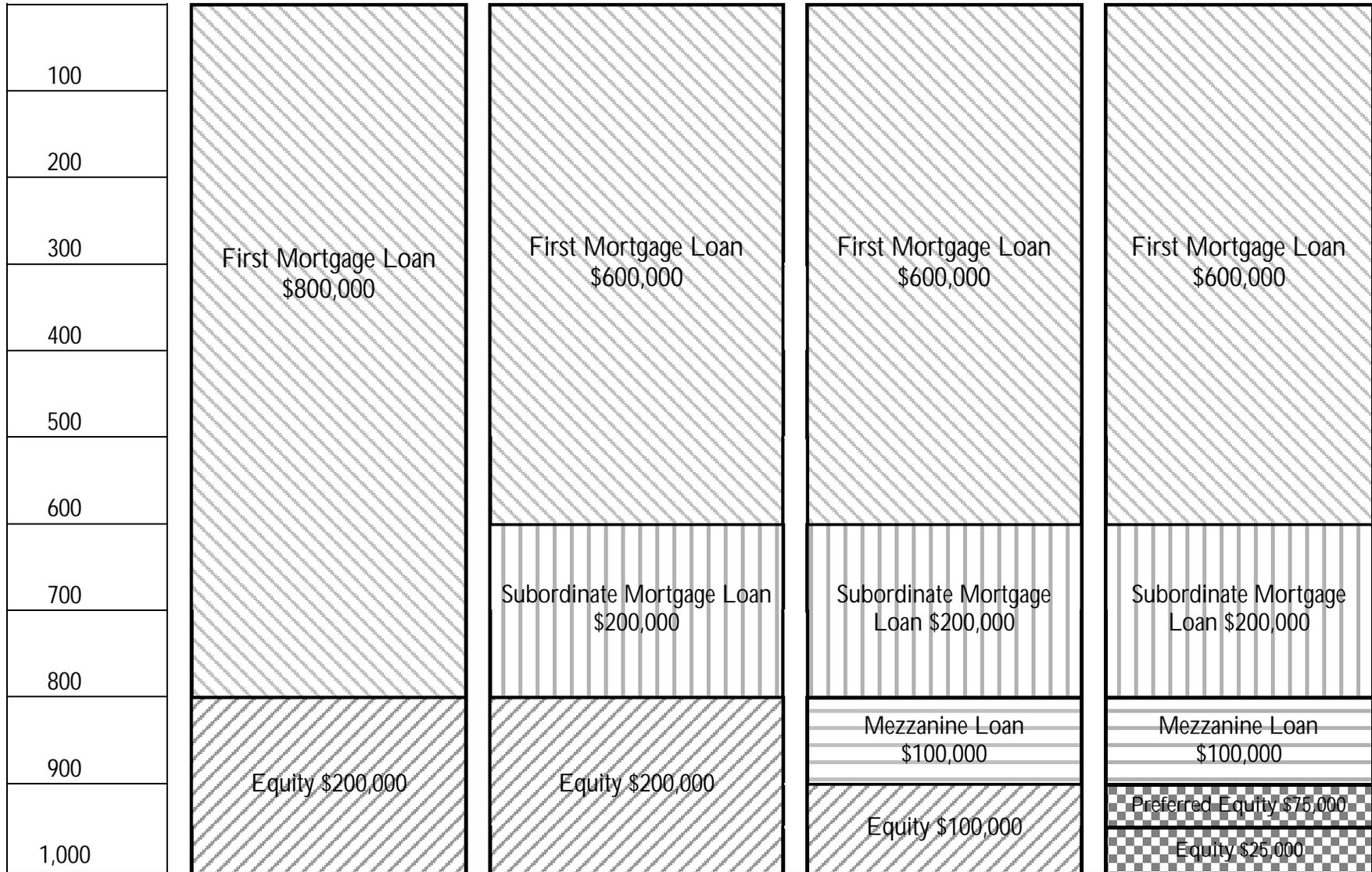
44. The Loan is non-recourse to the Borrower (or its principals) except for certain circumstances including fraud, misappropriation, material misrepresentation and other matters expressly set forth in the Loan Documents;

45. Seller (or the Loan originator) has inspected or caused to be inspected the Mortgaged Property within twelve (12) months of origination;

46. Except as set forth in Schedule [] to the Agreement, the Loan is not secured in whole or in part by a ground lease; and

47. To Seller's knowledge, there are no pending actions, suits or proceedings by or before any court or governmental authority against or affecting the Borrower or the Mortgaged Property that, it determined adversely to the Borrower, would materially and adversely affect the ability of the Borrower to pay principal, interest or any other amount due under the Loan.

ATTACHMENT D
 COST VALUE
 \$1,000,000



PROPERTY APPRAISED VALUE
\$500,000

100	NOTE A	NOTE A	NOTE A	NOTE A
200	First Mortgage Loan \$800,000	First Mortgage Loan \$600,000	First Mortgage Loan \$600,000	First Mortgage Loan \$600,000
300				
400				
500				
600				
700	Equity \$200,000	Subordinate Mortgage Loan \$200,000	Subordinate Mortgage Loan \$200,000	Subordinate Mortgage Loan \$200,000
800				
900				
1,000	Equity \$100,000	Preferred Equity \$75,000	Equity \$25,000	

LOAN SALE VALUE
\$300,000

100	First Mortgage Loan \$800,000	First Mortgage Loan \$600,000	First Mortgage Loan \$600,000	First Mortgage Loan \$600,000
200				
300				
400	Discount – present value operating expenses, illiquidity, devaluation, enforceability and lender liability	Discount – present value operating expenses, illiquidity, devaluation, enforceability and lender liability	Discount – present value operating expenses, illiquidity, devaluation, enforceability and lender liability	Discount – present value operating expenses, illiquidity, devaluation, enforceability and lender liability
500				
600	Equity \$200,000	Subordinate Mortgage Loan \$200,000	Subordinate Mortgage Loan \$200,000	Subordinate Mortgage Loan \$200,000
700				
800				
900	Equity \$200,000	Equity \$200,000	Mezzanine Loan \$100,000	Mezzanine Loan \$100,000
1,000			Equity \$100,000	Preferred Equity \$75,000 Equity \$25,000