



January 19, 2011

The Honorable Timothy Geithner
Secretary, U.S. Department of the Treasury, and Chairman,
Financial Stability Oversight Council
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Ben S. Bernanke
Chairman, Board of Governors of
the Federal Reserve System
2001 C Street NW
Washington, DC 20001

The Honorable Sheila C. Bair
Chairman
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

The Honorable Mary L. Schapiro
Chairman
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

The Honorable John Walsh
Acting Comptroller of the Currency
Office of the Comptroller of the Currency
250 E Street SW
Washington, DC 20219

Re: Model Representations and Warranties for Commercial Mortgages

Dear Mssrs. and Madams:

On behalf of the Commercial Real Estate (CRE) Finance Council, we are pleased to present you with the results of an extensive project that has been undertaken by our members to encapsulate the consensus view of all constituents in our market on representations and warranties for the sale of commercial mortgages intended for securitization. Our Model Representations and Warranties initiative is the third in a series of similar “best practices” projects undertaken by our members, and follows on the Principles-Based Underwriting Framework and the updates and modifications to “Annex A” initial disclosures regarding underlying assets, both of which were forwarded to you on December 15, 2010.

The CRE Finance Council is the collective voice of the entire \$3.5 trillion commercial real estate finance market, including portfolio and commercial mortgage-backed securities (“CMBS”) lenders; issuers of CMBS; loan and bond investors such as insurance companies, pension funds, money managers, and servicers; as well as rating agencies; accounting and law firms; and other service providers. Our principal missions include setting market standards and providing market information and education to all constituencies and at all levels (including market participants, legislators, and regulators) on pertinent issues. The CRE Finance Council has

worked closely with policymakers in an effort to ensure that legislative and regulatory actions do not negate or counteract economic recovery efforts in the CRE finance market.

Although the CMBS market is very different from other asset classes and already is seeing positive developments as previously noted in our December letter, the CRE Finance Council remains committed to building on existing safeguards to promote certainty and confidence that will support a timely market resurgence in the short term and a sound and sustainable market in the long term. Accordingly, we continue to work with market participants to develop mutually agreed upon improvements in CRE finance industry standards. The enclosed Model Representations and Warranties are further evidence of this commitment and effort.

Before describing the substantive details of the Model Representations and Warranties, our members wish to stress the extraordinary amount of time and consideration that market participants across all constituencies have devoted to developing this initiative, particularly over the past six months. The effort has involved more than 50 market participants who have given freely of their time and includes originators, issuers, investors, attorneys and other support providers. The involvement of both issuers and investors is critical given that these two constituents are on different sides of any securitized transaction. Both groups recognize the importance of industry “best practices” that will support a viable CMBS market, and neither side took its role lightly in seeking consensus on market practices. The debate over provisions was thorough and productive. In the end, a standard was created that will serve the industry well and can be an important component of any retention analysis.

As you know, Dodd-Frank Section 941(b) mandates that the implementing regulators adopt a risk retention regime through joint final rules tailored to each asset class. In the case of commercial mortgages, Dodd-Frank contemplates development of a menu of options that could be employed to satisfy the retention requirement, such as “adequate” representations and warranties and related enforcement mechanisms, in addition to adequate underwriting standards and controls, a securitizer or originator retaining a specified amount of the total credit risk, or retention of a first-loss position by a third-party purchaser. In light of the specific risk retention framework established by Congress for commercial mortgages (including recognition of the role that representations and warranties serve in establishing an appropriate alignment of the interests of investors and issuers), CREFC developed Model Representations and Warranties that not only enhance the existing customary representations and warranties for CMBS but also meet the needs of CMBS investors in a way that is also acceptable to issuers. CRE Finance Council believes that such Model Representations and Warranties constitute a form of risk retention consistent with the Dodd-Frank statute. Most importantly, we have standardized representations and warranties so that all relevant parties can point to standard concepts, standard language, and broad industry acceptance of what will be common practice.

The Model Representations and Warranties for CMBS are to be made by the loan seller in the mortgage loan purchase agreement at the time of securitization. Issuers are able to provide representations and warranties as appropriate, but they will be required to present all prospective bond investors with a comparison (via blackline) of the actual representations and warranties they make to the CRE Finance Council Model Representations and Warranties. Additionally, loan-by-loan exceptions to the representations and warranties must also be disclosed to all prospective bond investors. Lastly, the CRE Finance Council also has developed best practices for addressing and resolving breach claims in an expedited, reliable, and fair fashion by way of mandatory mediation before commencement of any legal action. This should facilitate (and reduce the cost of) representation and warranty dispute resolution.

The CRE Finance Council believes that such Model Representations and Warranties are a strong and workable point of reference that has already been vetted by the industry, and therefore, could be adopted by regulators as an example of “adequate” representations and warranties – which is among the specific risk retention options for commercial mortgages included in Dodd-Frank. Ultimately, the industry has focused on standard practices that could be used immediately to enhance disclosure, improve underwriting, and strengthen

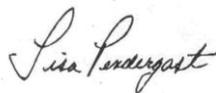
representations and warranties to ensure alignment of interests between issuers/originators and investors, and that are consistent with the Dodd-Frank menu of options for commercial mortgages.

Finally, as you know, Dodd-Frank Section 943(1) directs the Securities and Exchange Commission to develop regulations requiring credit rating agencies (CRAs) to include in ratings reports a description of the representations, warranties, and enforcement mechanisms available to investors for the issuance in question, along with a description of how those representations, warranties, and enforcement mechanisms differ from those in “issuances of similar securities.” CRAs have played an important role in the CRE Finance Council’s development of Model Representations and Warranties, and we believe the Model Representations and Warranties can facilitate fulfillment of the new CRA reporting requirements under Dodd-Frank Section 943(1). Accordingly, the CRE Finance Council believes that regulations implementing Dodd-Frank Section 943(1) should allow CRAs to use CREFC’s Model Representations and Warranties as a point of reference for describing the representations, warranties and enforcement mechanisms for “similar issuances” of CMBS.

We hope that you will take the time to review the enclosed materials and utilize them in your analysis of the best manner to address the Dodd-Frank requirements outlined above. Our members stand ready to answer any questions you may have regarding the Model Representations and Warranties, as well as our Principles-Based Underwriting Framework and Annex A revision projects previously shared. In the interest of time, we have provided you with the enclosed document as approved by the Model Representations and Warranties working group, while formal approval is expected shortly. We do not anticipate any policy changes to the document, but should there be any minor changes, we will provide them to you immediately.

Thank you for your consideration, and please contact Brendan Reilly or Mike Flood at (212) 509-1844 if you have questions or would like additional information.

Sincerely,



Lisa Pendergast
Managing Director
Jeffries & Company; and
President
CRE Finance Council



John D'Amico
Chief Executive Officer
CRE Finance Council

Enclosure: CRE Finance Council Model Representations and Warranties



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1. Complete Servicing File. All documents comprising the Servicing File will be or have been delivered to the Master Servicer with respect to each Mortgage Loan.

2. Whole Loan; Ownership of Mortgage Loans. Except with respect to each Participation Loan, each Mortgage Loan is a whole loan and not a participation interest in a Mortgage Loan. Each Participation Loan is a pari passu portion or senior portion (or a pari passu portion of a senior portion) of a whole mortgage loan evidenced by a senior note. Immediately prior to the sale, transfer and assignment to Depositor, no Mortgage Note or Mortgage was subject to any assignment (other than assignments to the Loan Seller), participation (other than with respect to Participation Loans) or pledge, and the Loan Seller had good title to, and was the sole owner of, each Mortgage Loan free and clear of any and all liens, charges, pledges, encumbrances, participations (other than with respect to Participation Loans), any other ownership interests and other interests on, in or to such Mortgage Loan other than any servicing rights appointment or similar agreement. Loan Seller has full right and authority to sell, assign and transfer each Mortgage Loan, and the assignment to Depositor constitutes a legal, valid and binding assignment of such Mortgage Loan free and clear of any and all liens, pledges, charges or security interests of any nature encumbering such Mortgage Loan.

3. Loan Document Status. Each related Mortgage Note, Mortgage, assignment of leases (if a separate instrument), guaranty and other agreement executed by or on behalf of the related Mortgagor, guarantor or other obligor in connection with such Mortgage Loan that is intended to be recorded is in recordable form and is the legal, valid and binding obligation of the related Mortgagor, guarantor or other obligor (subject to any non-recourse provisions contained in any of the foregoing agreements and any applicable state anti-deficiency or market value limit deficiency legislation), as applicable, and is enforceable in accordance with its terms, except as such enforcement may be limited by (i) bankruptcy, insolvency, fraudulent transfer, reorganization or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law and except that certain provisions in such loan documents may be further limited or rendered unenforceable by applicable law (clauses (i) and (ii) collectively, the "Insolvency Qualifications"), but (subject to the limitations set forth in the Insolvency Qualifications) such limitations or unenforceability will not render such loan documents invalid as a whole or substantially interfere with the mortgagee's realization of the principal benefits and/or security provided thereby.

Except as set forth in the immediately preceding sentences, there was no valid offset, defense, counterclaim or right of rescission available to the related Mortgagor with respect to any of the related Mortgage Notes, Mortgages or other loan documents, including, without limitation, any such valid offset, defense, counterclaim or right based on intentional fraud by Loan Seller in connection with the origination of the Mortgage Loan, that would deny the mortgagee the principal benefits intended to be provided by the Mortgage Note, Mortgage or other Mortgage Loan Documents.



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4. Mortgage Provisions.¹ The Mortgage Loan Documents for each Mortgage Loan contain provisions that render the rights and remedies of the holder thereof adequate for the practical realization against the Mortgaged Property of the principal benefits of the security intended to be provided thereby, including realization by judicial or, if applicable, nonjudicial foreclosure subject to the limitations set forth in the Insolvency Qualifications.

5. Hospitality Provisions. Each Mortgage Loan that is secured by a hospitality property operated pursuant to a franchise agreement includes an executed comfort letter signed by the Mortgagor and franchisor of such property enforceable by the Trust against such franchisor, either directly or as an assignee of the originator.

6. Mortgage Status; Waivers and Modifications. Since origination, and except by written instruments set forth in the related Mortgage File, (a) the material terms of such Mortgage, Mortgage Note, Mortgage Loan guaranty, and related Mortgage Loan Documents have not been waived, impaired, modified, altered, satisfied, canceled, subordinated or rescinded in any respect; (b) no related Mortgaged Property or any portion thereof has been released from the lien of the related Mortgage in any manner which materially interferes with the security intended to be provided by such Mortgage or the use, value or operation of such Mortgaged Property; and (c) neither borrower nor guarantor has been released from its obligations under the Mortgage Loan.

7. Lien; Valid Assignment. Each related Mortgage is a legal, valid and enforceable first lien on the related Mortgagor's fee (or if identified on the Mortgage Loan Schedule, leasehold) interest in the Mortgaged Property in the principal amount of such Mortgage Loan or allocated loan amount (subject only to Permitted Encumbrances (as defined below)), except as the enforcement thereof may be limited by the Insolvency Qualifications. Such Mortgaged Property (subject to Permitted Encumbrances) is free and clear of any mechanics' liens, materialmen's liens and other encumbrances, and no rights exist which under law could give rise to any such lien or encumbrance that would be prior to or equal with the lien of the related Mortgage, except those which are insured against by a lender's title insurance policy (as described below). Any security agreement, chattel mortgage or equivalent document related to and delivered in connection with the Mortgage Loan establishes and creates a valid and enforceable lien on property described therein, except as such enforcement may be limited by Insolvency Qualifications. Notwithstanding the foregoing, no representation is made as to the perfection of any security interest in rents or other personal property to the extent that possession or control of such items or actions other than the filing of Uniform Commercial Code financing statements is required in order to effect such perfection.

¹ New MLPA to include guidance referring to disclosure of escrows, releases and cash management. A discussion will be required to better define what is meant by loan release provisions and "lock boxes."



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8. Permitted Liens; Title Insurance. Each Mortgaged Property securing a Mortgage Loan is covered by an American Land Title Association lender's title insurance policy or a comparable form of lender's title insurance policy approved for use in the applicable jurisdiction (or, if such policy is yet to be issued, by a pro forma policy, a preliminary title policy with escrow instructions or a "marked up" commitment binding on the title insurer) (the "Title Policy") in the original principal amount of such Mortgage Loan (or with respect to a Mortgage Loan secured by multiple properties, an amount equal to at least the allocated loan amount with respect to the Title Policy for each such property) after all advances of principal, that insures for the benefit of the Loan Seller and its successors and assigns the first priority lien of the Mortgage, which lien is subject only to (a) the lien of current real property taxes, 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 specifically identified in the Title Policy; (c) the exceptions (general and specific) and exclusions set forth in such Title Policy; (d) other matters to which like properties are commonly subject; (e) the rights of tenants (as tenants only) under leases (including subleases) pertaining to the related Mortgaged Property which the Mortgage Loan Documents do not require to be subordinated to the lien of such Mortgage; and (f) if the related Mortgage Loan constitutes a Cross-Collateralized Mortgage Loan, the lien of the Mortgage for another Mortgage Loan contained in the same Cross-Collateralized Group, provides that none of which items (a) through (f), individually or in the aggregate, materially interferes with the current use or operation of the Mortgaged Property or the security intended to be provided by such Mortgage or with the current ability of the related Mortgaged Property to generate net cash flow sufficient to service the related Mortgage Loan or the Mortgagor's ability to pay its obligations when they become due (collectively, the "Permitted Encumbrances"). Except as contemplated by clause (f) of the preceding sentence none of the Permitted Encumbrances are mortgage liens that are senior to or pari passu with the lien of the related Mortgage. Such Title Policy (or, if it has yet to be issued, the coverage to be provided thereby) is in full force and effect, all premiums thereon have been paid and no claims have been made there under and no claims have been paid there under. Neither the Loan Seller, nor to the Loan Seller's knowledge, any other holder of the Mortgage Loan, has done, by act or omission, anything that would materially impair the coverage under such Title Policy.

9. Junior Liens. It being understood that B Loans are not subordinate mortgages or junior liens, there are no subordinate mortgages or junior liens encumbering the related Mortgaged Property. Except as set forth on Schedule [___], the Loan Seller has no knowledge of any mezzanine debt related to the Mortgaged Property.

10. Assignment of Leases and Rents. There exists as part of the related Mortgage File an assignment of leases (either as a separate instrument or incorporated into the related Mortgage). Each related assignment of leases creates a valid first-priority collateral assignment of, or a valid first-priority lien or security interest in, certain rights under the related lease or leases, subject only to a license granted to the related Mortgagor to exercise certain rights and to perform certain obligations of the lessor under such lease or leases, including the right to operate the related leased property, except as the enforcement thereof may be limited by the Insolvency Qualifications; no person other than the related Mortgagor owns any interest in any payments



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due under such lease or leases that is superior to or of equal priority with the lender's interest therein. The related Mortgage or related assignment of leases, subject to applicable law, provides for, upon an event of default under the Mortgage Loan, the appointment of a receiver for the collection of rents or for the related mortgagee to enter into possession to collect the rents or for rents to be paid directly to the mortgagee.

11. Financing Statements. A UCC 1 financing statement has been filed and/or recorded (or, in the case of fixtures, the Mortgage constitutes a fixture filing) in all places necessary to perfect a valid security interest in the personal property necessary to operate any Mortgaged Property in its current use other than (1) non-material personal property, (2) personal property subject to purchase money security interests and (3) personal property that is leased equipment. Each UCC 1 financing statement, if any, filed with respect to personal property constituting a part of the related Mortgaged Property and each UCC 2 or UCC 3 assignment, if any, of such financing statement to the Loan Seller was in suitable form for filing in the filing office in which such financing statement was filed.

12. Condition of Property. Loan Seller or the originator of the Mortgage Loan inspected or caused to be inspected each related Mortgaged Property within four months of origination of the Mortgage Loan and within twelve months of the Cut-Off Date.

An engineering report was prepared in connection with the origination of each Mortgage Loan no more than twelve months prior to the Cut-Off Date, which states that all building systems for the improvements of each related Mortgaged Property are in good working order, and further states that each related Mortgaged Property (a) is free of any material damage (b) is in good repair and condition and (c) is free of structural defects, except to the extent (i) any damage or deficiencies that would not materially and adversely affect the use, operation or value of the Mortgaged Property or the security intended to be provided by such Mortgage or repairs with respect to such damage or deficiencies estimated to cost less than \$50,000 in the aggregate per Mortgaged Property; (ii) such repairs have been completed; or (iii) escrows in an aggregate amount consistent with the standards utilized by the Loan Seller with respect to similar loans it holds for its own account have been established, which escrows will in all events be in an aggregate amount not less than the estimated cost of such repairs. The Seller has no knowledge of any material issues with the physical condition of the Mortgaged Property that the Loan Seller believes would have a material adverse effect on the use, operation or value of the Mortgaged Property other than those disclosed in the engineering report and those addressed in sub-clauses (i), (ii) and (iii) of the preceding sentence.

13. Taxes and Assessments. As of the date of origination and as of the Cut-Off Date, all taxes, governmental assessments and other outstanding governmental charges (including, without limitation, water and sewage charges) due with respect to the Mortgaged Property securing a Mortgage Loan that is or could become a lien on the related Mortgaged Property that became due and owing prior to the date hereof with respect to each related Mortgaged Property have been paid, or, if the appropriate amount of such taxes or charges is being appealed or is otherwise in dispute, the unpaid taxes or charges are covered by an escrow of funds or other



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security sufficient to pay such tax or charge. For purposes of this representation and warranty, real property taxes and assessments shall not be considered due and payable until the date on which interest and/or penalties would be payable thereon.

14. Condemnation. As of the date of origination and to the Loan Seller's knowledge as of the Cut-Off Date, there is no proceeding pending or threatened for the total or partial condemnation of such Mortgaged Property that would have a material adverse effect on the value, use or operation of the Mortgaged Property.

15. Actions Concerning Mortgage Loan. As of the date of origination and to the Loan Seller's knowledge as of the Cut-Off Date, there was no pending, filed or threatened action, suit or proceeding, arbitration or governmental investigation involving any Mortgagor, guarantor, or Mortgaged Property, an adverse outcome of which would reasonably be expected to materially and adversely affect title to the Mortgaged Property, the validity or enforceability of the Mortgage, such Mortgagor's ability to perform under the related Mortgage Loan or such guarantor's ability to perform under the related guaranty or which would materially and adversely affect the use, operation or value of the Mortgaged Property, the principal benefit of the security intended to be provided by the Mortgage Loan Documents, the current ability of the Mortgaged Property to generate net cash flow sufficient to service such Mortgage Loan, or the current principal use of the Mortgaged Property.

16. Escrow Deposits. All escrow deposits and payments required pursuant to each Mortgage Loan (including capital improvements and environmental remediation reserves) are in the possession, or under the control, of the Loan Seller or its servicer, and there are no deficiencies (subject to any applicable grace or cure periods) in connection therewith, and all such escrows and deposits that are required under the related Mortgage Loan Documents are being conveyed by the Loan Seller to Depositor or its servicer and identified as such with appropriate detail. Any and all requirements under the Mortgage Loan as to completion of any material improvements and as to disbursements of any funds escrowed for such purpose, which requirements were to have been complied with on or before Closing Date, have been complied with in all material respects or the funds so escrowed have not been released. No other escrow amounts have been released except in accordance with the terms and conditions of the related Loan Documents.

17. No Holdbacks. The principal amount of the Mortgage Loan stated on the Mortgage Loan Schedule has been fully disbursed as of the Closing Date and there is no requirement for future advances there under (except in those cases where the full amount of the Mortgage Loan has been disbursed but a portion thereof is being held in escrow or reserve accounts pending the satisfaction of certain conditions relating to leasing, repairs or other matters with respect to the related Mortgaged Property), and any requirements or conditions to disbursements of any loan proceeds held in escrow have been satisfied with respect to any disbursement of any such escrow fund.



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18. Insurance. Each related Mortgaged Property is, and is required pursuant to the related Mortgage to be, insured by a fire and extended perils insurance policy providing coverage for losses sustained by fire and against loss or damage sustained by other risks and hazards covered by a standard extended coverage insurance policy providing “special” form coverage, issued by an insurer meeting the requirements of the related loan documents and having a claims-paying or financial strength rating of at least “A-:VIII” (for a Mortgage Loan with a principal balance below \$35 million) and “A:VIII” (for a Mortgage Loan with a principal balance of \$35 million or more) from A.M. Best Company or “A3” (or the equivalent) from Moody’s Investors Service, Inc. or “A-” from Standard & Poor’s Ratings Services, in an amount not less than the lesser of (1) the original principal balance of the Mortgage Loan and (2) the full insurable value on a replacement cost basis of the improvements, furniture, furnishings, fixtures and equipment included in the Mortgaged Property (with no deduction for physical depreciation), but, in any event, not less than the amount necessary or containing such endorsements as are necessary to avoid the operation of any coinsurance provisions with respect to the related Mortgaged Property.

Each related Mortgaged Property is also covered, and required to be covered pursuant to the related Loan Documents, by business interruption or rental loss insurance which (i) covers a period of not less than 12 months (or with respect to each Mortgage Loan with a principal balance of \$35 million or more, 18 months); (ii) for a Mortgage Loan with a principal balance of \$50 million or more contains a 180 day “extended period of indemnity”; and (iii) covers the actual loss sustained during restoration.

If any material part of the improvements, exclusive of a parking lot, located on a Mortgaged Property is in an area identified in the Federal Register by the Federal Emergency Management Agency as having special flood hazards, the related Mortgagor is required to maintain insurance in the maximum amount available under the National Flood Insurance Program, plus such additional excess flood coverage necessary to maintain coverage at least in an amount equal to a professional engineer’s estimate of the probable maximum loss that would be sustained in the event of a flood at the Mortgaged Property.

If windstorm and/or windstorm related perils and/or “named storms” are excluded from the primary property damage insurance policy the Mortgaged Property is insured by a separate windstorm insurance policy or endorsement covering damage from windstorm and/or windstorm related perils and/or named storms, in an amount at least equal to 100% of the full insurable value on a replacement cost basis of the Improvements and personalty and fixtures included in the related Mortgaged Property.



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The Mortgaged Property is covered, and required to be covered pursuant to the related Loan Documents, by a comprehensive commercial general liability insurance policy including broad-form coverage for property damage, contractual damage and personal injury (including bodily injury and death) in amounts as are generally required by prudent institutional commercial mortgage lenders, and in any event not less than \$1 million per occurrence and \$2,000,000 in the aggregate.

An architectural or engineering consultant has performed an analysis of each of the Mortgaged Properties located in seismic zones 3 or 4 in order to evaluate the structural and seismic condition of such property, for the sole purpose of assessing the probable maximum loss (“PML”) for the Mortgaged Property in the event of an earthquake. In such instance, the PML was based on a 475-year return period, an exposure period of 50 years and a 10% probability of exceedance. If the resulting report concluded that the PML would exceed 20% of the amount of the replacement costs of the improvements, earthquake insurance on such Mortgaged Property was obtained by an insurer rated at least “A:VIII” by A.M. Best Company or “A3” (or the equivalent) from Moody’s Investors Service, Inc. or “A-” by Standard & Poor’s Rating in an amount not less than 150% of the PML.

The Loan Documents require insurance proceeds in respect of a casualty loss to be applied either (a) to the repair or restoration of all or part of the related Mortgaged Property, with respect to all casualty losses in excess of 5% of the principal amount of the related Mortgage Loan, the lender (or a trustee appointed by it) having the right to hold and disburse such proceeds as the repair or restoration progresses, or (b) to the payment of the outstanding principal balance of such Mortgage Loan together with any accrued interest thereon.

All premiums on all insurance policies referred to in this section required to be paid as of the date hereof have been paid, and such insurance policies name the lender under the Mortgage Loan and its successors and assigns as a loss payee under a mortgagee endorsement clause or, in the case of the general liability insurance policy, as named or additional insured. Such insurance policies will inure to the benefit of the Trustee. Each related Mortgage Loan obligates the related Mortgagor to maintain all such insurance and, at such Mortgagor’s failure to do so, authorizes the lender to maintain such insurance at the Mortgagor’s cost and expense and to charge such Mortgagor for related expenses, including reasonable attorneys’ fees. All such insurance policies (other than commercial liability policies) require at least 10 days’ prior notice to the lender of termination or cancellation arising because of nonpayment of a premium and at least 30 days prior notice to the lender of termination or cancellation (or such lesser period, not less than 10 days, as may be required by applicable law) arising for any reason other than non-payment of a premium and no such notice has been received by Loan Seller.



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19. Access; Utilities; Separate Tax Lots. Each Mortgaged Property (a) is located on or adjacent to a public road and has direct legal access to such road, or has access via an irrevocable easement or irrevocable right of way permitting ingress and egress to/from a public road, (b) is served by or has uninhibited access rights to public or private water and sewer (or well and septic) and all required utilities, all of which are appropriate for the current use of the Mortgaged Property, and (c) constitutes one or more separate tax parcels which do not include any property which is not part of the Mortgaged Property or is subject to an endorsement under the related Title Policy insuring the Mortgaged Property, or in certain instances an application has been made to the applicable governing authority for creation of separate tax lots, in which case the Mortgage Loan requires the Mortgagor to escrow an amount sufficient to pay taxes for the existing tax parcel of which the Mortgaged Property is a part until the separate tax lots are created.

20. No Encroachments. Based solely on surveys (if any) and/or the lender's title policy (or, if such policy is not yet issued, a pro forma title policy, a preliminary title policy with escrow instructions or a "marked up" commitment) obtained in connection with the origination of each Mortgage Loan, all material improvements that were included for the purpose of determining the appraised value of the related Mortgaged Property at the time of the origination of such Mortgage Loan are within the boundaries of the related Mortgaged Property, except encroachments that do not materially and adversely affect the value of such Mortgaged Property, after taking into account any applicable provisions of the Title Policy. No improvements on adjoining parcels encroach onto the related Mortgaged Property except for encroachments that do not materially and adversely affect the value of such Mortgaged Property, after taking into account any applicable provisions of the Title Policy.

21. No Contingent Interest or Equity Participation. No Mortgage Loan has a shared appreciation feature, any other contingent interest feature or a negative amortization feature (except that an ARD Loan may provide for the accrual of the portion of interest in excess of the rate in effect prior to the Anticipated Repayment Date) or an equity participation by Loan Seller.

22. REMIC. The Mortgage Loan is a "qualified mortgage" within the meaning of Section 860(a)(3) of the Code (but determined without regard to the rule in Treasury Regulations Section 1.860G-2(f)(2) that treats certain defective mortgage loans as qualified mortgages), and, accordingly, (A) the issue price of the Mortgage Loan to the related Borrower at origination did not exceed the non-contingent principal amount of the Mortgage Loan and (B) either: (a) such Mortgage Loan is secured by an interest in real property (including buildings and structural components thereof, but excluding personal property) having a fair market value (i) at the date the Mortgage Loan was originated at least equal to 80% of the adjusted issue price of the Mortgage Loan on such date or (ii) at the Closing Date at least equal to 80% of the adjusted issue price of the Mortgage Loan on such date, provided that for purposes hereof, the fair market value of the real property interest must first be reduced by (A) the amount of any lien on the real property interest that is senior to the Mortgage Loan and (B) a proportionate amount of any lien that is in parity with the Mortgage Loan; or (b) substantially all of the proceeds of such Mortgage



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Loan were used to acquire, improve or protect the real property which served as the only security for such Mortgage Loan (other than a recourse feature or other third-party credit enhancement within the meaning of Treasury Regulations Section 1.860G-2(a)(1)(ii)). If the Mortgage Loan was “significantly modified” prior to the Closing Date so as to result in a taxable exchange under Section 1001 of the Code, it either (x) was modified as a result of the default or reasonably foreseeable default of such Mortgage Loan or (y) satisfies the provisions of either sub-clause (B)(a)(i) above (substituting the date of the last such modification for the date the Mortgage Loan was originated) or sub-clause (B)(a)(ii), including the proviso thereto. Any prepayment premium and yield maintenance charges applicable to the Mortgage Loan constitute “customary prepayment penalties” within the meaning of Treasury Regulations Section 1.860G-(b)(2). All terms used in this paragraph shall have the same meanings as set forth in the related Treasury Regulations.

23. Compliance with Usury Laws. The Mortgage Rate (exclusive of any default interest, late charges, yield maintenance charge, or prepayment premiums) of such Mortgage Loan complied as of the date of origination with, or was exempt from, applicable state or federal laws, regulations and other requirements pertaining to usury.

24. Authorized to do Business. To the extent required under applicable law, as of the Cut-Off Date or as of the date that such entity held the Mortgage Note, each holder of the Mortgage Note was authorized to transact and do business in the jurisdiction in which each related Mortgaged Property is located, or the failure to be so authorized does not materially and adversely affect the enforceability of such Mortgage Loan.

25. Trustee under Deed of Trust. With respect to each Mortgage which is a deed of trust, a trustee, duly qualified under applicable law to serve as such, currently so serves and is named in the deed of trust or has been substituted in accordance with the Mortgage and applicable law or may be substituted in accordance with the Mortgage and applicable law by the related mortgagee, and except in connection with a trustee’s sale after a default by the related Mortgagor or in connection with any full or partial release of the related Mortgaged Property or related security for such Mortgage Loan, and except in connection with a trustee’s sale after a default by the related Mortgagor, no fees are payable to such trustee except for de minimis fees paid.

26. Local Law Compliance. To the Loan Seller’s knowledge, based upon any of a letter from any governmental authorities, a legal opinion, an architect’s letter, a zoning consultant’s report, an endorsement to the related Title Policy, or other affirmative investigation of local law compliance considered reasonable by prudent commercial mortgage lenders, the improvements located on or forming part of each Mortgaged Property securing a Mortgage Loan are in material compliance with applicable laws, zoning ordinances, rules, covenants, and restrictions governing the occupancy, use, and operation of such Mortgaged Property. Any non-conformity with zoning laws constitutes a legal non-conforming use or structure which does not materially and adversely affect the use, operation or value of such Mortgaged Property, and in the event of casualty or destruction, (a) the Mortgaged Property may be restored or repaired to

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the full extent necessary to maintain the use of the structure at the time of such casualty or destruction, (b) law and ordinance insurance coverage has been obtained for the Mortgaged Property in amounts customarily required by prudent commercial mortgage lenders, that covers damages resulting from the inability to restore or repair the Mortgaged Property to the full extent necessary to maintain the use of the structure at the time of the casualty or destruction, or (c) the inability to restore the Mortgaged Property to the full extent of the use or structure at the time of the casualty would not materially and adversely affect the use, operation or value of such Mortgaged Property.

27. Licenses and Permits. Each Mortgagor covenants in the Mortgage Loan Documents that it shall keep all material licenses, permits, franchises, certificates of occupancy, consents, and other approvals necessary for the operation of the Mortgaged Property in full force and effect, and to the Loan Seller's knowledge all such licenses, permits, franchises, certificates of occupancy, consents, and other approvals are in effect. The Mortgage Loan requires the related Mortgagor to be qualified to do business in the jurisdiction in which the related Mortgaged Property is located and for the Mortgagor and the Mortgaged Property to be in compliance in all material respects with all regulations, zoning and building laws.

28. Recourse Obligations. The Mortgage Loan Documents for each Mortgage Loan provide that such Mortgage Loan (a) becomes full recourse to the Mortgagor and guarantor (which is a natural person or persons, or an entity distinct from the Mortgagor (but may be affiliated with the Mortgagor) that has assets other than equity in the related Mortgaged Property that are not de minimis) in any of the following events: (i) if any petition for bankruptcy, insolvency, dissolution or liquidation pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by, consented to, or acquiesced in by, the Mortgagor; (ii) Mortgagor, any indemnitor or guarantor shall have colluded with other creditors to cause an involuntary bankruptcy filing with respect to the Mortgagor or (iii) transfers of either the Mortgaged Property or equity interests in Mortgagor made in violation of the Mortgage Loan Documents; and (b) contains provisions providing for recourse against the Mortgagor and guarantor (which is a natural person or persons, or an entity distinct from the Mortgagor (but may be affiliated with the Mortgagor) that has assets other than equity in the related Mortgaged Property that are not de minimis), for losses and damages sustained in the case of (i) misappropriation of rents, security deposits, insurance proceeds, or condemnation awards; (ii) the Mortgagor's fraud or willful misrepresentation; (iii) willful misconduct by the Mortgagor or guarantor; (iv) breaches of the environmental covenants in the Mortgage Loan Documents; or (v) commission of material physical waste at the Mortgaged Property.

29. Mortgage Releases. The terms of the related Mortgage or related Mortgage Loan Documents do not provide for release of any material portion of the Mortgaged Property from the lien of the Mortgage except (a) a partial release, accompanied by principal repayment of not less than a specified percentage at least equal to 100% of the related allocated loan amount of such portion of the Mortgaged Property, (b) upon payment in full of such Mortgage Loan, (c) upon a Defeasance [defined in (___) below], (d) releases of out-parcels that are unimproved or other portions of the Mortgaged Property which will not have a material adverse effect on the



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underwritten value of the Mortgaged Property and which were not afforded any value in the appraisal obtained at the origination of the Mortgage Loan or (e) as required pursuant to an order of condemnation. With respect to any partial release under the preceding clauses (a) or (d), either: (x) such release of collateral (i) would not constitute a “significant modification” of the subject Mortgage Loan within the meaning of Treasury Regulations Section 1.860G-2(b)(2) and (ii) would not cause the subject Mortgage Loan to fail to be a “qualified mortgage” within the meaning of Section 860G(a)(3)(A) of the Code; or (y) the mortgagee or servicer can, in accordance with the related Mortgage Loan Documents, condition such release of collateral on the related Mortgagor’s delivery of an opinion of tax counsel to the effect specified in the immediately preceding clause (x). For purposes of the preceding clause (x), for any Mortgage Loan originated after December 6, 2010, if the fair market value of the real property constituting such Mortgaged Property after the release is not equal to at least 80% of the principal balance of the Mortgage Loan outstanding after the release, the Borrower is required to make a payment of principal in an amount not less than the amount required by the REMIC Provisions.

30. Financial Reporting and Rent Rolls. Each Mortgage requires the Mortgagor to provide the owner or holder of the Mortgage with quarterly (other than for single-tenant properties) and annual operating statements, and quarterly (other than for single-tenant properties) and annual rent rolls for properties that have leases contributing more than 5% of the in-place base rent and annual financial statements, which annual financial statements (i) with respect to each Mortgage Loan with more than one Mortgagor are in the form of an annual combined balance sheet of the Mortgagor entities (and no other entities), together with the related combined statements of operations, members’ capital and cash flows, including a combining balance sheet and statement of income for the Mortgaged Properties on a combined basis and (ii) for each Mortgage Loan with an original principal balance greater than \$50 million shall be audited by an independent certified public accountant upon the request of the owner or holder of the Mortgage.

31. Acts of Terrorism Exclusion. With respect to each Mortgage Loan over \$20 million, the related special-form all-risk insurance policy and business interruption policy do not specifically exclude Acts of Terrorism, as defined in the Terrorism Risk Insurance Act of 2002, as amended by the Terrorism Risk Insurance Program Reauthorization Act of 2007 (collectively referred to as “TRIA”), from coverage, or if such coverage is excluded, it is covered by a separate terrorism insurance policy. With respect to each other Mortgage Loan, the related special all-risk insurance policy and business interruption policy did not, as of the date of origination of the Mortgage Loan, and, to Loan Seller’s knowledge, do not, as of the date hereof, specifically exclude Acts of Terrorism, as defined in TRIA, from coverage, or if such coverage is excluded, it is covered by a separate terrorism insurance policy. With respect to each Mortgage Loan, the related Mortgage Loan Documents do not expressly waive or prohibit the mortgagee from requiring coverage for Acts of Terrorism, as defined in TRIA, or damages related thereto, except to the extent that any right to require such coverage may be limited by availability on commercially reasonable terms, or as otherwise indicated on Schedule A.

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32. Due on Sale or Encumbrance. Subject to specific exceptions set forth below, each Mortgage Loan contains a “due on sale” or other such provision for the acceleration of the payment of the unpaid principal balance of such Mortgage Loan if, without the consent of the holder of the Mortgage (which consent, in some cases, may not be unreasonably withheld) and/or complying with the requirements of the related Mortgage Loan Documents (which provide for transfers without the consent of the lender which are customarily acceptable to prudent commercial and multifamily mortgage lending institutions lending on the security of property comparable to the related Mortgaged Property, such as transfers of worn-out or obsolete furnishings, fixtures, or equipment promptly replaced with property of equivalent value and functionality and transfers by leases entered into in accordance with the Mortgage Loan Documents), (a) the related Mortgaged Property, or any controlling equity interest in the related Mortgagor, is directly or indirectly pledged, transferred or sold, other than as related to (i) family and estate planning transfers, (ii) transfers to certain affiliates as defined in the related Mortgage Loan Documents, (iii) transfers of less than a controlling interest in a Mortgagor, (iv) transfers to another holder of direct or indirect equity in the Mortgagor, a specific Person designated in the related Mortgage Loan Documents or a Person satisfying specific criteria identified in the related Mortgage Loan Documents, (v) transfers of common stock in publicly traded companies or (vi) a substitution or release of collateral within the parameters of paragraph [()] below, or (vii) as set forth on Exhibit [] by reason of any mezzanine debt that existed at the origination of the related Mortgage Loan, or (b) the related Mortgaged Property is encumbered with a subordinate lien or security interest against the related Mortgaged Property, other than (i) any Companion Interest of any Mortgage Loan or any subordinate debt that existed at origination and is permitted under the related Mortgage Loan Documents, (ii) purchase money security interests as set forth in representation (xi), or (iii) any Mortgage Loan that is cross-collateralized and cross-defaulted with another Mortgage Loan, as set forth on Exhibit []. The Mortgage or other Mortgage Loan Documents provide that to the extent any Rating Agency fees are incurred in connection with the review of and consent to any transfer or encumbrance. The Mortgagor is responsible for such payment.

33. Single-Purpose Entity. Each Mortgage Loan with a Cut-Off Date Principal Balance in excess of \$10 million requires the Mortgagor to be a Single-Purpose Entity for at least as long as the Mortgage Loan is outstanding. Both the Loan Documents and the organizational documents of the Mortgagor with respect to each Mortgage Loan with a Cut-Off Date Principal Balance in excess of \$10 million provide that the Mortgagor is a Single-Purpose Entity, and each Mortgage Loan with a Cut-Off Date Principal Balance of \$20 million or more has a counsel’s opinion regarding non-consolidation of the Mortgagor. For this purpose, a “Single-Purpose Entity” shall mean an entity, other than an individual, whose organizational documents (or if the Mortgage Loan has a Cut-Off Date Principal Balance equal to \$10 million or less, its organizational documents or the related Mortgage Loan Documents) provide substantially to the effect that it was formed or organized solely for the purpose of owning and operating one or more of the Mortgaged Properties securing the Mortgage Loans and prohibit it from engaging in any business unrelated to such Mortgaged Property or Properties, and whose organizational documents further provide, or which entity represented in the related Mortgage Loan Documents, substantially to the effect that it does not have any assets other than those related to its interest in

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and operation of such Mortgaged Property or Properties, or any indebtedness other than as permitted by the related Mortgage(s) or the other related Mortgage Loan Documents, that it has its own books and records and accounts separate and apart from those of any other person (other than a Mortgagor for a Mortgage Loan that is cross-collateralized and cross-defaulted with the related Mortgage Loan), and that it holds itself out as a legal entity, separate and apart from any other person or entity.

34. Defeasance. [For fixed-rate pools only] With respect to any Mortgage Loan that, pursuant to the Mortgage Loan Documents, can be defeased (a “Defeasance”), (i) the Mortgage Loan Documents provide for defeasance as a unilateral right of the Mortgagor, subject to satisfaction of conditions specified in the Loan Documents; (ii) the Mortgage Loan cannot be defeased within two years after the Closing Date; (iii) the Mortgagor is permitted to pledge only United States “government securities” within the meaning of Treasury Regulations Section 1.860G-2(a)(8)(i), the revenues from which will be sufficient to make all scheduled payments under the Mortgage Loan when due, including the entire remaining principal balance on the maturity date (or on or after the first date on which payment may be made without payment of a yield maintenance charge or prepayment penalty) or, if the Mortgage Loan is an ARD Loan, the entire principal balance outstanding on the Anticipated Repayment Date, and if the Mortgage Loan permits partial releases of real property in connection with partial defeasance, the revenues from the collateral will be sufficient to pay all such scheduled payments calculated on a principal amount equal to a specified percentage in excess of 100% of the allocated loan amount for the real property to be released; (iv) the defeasance collateral is not permitted to be subject to prepayment, call, or early redemption; (v) the Mortgagor is required to provide a certification from an independent certified public accountant that the collateral is sufficient to make all scheduled payments under the Mortgage Note as set forth in (iii) above, (vi) if the Mortgagor would continue to own assets in addition to the defeasance collateral, the Mortgage Loan is required to be assumed by a Single-Purpose Entity; (vii) the Mortgagor is required to provide an opinion of counsel that the Trustee has a perfected security interest in such collateral prior to any other claim or interest; and (viii) the Mortgagor is required to pay all rating agency fees associated with defeasance (if rating confirmation is a specific condition precedent thereto) and all other reasonable expenses associated with defeasance, including, but not limited to, accountant’s fees and opinions of counsel.

35. Fixed Interest Rates. [For fixed-rate pools only.] Each Mortgage Loan bears interest at a rate that remains fixed throughout the remaining term of such Mortgage Loan, except in the case of ARD loans and situations where default interest is imposed.

36. Ground Leases. With respect to any Mortgage Loan where all or a material portion of the estate of the related Mortgagor therein is a leasehold estate, and the related Mortgage does not also encumber the related lessor’s fee interest in such Mortgaged Property, based upon the terms of the ground lease and any estoppel received from the ground lessor in favor of Loan Seller, its successors and assigns, Loan Seller represents and warrants that:



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(A) The ground lease or a memorandum regarding such ground lease has been duly recorded or submitted for recordation in a form that is acceptable for recording in the applicable jurisdiction. The ground lease or an estoppel received from the ground lessor permits the interest of the lessee to be encumbered by the related Mortgage and does not restrict the use of the related Mortgaged Property by such lessee, its successors or assigns in a manner that would adversely affect the security provided by the related Mortgage. No material change in the terms of the ground lease had occurred since its recordation, except by any written instruments which are included in the related Mortgage File;

(B) The lessor under such ground lease has agreed in a writing included in the related Mortgage File (or in such ground lease) that the ground lease may not be amended, modified, canceled or terminated without the prior written consent of the lender and that any such action without such consent is not binding on the lender, its successors or assigns;

(C) The ground lease has an original term (or an original term plus one or more optional renewal terms, which, under all circumstances, may be exercised, and will be enforceable, by borrower or the mortgagee) that extends not less than 20 years beyond the stated maturity of the related Mortgage Loan, or 10 years past the stated maturity if such Mortgage Loan fully or substantially amortizes by the stated maturity;

(D) The ground lease is not subject to any interests, estates, liens or encumbrances superior to, or of equal priority with, the Mortgage, except for the related fee interest of the ground lessor and the Permitted Encumbrances;

(E) The ground lease is assignable to the holder of the Mortgage Loan and its successors and assigns without the consent of the lessor there under, and in the event it is so assigned, it is further assignable by the holder of the Mortgage Loan and its successors and assigns without the consent of the lessor;

(F) The Loan Seller has not received any written notice of default under or notice of termination of such ground lease. To the Loan Seller's knowledge, there is no default under such ground lease and no condition that, but for the passage of time or giving of notice, would result in a default under the terms of such ground lease and, to the Loan Seller's knowledge, such ground lease is in full force and effect as of the Closing Date;

(G) The ground lease or ancillary agreement between the lessor and the lessee requires the lessor to give to the lender written notice of any default and provides that no notice of default or termination is effective unless such notice is given to the lender;

(H) A lender is permitted a reasonable opportunity (including, where necessary, sufficient time to gain possession of the interest of the lessee under the ground lease through legal proceedings) to cure any default under the ground lease which is curable after the lender's receipt of notice of any default before the lessor may terminate the ground lease;



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(I) The ground lease does not impose any restrictions on subletting that would be viewed as commercially unreasonable by a prudent commercial mortgage lender;

(J) Under the terms of the ground lease or an estoppel received from the ground lessor and the related Mortgage, any related insurance proceeds or the portion of the condemnation award allocable to the ground lessee's interest (other than in respect of a total or substantially total loss or taking as addressed in subpart (K)) will be applied either to the repair or to restoration of all or part of the related Mortgaged Property with (so long as such proceeds are in excess of the threshold amount specified in the related Mortgage Loan Documents) the lender or a trustee appointed by it having the right to hold and disburse such proceeds as repair or restoration progresses, or to the payment of the outstanding principal balance of the Mortgage Loan, together with any accrued interest;

(K) Under the terms of the ground lease and the related Mortgage, any related insurance proceeds, or portion of the condemnation award allocable to ground lessee's interest in respect of a total or substantially total loss or taking of the related Mortgaged Property, will be applied first to the payment of the outstanding principal balance of the Mortgage Loan, together with any accrued interest; and

(L) Provided that the lender cures any defaults which are susceptible to being cured, the lessor has agreed to enter into a new lease with lender upon termination of the ground lease for any reason, including rejection of the ground lease in a bankruptcy proceeding.

37. Servicing. The servicing and collection of each Mortgage Loan complied with all applicable laws and regulations and was in all material respects legal, proper and prudent, in accordance with customary commercial mortgage servicing practices.

38. Origination and Underwriting. The origination of each Mortgage Loan complied with all applicable laws and regulations. At the time of the origination of such Mortgage Loan, the origination, due diligence and underwriting performed by or on behalf of the Loan Seller in connection with each Mortgage Loan complied in all material respects with the terms, conditions and requirements of the Loan Seller's origination, due diligence and underwriting procedures, guidelines and standards for similar commercial and multifamily mortgage loans intended for securitization.

39. Rent Rolls; Operating Histories. Loan Seller has obtained a rent roll (the "Certified Rent Roll(s)") other than with respect to hospitality properties certified by the related Mortgagor or the related guarantor(s) as accurate and complete in all material respects as of a date within 180 days of the date of origination of the related Mortgage Loan. Loan Seller has obtained operating histories (the "Certified Operating Histories") with respect to each Mortgaged Property certified by the related Mortgagor or the related guarantor(s) as accurate and complete in all material respects as of a date within 180 days of the date of origination of the related Mortgage Loan. The Certified Operating Histories collectively report on operations for a period equal to (a) at least a continuous three-year period or (b) in the event the Mortgaged Property



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was owned, operated or constructed by the Mortgagor or an affiliate for less than three years then for such shorter period of time.

40. No Material Default; Payment Record. No Mortgage Loan has been more than 30 days delinquent, without giving effect to any grace or cure period, in making required payments since origination, and as of the date hereof, no Mortgage Loan is delinquent (beyond any applicable grace or cure period) in making required payments. To the Loan Seller's knowledge, there is (a) no, and since origination there has been no, material default, breach, violation or event of acceleration existing under the related Mortgage Loan, or (b) 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, which default, breach, violation or event of acceleration, in the case of either (a) or (b), materially and adversely affects the value of the Mortgage Loan or the value, use or operation of the related Mortgaged Property, provided, however, that this representation and warranty does not cover any default, breach, violation or event of acceleration that specifically pertains to or arises out of an exception scheduled to any other representation and warranty made by the Loan Seller in this [Exhibit ___]. No person other than the holder of such Mortgage Loan may declare any event of default under the Mortgage Loan or accelerate any indebtedness under the Mortgage Loan Documents.

41. Bankruptcy. As of the date of origination and to the Seller's knowledge as of the Cut-Off Date, neither the Mortgaged Property, nor any portion thereof, is the subject of, and no Borrower, guarantor or tenant occupying a single-tenant property is a debtor in state or federal bankruptcy, insolvency or similar proceeding.

42. Organization of Mortgagor. The Loan Seller has obtained an organizational chart or other description of each Mortgagor which identifies all beneficial controlling owners of the Mortgagor (i.e., managing members, general partners or similar controlling person for such Mortgagor) (the "Controlling Owner") and all owners that hold a 10% or greater direct ownership share (i.e., the "Major Sponsors"). The Loan Seller (1) required questionnaires to be completed by each Controlling Owner and guarantor or performed other processes designed to elicit information from each Controlling Owner and guarantor regarding such Controlling Owner's or guarantor's prior history regarding any bankruptcies or other insolvencies and any felony convictions and (2) performed or caused to be performed searches of the public records or services such as Lexis/Nexus, Choicepoint or a similar service designed to elicit information about each Controlling Owner, Major Sponsor and guarantor regarding such Controlling Owner's, Major Sponsor's or guarantor's prior history regarding any bankruptcies or other insolvencies and any felony convictions; provided, however, that manual public records searches were limited to the last 10 years. ((1) and (2) collectively, the "Sponsor Diligence"). Based solely on the Sponsor Diligence, to the knowledge of the Loan Seller, no Major Sponsor or guarantor (i) is currently in a state of federal bankruptcy or insolvency proceeding, (ii) has a prior record of having been in a state of federal bankruptcy or insolvency, or (iii) has been convicted of a felony.

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43. Environmental Conditions. At origination, each Mortgagor represented and warranted that to its knowledge no hazardous materials or any other substances or materials which are included under or regulated by Environmental Laws are located on, or have been handled, manufactured, generated, stored, processed, or disposed of on or released or discharged from the Mortgaged Property, except for those substances commonly used in the operation and maintenance of properties of kind and nature similar to those of the Mortgaged Property in compliance with all Environmental Laws and in a manner that does not result in contamination of the Mortgaged Property or in a material adverse effect on the value, use or operations of the Mortgaged Property. A Phase I environmental site assessment (or update of a previous Phase I and or Phase II site assessment) and, with respect to certain Mortgage Loans, a Phase II environmental site assessment (collectively, an “ESA”) meeting ASTM requirements conducted by a reputable environmental consultant in connection with such Mortgage Loan within 12 months prior to its origination date (or an update of a previous ESA was prepared), and such ESA (i) did not reveal any known circumstance or condition that rendered the Mortgaged Property at the date of the ESA in material noncompliance with applicable Environmental Laws or the existence of recognized environmental conditions (as such term is defined in ASTM E1527-05 or its successor, hereinafter “Environmental Condition”) or the need for further investigation, or (ii) if any material noncompliance with Environmental Laws or the existence of an Environmental Condition was indicated in any such ESA, then at least one of the following statements is true: (A) 125% of the funds reasonably estimated by a reputable environmental consultant to be sufficient to cover the estimated cost to cure any material noncompliance with applicable Environmental Laws or the Environmental Condition has been escrowed by the related Mortgagor and is held by the related lender; (B) if the only Environmental Condition relates to the presence of asbestos-containing materials and the only recommended action in the ESA is the institution of such a plan, an operations or maintenance plan has been required to be instituted by the related Mortgagor that can reasonably be expected to mitigate the identified risk; (C) the Environmental Condition identified in the related environmental report was remediated or abated in all material respects prior to the date hereof, and a no further action or closure letter was obtained from the applicable governmental regulatory authority (or the environmental issue affecting the related Mortgaged Property was otherwise listed by such governmental authority as “closed”); (D) a lender’s pollution legal liability insurance policy meeting the requirements set forth below that covers liability for the identified circumstance or condition was obtained from an insurer rated no less than A- by Moody’s, S&P and/or Fitch; (E) a party not related to the Mortgagor was identified as the responsible party for such condition or circumstance and the Loan Seller has reasonably estimated that the responsible party has financial resources adequate to address the situation; or (F) a party related to the Mortgagor having financial resources reasonably estimated to be adequate to address the situation is required to take action. The ESA will be part of the Servicing File; and to Seller’s knowledge, except as set forth in the ESA, there is no (1) known circumstance or condition that rendered the Mortgaged Property in material noncompliance with applicable Environmental Laws, (ii) Environmental Conditions (as such term is defined in ASTM E1527-05 or its successor), or (iii) need for further investigation.



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In the case of each Mortgage Loan set forth on Schedule [____] to this Exhibit [____], (i) such Mortgage Loan is the subject of an environmental insurance policy, issued by the issuer set forth on Schedule [____] (the “Policy Issuer”) and effective as of the date thereof (the “Environmental Insurance Policy”), (ii) to the Loan Seller’s knowledge the Environmental Insurance Policy is in full force and effect, there is no deductible and the trustee is a named insured under such policy, (iii)(a) a property condition or engineering report was prepared, if the related Mortgaged Property was constructed prior to 1985, with respect to asbestos-containing materials (“ACM”) and, if the related Mortgaged Property is a multifamily property, with respect to radon gas (“RG”) and lead-based paint (“LBP”), and (b) if such report disclosed the existence of a material and adverse LBP, ACM or RG environmental condition or circumstance affecting the related Mortgaged Property, the related Mortgagor (A) was required to remediate the identified condition prior to closing the Mortgage Loan or provide additional security or establish with the mortgagee a reserve in an amount deemed to be sufficient by the Loan Seller, for the remediation of the problem, and/or (B) agreed in the Loan Documents to establish an operations and maintenance plan after the closing of the Mortgage Loan that should reasonably be expected to mitigate the environmental risk related to the identified LBP, ACM or RG condition, (iv) on the effective date of the Environmental Insurance Policy, Loan Seller as originator had no knowledge of any material and adverse environmental condition or circumstance affecting the Mortgaged Property (other than the existence of LBP, ACM or RG) that was not disclosed to the Policy Issuer in one or more of the following: (a) the application for insurance, (b) a Mortgagor questionnaire that was provided to the Policy Issuer, or (c) an engineering or other report provided to the Policy Issuer, and (v) the premium of any Environmental Insurance Policy has been paid through the maturity of the policy’s term and the term of such policy extends at least five years beyond the maturity of the Mortgage Loan.

44. Lease Estoppels. With respect to each Mortgage Loan secured by retail, office or industrial properties, the Loan Seller requested the related Mortgagor to obtain estoppels from each commercial tenant with respect to the Certified Rent Roll. With respect to each Mortgage Loan predominantly secured by a retail, office or industrial property leased to a single tenant, the Loan Seller reviewed an estoppel obtained from such tenant no earlier than 90 days prior to the origination date of the related Mortgage Loan, and to Loan Seller’s knowledge, (x) the related lease is in full force and effect and (y) there exists no default under such lease, either by the lessee there under or by the lessor subject, in each case, to customary reservations of tenant’s rights, such as with respect to CAM and pass-through audits and verification of landlord’s compliance with co-tenancy provisions. With respect to each Mortgage Loan predominantly secured by a retail, office or industrial property, the Loan Seller has received lease estoppels executed within 90 days of the origination date of the related Mortgage Loan that collectively account for at least 65% of the in-place base rent for the Mortgaged Property or set of cross-collateralized properties that secure a Mortgage Loan that is represented on the Verification Date Rent Roll. To the Loan Seller’s knowledge, (x) each lease represented on the Verification Date Rent Roll is in full force and effect and (y) there exists no material default under any such related lease that represents 20% or more of the in-place base rent for the Mortgaged Property or set of



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cross-collateralized properties either by the lessee there under or by the related Mortgagor, subject, in each case, to customary reservations of tenant's rights, such as with respect to CAM and pass-through audits and verification of landlord's compliance with co-tenancy provisions.

45. Appraisal. The Mortgage File contains an appraisal of the related Mortgaged Property with an appraisal date within 6 months of the Mortgage Loan origination date, and within 12 months of the Closing Date. The appraisal is signed by an appraiser who is a Member of the Appraisal Institute ("MAI") and, to the best of the Loan Seller's knowledge, had no interest, direct or indirect, in the Mortgaged Property or the Mortgagor or in any loan made on the security thereof, and whose compensation is not affected by the approval or disapproval of the Mortgage Loan. Each appraiser has represented in such appraisal or in a supplemental letter that the appraisal satisfies the requirements of the "Uniform Standards of Professional Appraisal Practice" as adopted by the Appraisal Standards Board of the Appraisal Foundation.

46. Mortgage Loan Schedule. The information pertaining to each Mortgage Loan which is set forth in the Mortgage Loan Schedule attached as an exhibit to this Mortgage Loan Purchase Agreement is true and correct in all material respects as of the Cut-Off Date and contains all information required by the Pooling and Servicing Agreement to be contained therein.

47. Cross-Collateralization. No Mortgage Loan is cross-collateralized or cross-defaulted with any other Mortgage Loan that is outside the Mortgage Pool, except as set forth on Schedule [___].

48. Advance of Funds by the Loan Seller. No advance of funds has been made by Loan Seller to the related Mortgagor, and no funds have been received from any person other than the related Mortgagor or an affiliate, directly, or, to the knowledge of the Loan Seller, indirectly for, or on account of, payments due on the Mortgage Loan. Neither Loan Seller nor any affiliate thereof has any obligation to make any capital contribution to any Mortgagor under a Mortgage Loan, other than contributions made on or prior to the date hereof.

For purposes of these representations and warranties, the phrases "the Loan Seller's knowledge" or "the Loan Seller's belief" and other words and phrases of like import shall mean, except where otherwise expressly set forth below, the actual state of knowledge or belief of the Loan Seller, its officers and employees responsible for the underwriting, origination, servicing or sale of the Mortgage Loans regarding the matters expressly set forth below in each case without having conducted any independent inquiry into such matters and without any obligation to have done so (except as expressly set forth herein). All information contained in documents which are part of or required to be part of a Servicing File, as specified in the Pooling and Servicing Agreement (to the extent such documents exist or existed), shall be deemed to be within the Loan Seller's knowledge.



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“Servicing File.” A copy of the Mortgage File and documents and records not otherwise required to be contained in the Mortgage File that (i) relate to the origination and/or servicing and administration of the Mortgage Loans, (ii) are reasonably necessary for the ongoing administration and/or servicing of the Mortgage Loans or for evidencing or enforcing any of the rights of the holder of the Mortgage Loans or holders of interests therein and (iii) are in the possession or under the control of the Seller, provided that the Seller shall not be required to deliver any draft documents, privileged or other communications, credit underwriting, due diligence analyses or data or internal worksheets, memoranda, communications or evaluations.



Dispute Resolution and Remedies for Inclusion in CMBS Mortgage Loan Purchase Agreements and Pooling and Servicing Agreements

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Section 2.05__ Mediation.

- (a) Except as expressly provided in Subsections (b) and (e) of this Section, no litigation, administrative proceeding, arbitration or other proceeding (an “Action”) with respect to any dispute, claim or controversy (a “Dispute”) arising out of or relating to a request for cure, substitution, or repurchase under Section 2.03(b) (a “Request”) may be commenced until the Dispute has first been submitted to a recognized dispute mediation organization which has been certified by [Commercial Real Estate Finance Council] (the “Certifying Body”), or such other organization upon which the party making the Request (the “Requesting Party”) and Mortgage Loan Seller (either a “Mediation Party” or collectively the “Mediation Parties”) mutually agree (the “Mediation Agency”), to conduct a mediation of the Dispute (the “Mediation”). Either Mediation Party may commence Mediation by providing to the Mediation Agency and the other Mediation Party a written request for Mediation, setting forth in sufficient detail the subject matter of the Dispute and the specific relief being requested.
- (b) Any Mediation Party (i) may seek equitable relief prior to or during the Mediation in order to preserve the status quo and/or for other emergency relief pending the completion of the Mediation and (ii) commence an Action to avoid the Dispute being barred by the expiration of any applicable statute of limitations. Subject to the applicable time periods for cure, substitution, repurchase or other remedy [constituting the Request] provided in this Agreement, if the applicable Mortgage Loan Seller contests a Request and the Special Servicer determines that it is in the best interest of the Certificateholders to proceed with a liquidation, workout or other resolution (a “Resolution”) of a Mortgage Loan or REO Property (any Resolution pursuant to which shall not constitute a defense against a repurchase) of a Mortgage Loan that is in default while pursuing a Request the Special Servicer may proceed with such Resolution *provided*, that any such action is consistent with the Servicing Standard. In the event of such Resolution, the Mortgage Loan Seller will be liable for the [difference] between the aggregate of all Resolution proceeds, Insurance and Condemnation Proceeds, net REO Revenues and all other amounts previously received from the Resolution in respect of, such Mortgage Loan and the Purchase Price to the extent the repurchase claim is successful.
- (c) The Mediation Parties will cooperate with the Mediation Agency and with one another in (i) the selection of an individual neutral mediator (the “Mediator”) from the Mediation Agency’s panel of qualified neutral mediators pursuant to the Mediation Agency’s rules of procedure, (ii) the scheduling of the Mediation proceedings for a mutually acceptable date, (iii) attending the Mediation sessions, (iv) providing information and documents requested by the Mediator and (v) working with the Mediator. The Mediation Parties covenant that they will fully participate in the Mediation in good faith, including making available for any Mediation a business person with full settlement authority, and will be responsible for their own costs in the Mediation. Each Mediation Party shall be responsible for paying its own fees and expenses. The Mediation Parties shall share equally the costs, fees and expenses of the Mediation and Mediation Agency.



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- (d) All offers, promises, conduct and statements, whether oral or written, made in the course or in connection with the Mediation by either of the Mediation Parties, their agents, employees, experts and attorneys, and by the Mediator and any of the Mediation Agency's employees, are confidential, privileged, inadmissible and non-discoverable for any purpose, including impeachment, in any Action involving the Mediation Parties; provided that documents which are otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable solely as a result of the Mediation.
- (e) Except as expressly provided in Subsection (b) of this Section, no Mediation Party may commence an Action, with respect to the matters submitted to Mediation until the earlier to occur of the completion of (a) the initial Mediation session, which, if the Dispute is not therein resolved, shall include a 10-day "cooling off" period following the Mediation and (b) 90 days after the receipt of the initial written request for Mediation. A Mediation may continue after the commencement of an Action permitted by subsection (e) if the Mediation Parties agree to do so.
- (f) The Mediation Parties agree that (i) all Mediations pursuant to this Section will be conducted in accordance with the official CMBS Mediation Guidelines promulgated by the Certifying Body, and (ii) the Mediator shall have the right to consult, from time to time during the Mediation, with neutral member(s) of the CMBS Mediation Advisory Board established by the Certifying Body to provide Mediators with experienced business and legal experts in the real estate finance and structured finance industries and markets.
- (g) The provisions of this Section may be enforced by any court of competent jurisdiction, and the Mediation Party successfully seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys' fees resulting from the failure of a Mediation Party to comply with the provisions of this Section.