

There is Something New Every Day:
Hot Topics in Securitized Mortgage Loans

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I. Recent Evolution of Loan Document
Provisions: Natural Evolution or Sign of a
Turn in the Cycle?



Annex A: Defeasance

- either (x) direct, non-callable obligations of the United States of America or (y) non-callable obligations, other than U.S. Treasury Obligations, that are “government securities” within the meaning of Section 1.860G-2(a)(8) of the Treasury Regulations, as amended, that are acceptable to each applicable rating agency, in each case, and that provide for payments prior, but as close as possible, to all successive Payment Dates occurring after the Release Date through and including the Maturity Date, with each such payment being equal to or greater than the amount of the corresponding installment of principal and interest required to be paid under the Note.
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Annex B: Replacement Reserve Tests

- Written request to disburse and certification
 - Invoices
 - Lien waivers/mandatory threshold
 - Architect's certification/monetary threshold
 - C of O/ monetary threshold
- 

Annex C: Cash Management

- i. First, to the Taxes and Insurance Reserve Account;
- ii. Second, to the Monthly Payment Amount;
- iii. Third, to the Replacement Reserve;
- iv. Fourth, if applicable, to other reserves;
- v. Fifth, to other amounts due and payable under the Loan Documents;
- vi. Sixth, to monthly Cash Expenses, less management fees payable to affiliates of Borrower, pursuant to the terms and conditions of the related Approved Annual Budget;
- vii. Seventh, to the payment of Extraordinary Expenses approved by Lender, if any;
- viii. [Eighth, from and after the Maturity Date, to Lender, to be applied to the reduction of the outstanding principal balance of the Note];
- ix. [Ninth, from and after the Maturity Date, to Lender, to be applied to Accrued Interest] and
- x. Lastly, and provided no Event of Default has occurred, any excess amounts, if any, shall be disbursed to Borrower.

A. Defeasance

B. Reserves

C. Cash Management



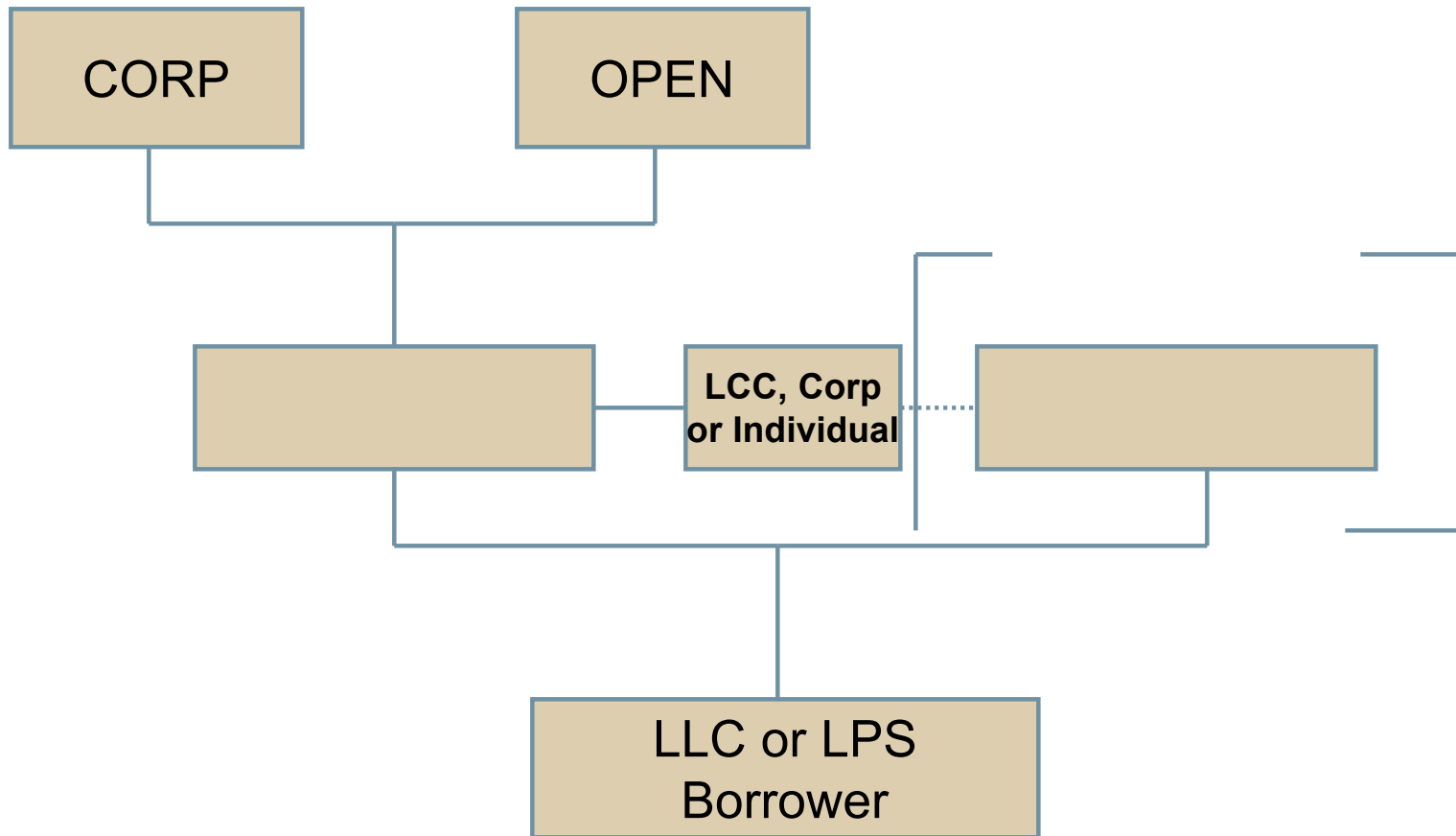
D. SPE Provisions



Annex D: SPE Provisions

- No other business
- No other property
- No consolidation
- Organizational formalities
- No loans to others
- No subs
- No commingling
- No debt beyond limited trade debt/financing leases
- Arms length related party agreements
- No guarantees
- Own tax returns
- Adequate capital/remain solvent
- _____
- unanimity to file bankruptcy
- _____
- structures

Annex D: SPE Provisions



E. Recourse Carve Outs



Annex E: Recourse Carve Outs

- Unpaid balance of the Loan in the event of:
 - any fraud, willful misconduct or material misrepresentation by Borrower or any Guarantor
 - failure to make the first full monthly payment of principal and interest due under the Note
 - a breach of the terms of the SPE Provisions
 - the voluntary filing by Borrower, or the filing against Borrower by any Guarantor or any affiliate of any Guarantor, or an involuntary bankruptcy filing against Borrower in which Borrower or Guarantor acts in collusion
 - Loss, liability, damage, cost, expense:
 - waste
 - misapplication, misappropriation or conversion of: rents or security deposits
 - insurance proceeds
 - awards or amounts received in connection with the condemnation
 - Environmental Matters
-

F. Prepayment Provisions

G. Borrower Comments



II. Insurance

A. Terrorism



B. Windstorm

C. Lender Coverage Warning



D. ACORD Forms



Annex G: ACORD

ACORD EVIDENCE OF COMMERCIAL PROPERTY INSURANCE		DATE (MM/DD/YYYY)
THIS IS EVIDENCE THAT INSURANCE AS IDENTIFIED BELOW HAS BEEN ISSUED, IS IN FORCE, AND CONVEYS ALL THE RIGHTS AND PRIVILEGES AFFORDED UNDER THE POLICY.		
PROVIDER BASIC CONTACT PERSON AND ADDRESS NAME: _____ TITLE: _____ PHONE: _____ FAX: _____ EMAIL: _____ ADDRESS: _____	POLICY TYPE: _____ POLICY NUMBER: _____ EFFECTIVE DATE: _____ EXPIRATION DATE: _____	DATE: _____ TIME: _____
CODE: _____ SALES CODE: _____ POLICY CUSTOMER: _____ NAMED INSURED AND ADDRESS: _____	IF MULTIPLE COMPANIES COMPLETE SEPARATE FORM FOR EACH LEAD NUMBER: _____ POLICY NUMBER: _____ CONTINUED UNTIL TERMINATED IF CHECKED: <input type="checkbox"/>	
ADDITIONAL NAMED INSURED(S): _____ THIS REPLACES PRIOR EVIDENCE DATED: _____		
PROPERTY INFORMATION (Use additional sheets if more space is required) LOCATION(S) (Street): _____		
COVERAGE INFORMATION CAUSE OF LOSS CODE: _____ BASIC _____ BROAD _____ SPECIAL _____ OTHER _____		
COMMERCIAL PROPERTY COVERAGE AMOUNT OF INSURANCE: \$ _____ DED: _____		
BUILDING (CORE) / RENTAL VALUE	IF YES, LIMIT:	Actual Loss Sustained # of months:
FLUORESCENT COVERAGE	IF YES, indicate amount of insurance on properties identified above: \$	
TERRORISM COVERAGE		
Attach signed Disclosure Notice / DEC:		
IS COVERAGE PROVIDED FOR "CERTIFIED ACTS" ONLY?	IF YES, SUB LIMIT:	DED:
IS COVERAGE A STRIKING ALBUM POLICY?	IF YES, LIMIT:	DED:
DOES COVERAGE INCLUDE DOMESTIC TERRORISM?	IF YES, SUB LIMIT:	DED:
COVERAGE FOR MOLD	IF YES, LIMIT:	DED:
MOLD EXCLUSION (If "YES", specify organization's form used)		
REPLACEMENT COST		
AGREED AMOUNT		
COINSURANCE	IF YES, %:	
EQUIPMENT BREAKDOWN (If Applicable)	IF YES, LIMIT:	DED:
LAW AND ORDINANCE - Coverage for loss to unimpaired portion of building	IF YES, LIMIT:	DED:
- Demolition Costs	IF YES, LIMIT:	DED:
- Incl. Cost of Construction	IF YES, LIMIT:	DED:
EARTHQUAKE (If Applicable)	IF YES, LIMIT:	DED:
FLOOD (If Applicable)	IF YES, LIMIT:	DED:
SPIN / HULL (If Separate Policy)	IF YES, LIMIT:	DED:
PERMISSION TO WAIVE SUBROGATION PRIOR TO LOSS	IF YES, LIMIT:	DED:
REMARKS - including Special Conditions (Use additional sheets if more space is required) _____ _____		
CANCELLATION THE POLICY IS SUBJECT TO THE PREMIUMS, FORMS, AND RULES IN EFFECT FOR EACH POLICY PERIOD. SHOULD THE POLICY BE TERMINATED, THE COMPANY WILL GIVE THE ADDITIONAL INTEREST IDENTIFIED BELOW DATE WRITTEN NOTICE, AND WILL SEND NOTIFICATION OF ANY CHANGES TO THE POLICY THAT WOULD AFFECT THAT INTEREST, IN ACCORDANCE WITH THE POLICY PROVISIONS OR AS REQUIRED BY LAW.		
ADDITIONAL INSURERS NAME AND ADDRESS: _____ LEADER SERVICE AGENT NAME AND ADDRESS: _____		
<input type="checkbox"/> MORTGAGE <input type="checkbox"/> LOSS PAYEE	<input type="checkbox"/> AUTHORIZED REPRESENTATIVE	
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III. Lender Liability

The three “c’s”:

1. course of conduct
2. consistency
3. conversations.