

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

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CATHY S. GARNETT, CLERK
KANAWHA COUNTY CIRCUIT COURT

U.S. BANK NATIONAL ASSOCIATION,
TRUSTEE, AS SUCCESSOR IN INTEREST
TO BANK OF AMERICA, NATIONAL
ASSOCIATION, SUCCESSOR BY
MERGER TO LASALLE BANK NATIONAL
ASSOCIATION, AS TRUSTEE OF BEAR
STEARNS COMMERCIAL MORTGAGE
SECURITIES, INC., COMMERCIAL
MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2007-TOP28

Plaintiff,

v.

Civil Action No. 17-C-1527
Judge Tabit

CHARLESTON TOWN CENTER SPE, LLC

Defendant.

CONSENT ORDER APPOINTING RECEIVER

This matter is before the Court upon the application of Plaintiff, U.S. Bank National Association, as Trustee, as Successor In Interest to Bank of America, National Association, as Successor by Merger to LaSalle Bank National Association, As Trustee for the Registered Holders of Bear Stearns Commercial Mortgage Securities, Inc., Commercial Mortgage Pass-Through Certificates, Series 2007-TOP28 for the Appointment of a Receiver for the real property owned by Defendant, Charleston Town Center SPE, LLC ("Defendant"), as said real property is more fully described in **Exhibit A** hereto, which is incorporated herein by reference (the "Property"), as well as certain other personal property owned by Defendant as to which this Order gives the Receiver the right to take possession.

★ On or about September 5, 2007, Morgan Stanley Mortgage Capital Holdings LLC, as the original lender, loaned Defendant the original principal sum of One Hundred Million and 00/100 Dollars (\$100,000,000.00) (“Loan”).

The Loan is secured by, among other things, (i) a certain Deed of Trust and Security Agreement (“Deed of Trust”) dated on or about September 5, 2007 granted by Defendant in favor of the original lender and assigned to Plaintiff; and (ii) a certain Assignment of Leases and Rents (the “ALR”) in favor of original lender and assigned to Plaintiff. The Deed of Trust recorded of record against the Property grants Plaintiff a first mortgage lien against the Property and the ALR recorded of record assigns to Plaintiff (subject to the terms of the ALR, among other things, all Leases (as defined in the ALR) at the Property and Rents (as defined in the ALR) arising from the Leases.

Plaintiff is the current holder of the Loan. The Plaintiff, through its attorneys, sent a written notice to Defendant on or about September 22, 2017 asserting that Defendant is in default of its obligations under the Loan for failing to pay the full amount due under the Loan when the Loan matured on September 8, 2017 (“Maturity Date”).

Plaintiff seeks the appointment of a receiver over the Property for the purpose of maintaining the uninterrupted operation of the Property. Plaintiff nominates CBRE, Inc. to be the receiver (“Receiver”).

ACCORDINGLY, IT IS HEREBY ORDERED AND DECREED, AS FOLLOWS:

1. CBRE, Inc., subject to the terms of this Order, is hereby appointed as Receiver over the Property with all of the powers and obligations set forth herein. Although this Order is effective immediately, the term of the receivership contemplated by this Order shall not commence until 12:01 a.m. on January 14, 2018 (the “Turnover Date”).

2. Effective on the Turnover Date, and until further notice of this Court, all persons or entities, including but not limited to tenants in possession of the Property or any portion thereof, and any persons liable therefor, shall pay to the Receiver all rents or other amounts which are payable to Defendant with respect to the Property and are then due and unpaid on the Turnover Date and all rents or other amounts to become due and unpaid following the Turnover Date with respect to their respective tenancies, and Defendant, either directly or through its agents, servants, representatives and attorneys, is hereby enjoined and restrained from collecting any rents or fees from or incident to the Property on or following the Turnover Date (except to the extent that such amounts are received by Defendant and turned over to the Receiver pursuant to the next following sentence) and from interfering in any manner with the Property on or following the Turnover Date. During the term of this Order, all rents or other amounts to be paid to the Receiver shall be paid to the Receiver at the address provided to tenants by the Receiver. Notwithstanding the foregoing, on or following the Turnover Date, to the extent any tenants continue to pay any rents and other amounts due on the respective tenancies to Defendant (including, without limitation, into the lockbox controlled by Defendant), Defendant shall promptly turn over such rents and other amounts paid to Defendant on or following the Turnover Date to the Receiver, and any checks received by Defendant on or following the Turnover Date shall be endorsed to Receiver without recourse and turned over to Receiver.

3. Effective on the Turnover Date, the Receiver (y) shall have the right to possession of (i) the Property (subject to the rights of existing tenants and licensees), and (ii) subject to subparagraph 3(m) below, the personal property subject to the Deed of Trust and all other property subject to the Deed of Trust and (z) shall have full power and authority to operate, manage, and conserve the Property. Without limiting the foregoing, the Receiver shall have the power and authority, effective upon the Turnover Date, subject to the provisions of subparagraph 3(m) herein, to:

- (a) Engage property managers to operate and manage the Property;

(b) Secure tenants and/or retain tenants and execute leases, renewals and/or amendments to leases for the Property, the duration and terms of which are reasonable and customary for the type of use involved, and such leases shall have the same effect as if made by the Defendant, provided however that Receiver shall not enter into a Major Lease, as that term is defined in Section 3.8(d) of the Deed of Trust at issue in this action without first obtaining Plaintiff's written consent;

(c) collect (on account of any time period) the rents, account receivables, insurance claim proceeds, real estate tax refunds, and profits from the Property to the extent, in each of the foregoing cases, the same have not been paid to Defendant on the Turnover Date, and collect any utility deposits and/or security deposits which would otherwise be payable to Defendant from and after the Turnover Date;

(d) purchase and maintain insurance for the Property against loss by fire or other casualty and against claims for personal injury and property damage, which may include, but not be limited to, the following coverages, from any insurer or prospective insurer: property, liability (and excess liability), auto liability, workers compensation, EPLI, employer liability, employee dishonesty, business interruption, boiler and machinery, builders risk, construction bonding and other bonding, environmental, terrorism and professional liability and errors and omissions, but shall in all events be in such amounts and with such coverages as are required under the Deed of Trust. Effective on the Turnover Date, the Receiver is authorized to, and shall purchase, and thereafter maintain, new insurance policies in coverages and amounts as provided in the immediately preceding sentence and the existing insurance policies maintained by Defendant may be cancelled to the extent they have not lapsed in accordance with their terms. All such insurance policies shall name the Receiver, Plaintiff and Defendant as insured and additional insured, as appropriate, shall name Forest City Realty Trust, Inc. and its affiliates and Forest City Commercial Management, LLC as additional insureds on any liability policies, and shall name Plaintiff as mortgagee and as loss payee with respect to all casualty policies;

(e) employ construction managers, general contractors, subcontractors, architects, engineers, consultants, title companies, environmental consultants, asset managers, property managers, leasing agents, administrative support, attorneys, security companies, custodians, janitors, maintenance workers, repairman/contractors, assistants, agents, accountants and other employees reasonably deemed necessary, appropriate, or desirable to assist the Receiver in diligently executing the duties imposed upon the Receiver by this Order including, but not limited to, the maintenance and operation of the Property;

(f) pay taxes which may have been or may be levied against the Property;

(g) establish new bank accounts utilizing Defendant's tax identification number;

(h) subject to subparagraph 3(m) below, receive all rents and proceeds from the Property (whether historical, current or prospective), including, but not limited to, security deposits, rents, accounts receivable, insurance claim proceeds, real estate tax refunds, utility deposits, security deposits, and earnest money deposits presently in the possession of the Defendant and/or its agents;

(i) make all repairs, renewals, replacements, alterations, additions, betterments, and improvements in connection with the Property as may seem judicious to the Receiver, however, Receiver must obtain Plaintiff's prior written approval for (a) any such single cost in excess of \$5,000.00; (b) costs exceeding \$10,000.00 in the aggregate; and (c) capital expenditures that fail to comply with the Budget (as defined hereinafter);

(j) hire or retain any agents necessary or appropriate to do any of the duties listed above without further approval of this Court, including, but not limited to, accountants, attorneys, environmental consultants and personnel, brokers, leasing agents and property

managers, including but not limited to, the use of Receiver's Brokerage Services division and Asset Services division;

(k) subject to subparagraph 14(d) below, terminate or enter into vendor or other service contracts pertaining to the Property as Receiver may determine in its reasonable judgment are necessary, with no further obligation or liability (including not having to pay any termination fees) under any terminated contract, however before so acting, Receiver must obtain Plaintiff's prior written approval. The Receiver may pay vendors for contracts entered into out of rents from the Property;

(l) procure or maintain utility services for the Property, to include but not be limited to, gas/steam, electric, water, sewer, trash, phone, cable, internet, and snow removal, without suffering, regardless of the internal policies of any utility provider, the termination of such service or refusal to authorize any new account based upon previous unpaid bills for services rendered prior to the appointment of the Receiver or during the term of the Receiver, with any and all accounts to be opened in the Receiver's name (and any existing accounts shall be closed or be retitled in the name of the Receiver and Defendant shall be removed from any further obligation thereunder on account of services rendered or utilities furnished from and after the date of entry of this Order). Further, the Receiver is not responsible for any utility bills or other debts accruing prior to its appointment and the Receiver is not personally responsible for any bills during the receivership;

(m) open new bank accounts in the name of the Receiver and take possession of all cash or funds belonging to or for the benefit of Defendant which were derived from the Property, but solely to the extent such cash or funds were received by Defendant from and after the Maturity Date and solely to the extent of the balance of such cash or funds remaining after first deducting the sum of (i) any amounts paid by or on behalf of Defendant for Property Expenses (as hereinafter defined) accruing following the Maturity Date, (ii) any unpaid Property

Expenses accruing from and after the Maturity Date for which Defendant remains liable, (iii) without duplication of any amounts set forth in preceding clause (i), any amounts paid by Defendant to Plaintiff from and after the Maturity Date and (iv) security deposits received by Defendant from and after the Maturity Date which are to be turned over to the Receiver pursuant to Paragraph 16 below (such balance remaining is hereinafter called the "Post-Maturity Date Net Cash Flow"). Notwithstanding anything to the contrary in this Order, nothing in this Order shall be deemed to require Defendant to turn over to the Receiver any cash (exclusive of security deposits) or other income received by Defendant prior to the Maturity Date, and Defendant shall be permitted to pay any items it desires from such cash or income or any other cash or income which Defendant is entitled to retain pursuant to the terms of this Order.¹ "Property Expenses" shall mean reasonable Property related expenditures resulting from the ownership, operation, maintenance, management, leasing, repair, replacement and/or improvement of the Property, including, without limitation, (1) the Additional Annual Payment(s) payable under that certain Joint Development Agreement between Charleston Urban Renewal Authority and Charleston Town Center Company, Ltd. recorded in the Office of the Clerk of Kanawha County Recorder in Deed Book 2002 page 1 as the same may be amended and assigned (the "Joint Development Agreement"), (2) amounts due and payable with respect to the Property under the Construction, Operation and Reciprocal Easement Agreement dated May 10, 1982 and recorded in Deed Book 2002 page 122 (the "COREA"), (3) Property taxes or Business and Occupation taxes or assessments imposed on the Property or Defendant or its direct or indirect owners in connection with the Property or the income therefrom, and (4) payments on account of the Loan; provided, however, that Property Expenses shall exclude (i) amounts payable under the Joint Development Agreement other than the Additional Annual Payment(s), (ii) legal, accounting fees and other out of pocket expenses incurred in negotiating the terms of this Order, (iii) income taxes imposed on

¹ Plaintiff and Defendant acknowledge that, notwithstanding the entry of this Order, Plaintiff continues to review the Property Expenses identified by Defendant to Plaintiff which Defendant proposes to deduct as "Property Expense" from the sums to be remitted to the Receiver pursuant to clauses (i) and (ii) of the first sentence of this Paragraph 3(m), and that Plaintiff's review of such Property Expenses may continue after the date of this Order and the Turnover Date.

Defendant or its direct or indirect constituent entities other than the Business and Occupation Tax, (iv) any termination fees in connection with vendor or service contracts terminated by Defendant pursuant to subparagraph 14(d), (v) sums due under the Ground Lease and/or Sub Ground Lease and associated with the parking facility (the "Parking Facility"), (vi) sums due under any bond issuance associated with the Parking Facility and (vii) management fees payable to Forest City Commercial Management, LLC or another management company affiliated with Forest City Realty Trust, Inc. In no event shall the Receiver be authorized or obligated to pay any sums described in clauses (v), (vi) and (vii) of the immediately preceding sentence associated with the Parking Facility;

(n) institute, prosecute, defend and/or settle such legal proceedings as the Receiver deems necessary relating to the care or possession of the Property and to collect any such sums which may be due from any source relating to use of the Property; and

(o) take such other actions as may be reasonably necessary to conserve the Property and other property subject to the Deed of Trust, or as otherwise authorized by the Court; provided, however, that notwithstanding anything to the contrary in this Order, in no event may the Receiver incur any obligations on the Defendant's behalf for which Defendant's liability is not expressly limited to its interest in the Property.

4. Effective on the Turnover Date, the Receiver is authorized, without further leave of the Court, to defend or institute and prosecute suits or summary proceedings related to the Property or the duties imposed upon the Receiver by this Order, including but not limited to proceedings (a) for the collection of rents, income, and other amounts (which include tenants who have vacated their space), (b) for the removal of (i) any tenant or tenants in default (whether for failure to pay rent or other amounts when due, or otherwise, including violation of the Property rules) (ii) any tenant or tenants whose terms have expired and have not been renewed, or (iii) any other person(s) or entity(ies) unlawfully in possession of the Property, or (c)

otherwise related to the Property or the duties imposed upon the Receiver by this Order. This Order shall act as notice to all tenants of the Property that the Loan is in default and that the Property may become subject to the foreclosure process.

5. The Receiver shall, commencing on the Turnover Date, manage the Property as would a prudent person, taking into account the effect of the Receiver's management on the interest of the Plaintiff as mortgagee and Defendant as mortgagor. To the extent the Receiver receives sufficient receipts from the Property and/or the transfer of any funds made by Defendant pursuant to this Order, and except to the extent ordered otherwise by the Court, the Receiver, from and after the Turnover Date:

(a) Shall, in accordance with, Section 3(d) hereof, purchase and maintain new casualty and liability insurance complying with the requirements of the Deed of Trust and (i) name the Receiver, Plaintiff and Defendant, as additional insured thereon and (ii) name Forest City Realty Trust, Inc. and its affiliates and Forest City Commercial Management, LLC as additional insureds on any liability insurance (and all existing insurers of the Property are hereby ordered to release claims history on existing policies to Receiver);

(b) shall use reasonable efforts to maintain the Property in at least the same condition as existed at the time the Receiver took possession, excepting reasonable wear and tear and damage by any casualty;

(c) shall apply receipts in accordance with Section 15 of this Order;

(d) may make other repairs and improvements necessary to comply with building, life-safety and other similar codes or with such other contractual obligations as the Receiver deems affect the Property, however, Receiver must obtain Plaintiff's prior written approval for (a) any such single cost in excess of \$2,500; (b) costs exceeding \$5,000 in the

aggregate; (c) capital expenditures that fail to comply with the Budget (as defined hereinafter); and (d) payment of unsecured debt (other than ordinary and necessary trade accounts payable);

(e) may hold receipts as reserves reasonably required for the foregoing purposes;

(f) may take such other actions as may be reasonably necessary to conserve the Property, or as otherwise authorized by the court, provided sufficient funds are available;

(g) may also, with prior Court approval, pay any and all other outstanding obligations to vendors or suppliers incurred in arm's length transactions who, prior to the entry of this Order, supplied materials, business supplies, services and/or labor to or for the benefit of the Property, but only to the extent the Receiver shall determine, in its sole judgment, that it is prudent to do so in order to maintain the business relationships with such vendors or suppliers for the benefit of the Property, provided sufficient funds are available from the Property, and without, by so doing, making the Receiver liable for any other antecedent debts relating to the Property.

6. To the extent the Receiver decides to continue the services of any current employees, agents or other personnel with respect to the Property, neither the Receiver nor any person or entity engaged by the Receiver hereunder shall be liable for any claims of any nature whatsoever of such employees, agents, or other personnel that arose prior to the Turnover Date, which claims include, but are not limited to, unpaid but accrued wages, unpaid but accrued sick time, unpaid but accrued vacation time, unpaid but accrued overtime and/or any and all other liabilities related to unemployment and/or worker's compensation claims.

7. The liability of the Receiver is and shall be limited to the assets of the receivership, and neither the Receiver nor any person or entity engaged by the Receiver

hereunder shall be personally liable for any duly authorized actions properly and lawfully taken pursuant to this Order.

8. Within fifteen (15) calendar days of the entry of this Order Defendant and/or its agents, shall provide or make available to the Receiver the following, to the extent such items and things exist and are in Defendant's possession or are under Defendant's control:

- (a) Defendant's federal employer identification number(s);
- (b) Copies of any and all maintenance and service contracts currently in effect and pertaining to the Property other than so-called "master agreements" which include properties other than the Property and are not capable of being assumed by the Receiver solely with respect to the Property ("Master Service Agreements"); provided, however, that Defendant shall notify Receiver, in writing, of the nature of the services provided under any such master agreements;
- (c) Copies of any and all existing leases, lease abstracts, purchase agreements and the like pertaining to the Property;
- (d) All open invoices for services or goods relating to the Property;
- (e) A list of any and all bank accounts in the name of the Property and/or the Defendant, including the name or names of the institutions in which the accounts are located, any and all account numbers for each account, and monthly statements for each account for the (36) thirty-six month period preceding the date of this Order;
- (f) Intentionally omitted;
- (g) A copy of the 2014–2016 year-end financial statements and year-to-date (and month by month detail) in both hard copy and electronic format: balance sheet, income statement, accounts receivable (and receivables/arrearages aging), operating statements, current year budget, sources and uses of cash flow, rent rolls, accounts payable, check register, security

deposit listing, trial balance, general ledger and bank statements and, with regard to (i) calendar year 2017 (the "2017 Reporting") and (ii) the period commencing January 1, 2018 through the day immediately preceding the Turnover Date (the "January 2018 Reporting), an income statement, cash flow report and trial balance, which 2017 Reporting shall be provided not later than 15 calendar days from the date of this Order and which January 2018 Reporting shall be provided no later than 15 calendar days from the Turnover Date;

(h) A complete set of keys (including all masters) and all security and/or access codes and/or cards to the Property and a schedule (including full contact information) identifying each person or entity (including security companies, municipal/governmental agencies and utility companies), who currently has one or more keys and/or access cards to the Property or who has knowledge of any access codes thereto;

(i) Material agreements (other than Master Service Agreements) to which the Property is or may be subject, provided that nothing herein shall be construed as a finding that any such agreements encumber, or will encumber the Property, or that any obligations thereunder shall be obligations of the Receiver or its successors and assigns;

(j) [intentionally omitted];

(k) Copies of documents evidencing any liens or other monetary encumbrances on the Property excluding the Deed of Trust and other documents evidencing or securing the Loan, provided that nothing herein shall be construed as a finding that any such agreements encumber, or will encumber the Property, or that any obligations thereunder shall be obligations of the Receiver or its successors and assigns;

(l) Copies of current Property tax bills, assessments and any related appeals;

(m) [Intentionally omitted] ;

(n) Tenant files for current leases, including but not limited to, correspondence, leases, lease abstracts, and the most recent two years of CAM billing statements, excluding, in each of the foregoing cases, any matters which are subject to attorney/client privilege or other privilege;

(o) To the extent not subject to the attorney/client privilege or other privilege, (x) any current rent rolls and schedules/abstracts related to current tenant security deposits, encumbrances, options, escalations, rents and term; (xi) all marketing information (in hard copy and electronic format) including but not limited to brochures, photographs (including aerial), maps, signage, and (xii) all other aspects of the Property records (excluding copies of Master Service Agreements) requested by the Receiver that (i) relate to the current management, maintenance, operation and/or leasing of the Property and (ii) are or may be reasonably necessary or pertinent to the Receiver's management, maintenance, operation and/or leasing of the Property.

(p) Any and all current unresolved insurance claims on the Property, not subject to attorney/client privilege or other privilege;

(q) Any and all other documents (other than Master Service Agreements) relating to the management, leasing or operation of the Property as may be reasonably requested by the Receiver which are not subject to attorney/client privilege or other privilege; and

(r) All tangible personal property owned by Defendant associated with the use, operation and maintenance of the Property, and excluding cash (other than Post-Maturity Date Net Cash Flow) and any equipment and items leased by Defendant (unless the Receiver assumes the lease in question).

9. Defendant, and its agents, representatives and employees, shall at all times after the entry of this Order: (a) reasonably cooperate with the Receiver in the transition of

management of the Property to the Receiver on the Turnover Date and (b) timely respond to all reasonable requests for information in Defendant's possession or under its control or right of control relating to the management, leasing or operation of the Property made by the Receiver (but with respect to both preceding clauses (a) and (b), Defendant shall not be obligated to supply copies of any Master Service Agreements or information subject to attorney/client privilege or other privilege). Defendant's obligation to make available information under this Paragraph 9 shall be continuing until the earlier of (i) December 31, 2018 or (ii) the date of a trustee's sale, foreclosure sale or other execution sale with respect to the Property, unless extended by an order of this Court.

10. So long as any part of the Property remains in the Receiver's possession, the Receiver is directed to prepare and file with the Court, within forty-five (45) days after the last day of the first month of the entry of this Order a proposed 12-month budget (the "Budget") for the operation of the Property. The Budget shall be subject to the prior written approval of Plaintiff. So long as any part of the Property remains in the Receiver's possession, the Receiver is directed to prepare and file with the Court, within sixty (60) days after the last day of the first month of the entry of this Order and no less frequently than every month thereafter, and within forty-five (45) days after termination of the receivership, a full and complete report, under oath, setting forth: (i) all receipts, disbursements, cash flow, and all changes in the assets in the Receiver's charge, or interests in or claims against the assets, that have occurred during the preceding month; (ii) (a) balance sheet, statement of income and expenses, statement of cash flows, and budget vs. actual comparison report; (b) a detailed rent roll showing the name of each tenant, and for each tenant, the space occupied, the lease commencement/expiration date, the rent payable, aged accounts receivables, the rent paid to date and the security deposit (if any) being held for said tenant, a comparative sales report for each tenant (with per square foot sales), if applicable under the leases, and a leasing activity report, each in reasonable detail; (c) an aged payables report and an aged receivables report; (d) a capital expenditures report including the

type and amount of each capital expenditure made or proposed during the reporting period; and (e) bank statements with monthly reconciliations for the reporting month; (iii) the condition of the Property; (iv) any recommendations as to actions needed to preserve and protect the Property or to otherwise carry out the Receiver's duties; (v) marketing and leasing efforts; (vi) the current status of all licenses, permits and other governmental entitlements and/or approvals; and (vii) any other information the Receiver determines is relevant to the receivership and/or the Property. The Receiver is further directed to serve copies of each such report on the attorneys of record for Plaintiff, Defendant, and any other party who submits a written request to the Court and the Receiver, with the service of such copies to be made within fifteen calendar days following the end of each calendar month. Any party having an objection to the Receiver's report shall file a written objection with the Court no later than the later of (i) ten (10) business days after the date of the Receiver's filing of the report or (ii) ten business days after the date such report is served upon such party if such party is required to be served with such report. Any objection not filed within the time prescribed by this Order shall be deemed waived.

11. In the event Plaintiff advances funds pursuant to the terms of any document executed in connection with the Loan (the "Advances") to the Receiver during the pendency of the receivership to enable the Receiver to perform its duties hereunder, such Advances shall be considered Debt (as defined in the Deed of Trust) secured by the lien of the Deed of Trust.

12. The Receiver may at any time file a motion requesting that it be exonerated, discharged and released from its appointment as Receiver.

13. The Receiver shall not have any responsibility for the preparation or filing of any tax return of any kind for the Defendant other than with respect to the Business and Occupation Tax relating to the Property (which the Receiver shall prepare and file commencing with the report due on April 30, 2018 with respect to receipts for the period January 1, 2018 through March 31, 2018), but shall, if so asked by Defendant, provide the Defendant with information

within Receiver's possession so that Defendant may prepare and file any such returns which are not required to be filed by the Receiver. Defendant shall provide to Receiver (at no cost to Defendant) any information in Defendant's possession needed to file such tax returns relating to the Property. Receiver shall provide to Defendant any information in Receiver's possession needed by Defendant or its direct or indirect members to file tax returns relating to Defendant.

14. From and after the Turnover Date, neither the Defendant nor anyone associated therewith or acting under the Defendant's authority or control shall:

(a) possess or manage the Property in any way;

(b) collect (except as provided in Paragraph 2 above), withdraw (except as provided in Paragraph 2 above) or transfer (except to the Receiver), in any way, funds or revenue derived from operation of the Property following the Maturity Date; provided, however, that in the event any tenant at the Property pays rent either to the Defendant or to the Receiver after the Turnover Date with respect to any period or periods of time under such tenant's applicable lease, whether preceding or following the Turnover Date, any such rent shall be considered post-Maturity Date rent and shall become the property of the Receiver's estate. In the event any such rent paid after the Turnover Date is paid to Defendant directly, Defendant shall immediately remit such rent to the Receiver;

(c) remove or destroy any tangible personal property owned by Defendant from the Property;

(d) terminate or cause to be terminated any license, permit, lease, contract, insurance policy (except as provided in subparagraph 3(d) above) or agreement relating to the Property, except that Defendant shall have the right and be permitted to terminate (i) any vendor and service contracts (excluding those vendor and service contracts set forth in **Exhibit B** hereof, which contracts set forth on Exhibit B are hereinafter called "Continuing Vendor and Service

Contracts”) and (ii) any license, permit, contract or insurance policy or agreement as to which the Receiver does not provide funds to pay any amounts payable with respect thereto as and when due. The Receiver shall assume the Continuing Vendor and Service Contracts and be responsible for payments and performance required thereunder. Defendant shall provide notice to Receiver, in writing, of any vendor or service contracts it terminates, to include the nature of the contract and the effective date of termination; or

(e) otherwise interfere with Receiver’s possession or operation of the Property.

15. Receipts received from operation of the Property (or from Defendant) by the Receiver shall be applied in the following order of priority:

(a) First, to payment of Business and Occupation Taxes relating to receipts from the Property for the period of time from and after January 1, 2018 until the termination of the receivership created by this Order;

(b) Then, to payment of other reasonable and necessary expenses associated with the Property which shall include, but shall not be limited to, payment of authorized insurance premiums and of real estate taxes, payment of the Additional Annual Payment under the Joint Development Agreement and payments, if any, due under the COREA with respect to the Property;

(c) Then, to the Receiver for its fees in accordance with Exhibit C hereto; and

(d) Then, to the extent funds remain after the payment of the foregoing, to payment of the obligations to Plaintiff under the documents evidencing and/or securing the Loan.

16. Defendant, its agents, and employees, shall turn over to the Receiver, within five (5) business days from the date this Order is entered, (a) the Post-Maturity Date Net Cash Flow

and (b) all tenant/lessee security deposits. Upon payment of the tenant/lessee security deposits to Receiver by Defendant, Receiver shall maintain such sums in a segregated bank account and thereafter assume responsibility for the application thereof pursuant to the terms of the respective leases and Defendant is hereby relieved of any further obligation and responsibility with respect thereto.

17. [Intentionally Omitted].

18. The Receiver shall post a bond of \$25,000.00 within ten days of the date of entry of this Order; the costs of obtaining such bond from a bonding company shall be an expense of the Property.

19. The Receiver shall be compensated for its services hereunder consistent with the fee schedule attached hereto and marked as **Exhibit C**. The fee schedule set forth on Exhibit C shall encompass all of the Receiver's duties pursuant to this Order.

20. Nothing contained in this Order shall prejudice Defendant's right to defend any foreclosure or other similar proceeding, including the proceeding in which this Order has been entered.

21. Receiver is authorized to retain independent legal counsel to represent the Receiver generally in the receivership including, without limitation, in dealing with tenants, in reporting to and appearing before this court, and as necessary in dealing with the parties to the action. Legal fees and costs incurred by the Receiver in performance of its duties shall be an expense of the Property.

22. The receivership created by this Order shall terminate upon the earliest to occur of (i) the mutual agreement of Plaintiff and Defendant, (ii) an order of the Court terminating the receivership; and (iii) the delivery of a deed to the Property following a Trustee's sale of the Property.

The Clerk is directed to mail a certified copy of this Consent Order Appointing Receiver to all counsel of record.

ENTERED this 10th day of January, 2018.

Joanna I. Tabit
Honorable Joanna I. Tabit

Jointly Submitted By:

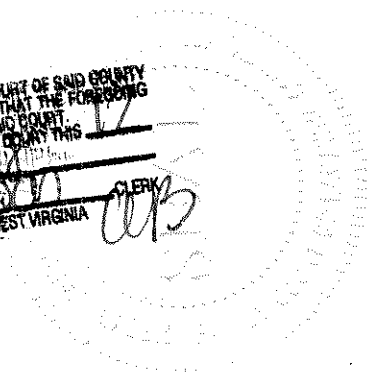
[Signature]

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(304) 344-9919 (fax)
Counsel for Defendant

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, BATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE CORRECT COPY OF THE RECORDS OF SAID COURT
GIVEN UNDER MY HAND AND SEAL OF SAID COUNTY THIS
DAY OF JANUARY 2018.
CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA



Dec 70 7111

Exhibit A

[insert legal description of Property]

EXHIBIT A

"PARCEL B" - TOWN CENTER DEVELOPER PARCEL

BEGINNING at a stake in the new southeasterly line of Clendenin Street, said beginning point being located N. 45° 22' 18" E. a distance of 331.50 feet from the intersection of the said southeasterly new street line of Clendenin Street with the northeasterly line of Quarrier Street, said beginning point also being located at the common corner to the parcel of land hereby described and Parcel "A", and running thence with the said line of Clendenin Street,

1. N. 45° 22' 18" E., 169.06 feet to a stake located at the common corner to the parcel of land hereby described and Parcel "C"; thence leaving said Clendenin Street and running with two common division lines between said parcels,
2. S. 43° 06' E., 351.36 feet to a stake; thence running
3. N. 46° 54' E., 32.42 feet to a stake located at the common corner to the parcel of land hereby described, Parcel "C" and Parcel "D"; thence running with the common division line between the parcel of land hereby described and said Parcel "D".
4. S. 43° 06' E., 544.00 feet to a stake located at the common corner to the parcel of land hereby described, Parcel "D" and Parcel "E"; thence running with four common division lines between the parcel of land hereby described and Parcel "E".
5. S. 46° 54' W., 71.98 feet to a stake; thence running
6. S. 43° 06' E., 251.00 feet to a stake; thence running
7. N. 46° 54' E., 203.83 feet to a stake; thence running
8. S. 43° 06' E., 92.52 feet to a stake in the northwesterly line of Court Street; thence leaving said Parcel "B" and running with said northwesterly line of said Court Street with six lines thereof,
9. S. 52° 00' W., 85.22 feet to a stake;
10. S. 51° 41' W., 70.12 feet to a stake;
11. S. 51° 42' W., 93.11 feet to a stake;
12. S. 51° 43' 31" W., 149.00 feet to a stake;
13. S. 51° 33' W., 50.19 feet to a stake;

14. S. 51° 28' W., 28.10 feet to a concrete monument at the common corner to parcel of land hereby described and the parcel of land formerly owned by James F. Brown, Trustee; thence leaving said Court Street and running with the common division line between the parcel of land hereby described and former Brown parcel,
15. N. 42° 46' W., 108.17 feet to a concrete monument located at the common corner to the said parcel and also at the terminus of former Buick Court; thence leaving former Brown parcel and running with the northeasterly terminal line of former Buick Court,
16. N. 42° 46' W., a distance of 15.00 feet to a concrete monument located at the common corner to the parcel of land hereby described and Parcel "F"; thence leaving said former Buick Court and running with four common division lines between said parcels,
17. N. 42° 46' W., 11.12 feet to a stake; thence,
18. N. 46° 54' E., 127.56 feet to a stake; thence,
19. N. 43° 06' W., 243.00 feet to a stake; thence,
20. S. 46° 54' W., 67.26 feet to a stake at the common corner to the parcel of land hereby described, Parcel "F" and Parcel "G"; thence leaving said Parcel "F" and running with the common division line between the parcel of land hereby described and said Parcel "G",
21. N. 43° 06' W., 544.00 feet to a stake located at common corner to the parcel of land hereby described, said Parcel "G" and Parcel "A"; thence leaving said Parcel "G" and running with two common division lines between the parcel of land hereby described and said Parcel "A",
22. N. 46° 54' E., 79.49 feet to a stake; thence,
23. N. 43° 06' W., 273.04 feet to the place of beginning, containing 293,057.63 square feet or 6.727 acres, more or less;

Together with appurtenant rights and easements pursuant to that certain "Construction, Operation and Reciprocal Easement Agreement" by and among Charleston Town Center Company, Ltd., and others, dated May 10, 1992, recorded in Deed Book 2002, page 122, including easement to use Parking Facility Decks "A", "B", "B-1" and "C" which parking facility decks are more particularly bounded and described on Schedule "A" attached hereto and made a part hereof.

SCHEDULE "A"

PARKING FACILITY DECK "A"

BEGINNING at a stake in the northeasterly line of Quarrier Street, said beginning point being located S. 44° 42' E. a distance of 264.31 feet from the intersection of the said northeasterly line of said Quarrier Street with the southeasterly new street line of Clendenin Street after the widening of same to 60 feet, said beginning point also being located at the common corner to the parcel of land hereby described and Parcel "A" and running thence from said beginning point with the common division line between said Parcels N. 46° 54' E. a distance of 244.51 feet to a stake located at the common corner to the parcel of land hereby described, said Parcel "A" and Parcel "B"; thence leaving said Parcel "A" and running with the common division line between the parcel of land hereby described and said Parcel "B" S. 43° 06' E. a distance of 544.00 feet to a stake located at the common corner to the parcel of land hereby described, said Parcel "B" and Parcel "F"; thence leaving said Parcel "B" and running with one common division line between the parcel of land hereby described and Parcel "F" S. 46° 54' W. a distance of 238.74 feet to a stake in the northeasterly line of Quarrier Street located at the common corner to the parcel of land hereby described and said Parcel "F"; thence leaving said Parcel "F" and running with the northeasterly line of Quarrier Street N. 42° 01' W. a distance of 183.75 feet to a tack; thence continuing with said northeasterly line of said Quarrier Street N. 43° 55' W. a distance of 60.04 feet to a railroad spike (set); thence continuing with said northeasterly line of Quarrier Street N. 44° 42' W. a distance of 300.37 feet to the place of beginning, containing One Hundred Twenty-Nine Thousand Eight Hundred Forty-Two Square Feet and Fifty-One One-hundredths of another Square Foot, (129,842.51 Square Feet), more or less, according to a survey made by Field Engineering Company of Charleston, West Virginia, and a map prepared therefrom titled, "MAP SHOWING SUBDIVISION OF DISPOSITION PARCEL 'A-1' GOVERNMENT SQUARE PROJECT & SUBDIVISION OF PART OF DISPOSITION PARCELS NOS. 35 & 36 TRIANGLE URBAN RENEWAL PROJECT W. VA. R-21 & SUBDIVISION OF DISPOSITION PARCEL NO. 41 TRIANGLE URBAN RENEWAL PROJECT W. VA. R-21 LOCATED IN THE CITY OF CHARLESTON, KANAWHA COUNTY, W. VA. PRESENTLY OWNED BY CHARLESTON URBAN RENEWAL AUTHORITY," on a scale of one inch equals forty (40) feet and dated April 21, 1982.

PARKING DECK FACILITY "B"

BEGINNING at a stake in the new southwesterly line of Lee Street East, said beginning point being located 359.61 feet in a southeasterly direction from the intersection of the new southeasterly street line of Clendenin Street with the existing southwesterly street line of Lee Street East, said beginning point also being located at the common corner to the parcel of land hereby described and Parcel "C", and running thence from said beginning point with the new street line of said Lee Street East with a curved line to the right with thirteen (13) chords thereof S. 46° 32' 41" E. a chord distance of 11.73 feet to a stake; thence running S. 46° 03' E. a chord distance of 49.60 feet to a stake; thence running S. 45° 17' E. a chord distance of 1.03 feet to a stake; thence running S. 45° 16' 32" E. a chord distance of 48.54 feet to a stake; thence

Exhibit A-3

running S. 44° 24' 30" E. a chord distance of 49.76 feet to a stake; thence running S. 43° 47' E. a chord distance of 49.67 feet to a stake; thence running S. 43° 06' E. a chord distance of 59.02 feet to a stake; thence running S. 41° 44' E. a chord distance of 89.94 feet to a stake; thence running S. 40° 48' E. a chord distance of 49.57 feet to a stake; thence running S. 40° 19' 46" E. a chord distance of 14.86 feet to a stake; thence running S. 39° 58' E. a chord distance of 34.76 feet to a stake; thence running S. 39° 20' E. a chord distance of 49.61 feet to a stake; thence running S. 38° 41' 03" E. a chord distance of 36.40 feet to a stake located at the common corner to the parcel of land hereby described and Parcel "B"; thence leaving said Lee Street East and running with one common division line between said parcels S. 46° 54' W. a distance of 232.51 feet to a stake located at the common corner to the parcel of land hereby described, Parcel "E" and Parcel "B"; thence leaving said Parcel "E" and running with one common division line between the parcel of land hereby described and Parcel "B" N. 43° 06' W. a distance of 544.00 feet to a stake located at the common corner to the parcel of land hereby described, Parcel "B" and Parcel "C"; thence leaving said Parcel "B" and running with one common division line between the parcel of land hereby described and said Parcel "C" N. 46° 54' E. a distance of 238.45 feet to the place of beginning, containing One Hundred Thirty-One Thousand Five Hundred Eighty Two Square Feet and Fifty-Six One-hundredths of another Square Foot, (131,582.56 Square Feet), more or less, according to a survey made by Field Engineering Company of Charleston, West Virginia, and a map prepared therefrom titled, "MAP SHOWING SUBDIVISION OF DISPOSITION PARCEL 'A-1' GOVERNMENT SQUARE PROJECT & SUBDIVISION OF PART OF DISPOSITION PARCELS NOS. 35 & 36 TRIANGLE URBAN RENEWAL PROJECT W. VA. R-21 & SUBDIVISION OF DISPOSITION PARCEL NO. 41 TRIANGLE URBAN RENEWAL PROJECT W. VA. R-21 LOCATED IN THE CITY OF CHARLESTON, KANAWHA COUNTY, W. VA. PRESENTLY OWNED BY CHARLESTON URBAN RENEW. AUTHORITY," on a scale of one inch equals forty (40) feet and dated April 21, 1982.

PARKING-DECK FACILITY "B-1"

BEGINNING at a stake in the new southwesterly line of Lee Street East, said beginning point being located a distance of 421.97 feet in a southeasterly direction from the intersection of the new street line of Clendenin Street with the existing southwesterly street line of Lee Street East, said beginning point also being located a distance of 62.36 feet in a southeasterly direction from the common corner to Parcel "C" and Parcel "D", said beginning point further being located S. 45° 17' E. a distance of 1.03 feet from the third (3) corner of said Parcel "D" as hereinbefore described and as shown on the attached map; thence leaving the southwesterly new street line of Lee Street East, N. 46° 54' E. crossing said street a distance of 60.08 feet to a stake located in the new northeasterly street line of said Lee Street East, said point being located at the southwesterly corner of Parcel "H", thence running with said northeasterly line of said new Lee Street East and also with the southwesterly boundary line of said Parcel "H" with a curved line to the right with eight chords thereof S. 45° 15' 20" E. a chord distance of 46.69 feet to a stake; thence running S. 44° 24' 30" E. a chord distance of 50.54 feet to a stake; thence running S. 43° 47' E. a chord distance of 50.33 feet to a stake; thence running S. 43° 06' E. a chord distance of 25.64 feet to a stake; thence running S. 42° 31' 45" E. a chord distance of 59.90 feet to a stake; thence running S. 41° 44' E. a chord distance of 65.73 feet to a stake; thence running S. 40° 48' E. a chord distance of 50.43 feet to a stake; thence running S. 40° 21' 06" E. a chord distance of 12.10 feet to a stake; said point being located in the southwesterly

boundary line of said Parcel "H" hereinbefore referred to; thence leaving said Parcel "H" and running S. 46° 54' W. crossing said new Lee Street East a distance of 60.08 feet to a stake in the Ninth (9) line of said Parcel "D" as hereinbefore described, and also being in the southwesterly new street line of said Lee Street East; thence running with said new street line of said Lee Street East with a curved line to the left with seven chords thereof; N. 40° 19' 46" W. a chord distance of 14.86 feet to a stake; thence running N. 40° 48' W. a chord distance of 49.57 feet to a stake; thence running N. 41° 44' W. a chord distance of 89.94 feet to a stake; thence running N. 43° 06' W. a chord distance of 59.02 feet to a stake; thence running N. 43° 47' W. a chord distance of 49.67 feet to a stake; thence running N. 44° 24' 30" W. chord distance of 49.76 feet to a stake; thence running N. 45° 16' 32" W. a chord distance of 48.54 feet to the place of beginning, containing Twenty-One Thousand Six Hundred Seventy-Seven Square Feet and Seventy-Nine One-hundredths of another Square Foot (21,677.79 Square Feet), more or less, according to a survey made by Field Engineering Company of Charleston, West Virginia, and a map prepared therefrom titled, "MAP SHOWING SUBDIVISION OF DISPOSITION PARCEL "A-1 GOVERNMENT SQUARE PROJECT & SUBDIVISION OF PART OF DISPOSITION PARCELS NOS. 35 6 36 TRIANGLE URBAN RENEWAL PROJECT W. VA. R-21 a SUBDIVISION OF DISPOSITION PARCEL, NO. 41 TRIANGLE URBAN RENEWAL PROJECT W. VA. R-21 LOCATED IN THE CITY OF CHARLESTON, KANAWHA COUNTY, W. VA. PRESENTLY OWNED BY CHARLESTON URBAN RENEWAL AUTHORITY," on a scale of one inch equals forty. (40) feet and dated April 21, 1982.

PARKING DECK FACILITY "C"

BEGINNING at a stake in the southwesterly new street line of Washington Street East, said beginning point is located S. 49° 43' E. a distance of 426.50 feet from the intersection of the said southwesterly line of Washington Street East with the southeasterly new street line of Clendenin Street, said beginning point also being located at the most easterly corner of Parcel "B" now Marriott Hotel Garage Site, and running thence from said beginning point with the southwesterly new street line of Washington Street East S. 49° 43' E. a distance of 179.64 feet to a stake in the new street line of Washington Street East; thence continuing with the new street line of Washington Street East S. 50° 25' E. a distance of 60.62 feet to a stake located at the intersection of the new southwesterly street line of Washington Street East with the existing southwesterly street line of Washington Street East; thence running with the existing southwesterly line of Washington Street East S. 48° 04' E. a distance of 237.56 feet to a stake at the most easterly corner of the parcel hereby described; thence leaving said Washington Street East and running with the southeasterly line of said parcel hereby described S. 46° 54' W. a distance of 229.60 feet to a point in the new northeasterly line of Lee Street East located at the most southerly corner of the parcel hereby described; thence running with said street line with a curved line to the left, with eleven (11) chords thereof, N. 38° 46' 05" W. a chord distance of 25.57 feet to a stake; thence running N. 39° 20' W. a chord distance of 50.39 feet to a stake; thence running N. 39° 58' W. a chord distance of 38.28 feet to a stake; thence running N. 40° 21' 05" W. a chord distance of 12.10 feet to a stake; thence running N. 40° 48' W. a chord distance of 50.43 feet to a stake; thence running N. 41° 44' W. a chord distance of 65.73 feet to a stake; thence running N. 42° 31' 45" W. a chord distance of 59.90 feet to a stake; thence running N. 43° 06' W. a chord distance of 25.64 feet to a stake; thence running N. 43° 47' W. a chord distance of 50.33 feet to a stake; thence running N. 44° 24' 30" W. a chord distance of 50.54 feet to a stake;

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thence running N. 45° 15' 20" W. a chord distance of 46.69 feet to a stake located at the most southerly corner of Parcel "B" now Marriott Hotel Garage Site; thence leaving said Lee Street East and running with the southeasterly line of said Parcel "B" N. 46° 54' E. a distance of 172.03 feet to the place of beginning, containing Ninety-Four Thousand Nineteen Square Feet and Fifty-Four One-hundredths of another Square Foot (94,019.54 Square Feet), more or less, according to a survey made by Field Engineering Company of Charleston, West Virginia, and a map prepared therefrom titled, "MAP SHOWING SUBDIVISION OF DISPOSITION PARCEL 'A-1' GOVERNMENT SQUARE PROJECT & SUBDIVISION OF PART OF DISPOSITION PARCELS NOS. 35 & 36 TRIANGLE URBAN RENEWAL PROJECT W. VA. R-21 & SUBDIVISION OF DISPOSITION PARCEL NO. 41 TRIANGLE URBAN RENEWAL PROJECT W. VA. R-21 LOCATED IN THE CITY OF CHARLESTON, KANAWHA COUNTY, W. VA. PRESENTLY OWNED BY CHARLESTON URBAN RENEWAL AUTHORITY," on a scale of one inch equals forty (40) feet and dated April 21, 1982.

Exhibit A-6

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Exhibit B

1. Service Agreement dated January 1, 2018 by and between ChemTreat, Inc. and Forest City Management; and
2. Live Plant and Maintenance Contract dated June 1, 2017 by and between TerraCare, Inc. and Charleston Town Center Mall

Exhibit C

Monthly Receiver Fee:	\$1,500.00, which includes up to four (4) hours per month for court appearances; time spent for court appearances in excess of four (4) hours in a given month will be billed at the rate of \$200.00 total for all attendees, travel time not to be billed
Property Management Fees:	The greater of 2.5% of monthly gross revenues and \$25,000.00
Leasing Commissions:	(a) New leases, greater than 20,000 sq. feet – greater of 4% of rent or \$3.00 psf; (b) New leases, 20,000 sq. feet or less – greater of 4% of rent, \$4.00 psf and \$5,000.00; (c) Renewal, greater than 20,000 sq. feet – greater of 2.5% of rent and 2.5% psf; (d) Renewal, 20,000 sq. feet or less – greater of 3% of rent, \$3.00 psf and \$3,000.00 (e) Provided, in connection with any of the foregoing, in the event a tenant is represented by a licensed broker other than CBRE (a “Co-Broker”), Receiver shall receive 1.5x the above fees, which Receiver shall split with the Co-Broker; and (f) Monthly leasing retainer of \$5,000 per month for the first twelve (12) months of the receivership, which shall be credited against commissions due hereunder
Start Up Fee:	\$10,000.00
Reimbursable Expenses:	Consistent with budget filed pursuant to the Receivership Order and approved by Plaintiff
Construction Management Fee:	\$25,001.00 - \$500,000.00 - 5% of fees managed; \$500,000.01 - \$2,000,000.00 – 4% of fees managed; \$2,000,001.00 and above - 3% of fees managed Up to \$25,000.00 – fee waived