



~~Non~~-recourse

Carveouts

The following provisions are from a “non-recourse” loan, where the sponsor (Meyer Chetrit) and CMBS originator (JP Morgan) are being sued by a debt investor (Wells Fargo). Lesson to borrowers: read the fine print.



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"True, complete and correct"

Financial Information. All financial data, including, without limitation, the statements of cash flow and income and operating expense, that have been delivered to Lender by Borrower in connection with the Loan (a) are true, complete and correct in all material respects, (b) accurately represent the financial condition of Borrower and each Individual Property, as applicable, as of the date of such reports, and (c) to the extent prepared or audited by an independent certified public accounting firm, have been prepared in accordance with GAAP throughout the periods covered, except as disclosed therein....

"accurately represent the financial condition"



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No Change in Facts or Circumstances; Disclosure. All information submitted by and on behalf of Borrower to Lender and in all financial statements, rent rolls (including the rent roll attached hereto as Schedule V), reports, certificates and other documents submitted in connection with the Loan or in satisfaction of the terms thereof and all statements of fact made by Borrower in this Agreement or in any other Loan Document, are true, complete and correct in all material respects. There has been no material adverse change in any condition, fact, circumstance or event that would make any such information inaccurate, incomplete or otherwise misleading in any material respect or that otherwise materially and adversely affects or would reasonably be expected to materially and adversely affect the use, operation or value of any Individual Property or the business operations or the financial condition of Borrower. Borrower has not failed to disclose any material fact that would be reasonably be expected to cause any Provided Information or representation or warranty made herein to be materially misleading.

"no material adverse change"



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Guarantor hereby irrevocably and unconditionally guarantees to Lender and its successors and assigns the payment and performance of the Guaranteed Obligations as and when the same shall be due and payable, whether by lapse of time, by acceleration of maturity or otherwise. Guarantor hereby irrevocably and unconditionally covenants and agrees that it is liable for the Guaranteed Obligations as a primary obligor.

"irrevocably and unconditionally guarantees"



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8. The Borrower on the Mortgage Loan defaulted in 2022 and continues to owe over \$285 million. The remaining Properties that serve as collateral for the Mortgage Loan are worth far less than that outstanding amount. The Trustee's repurchase remedy against JPM and recourse to Meyer Chetrit, as Guarantor, are therefore the only avenue for the Trustee to recover the full amount owed under the Mortgage Loan and avoid the substantial losses arising from JPM's and the Chetrits' misconduct. Accordingly, the Trustee seeks an order of specific performance

"continues to owe over \$285 million"