From: **Thomas Cassidy** tcassidy09@gmail.com
Subject: Re: Gondolier Properties - Interest Rate Swap
Date: November 18, 2023 at 7:11 AM
To: Matochik, Brian Brian.Matochik@fhnfinancial.com, Brandon Johnson BBJOHNSON@firsthorizon.com
Cc: JOHN J. COFFEY john.coffey@firsthorizon.com, John Cassidy jrcnsgy@aol.com

TC

Brian,

Thanks for the response. First Horizon's lawyers will immediately confirm that paying the mortgage loan down to $100 would have no consequence whatsoever for the security for the swap (or the loan, either). The swap would remain completely secured by the same collateral that secures the mortgage loan. This is also true of the mortgage loan - paying down the mortgage loan to $100 does not reduce at all the amount of collateral securing the loan. For example, the ENTIRE value of the Galleria Plaza would continue to secure the $100 balance due on the mortgage loan. There is no provision in the loan documents or swap documents that reduce the collateral coverage in respect of a prepayment, and any such provision would be highly unusual in a loan of this type.

By partially prepaying the mortgage loan, the swap becomes in effect over secured.

We would prefer to leave the swap outstanding and unaffected by any partial prepayment of the mortgage loan. I assume that once the lawyers confirm that a prepayment of the mortgage loan would not in any way impair the collateral for the swap, it will not be necessary to get credit approval.

> On Nov 17, 2023, at 11:31 AM, Matochik, Brian <Brian.Matochik@fhnfinancial.com> wrote:
>
> Hi Tom – my apologies for the delayed response as I have been traveling the last couple of days.
>
> The provision in Section 1(g) triggering a Termination Event if the loan pays off 'in part due to an acceleration of principal' is intended to apply to the specific scenario of paying down the loan more than is scheduled, to the extent the loan balance falls below the swap balance. This is primarily due to the fact that the bank's collateral for the swap is tied directly to the loan. As an extreme example, if you were to pay down the loan to say $100 (just as a hypothetical example) but the swap has an outstanding amount of $6mm, then the bank could have a considerable unsecured exposure amount on the swap.
>
> Additionally, this provision also protects the borrower as well. In the event that rates fall and you are in a pay position on the swap, this provision protects you from being 'overhedged' and paying on a swap balance that is not tied to any debt, i.e. you would be paying 'phantom interest' in this scenario, or paying for a hedge you do not need.
>
> It is for these reasons that we would require you to terminate a portion of the swap if you were to make any additional paydowns on the loan. That said, the good news is that the swap has a positive value currently so we would most likely be paying you to terminate a portion of the swap.
>
> On a final note, in the event that you would like to continue to pursue the option of leaving the swap outstanding, since the swap is currently positive to you we could potentially try to obtain credit approval on our end to keep the swap outstanding at the current balance. This would be an exception to policy on our end and may not be possible, but may be something John can explore if you like.
>
> I hope this helps but please let me know if I can provide any further information.
>
> Best Regards,
> -Brian
>
> Brian Matochik
> FHN Financial
> 901.435.4304
>
> ---
>
> **From:** Thomas Cassidy <tcassidy09@gmail.com>
> **Sent:** Wednesday, November 15, 2023 9:42 AM
> **To:** JOHN J. COFFEY <john.coffey@firsthorizon.com>; Matochik, Brian <Brian.Matochik@fhnfinancial.com>

Cc: John Cassidy <jrcnsgy@aol.com>
Subject: Gondolier Properties - Interest Rate Swap

This is an **EXTERNAL EMAIL**. Stop and closely consider before clicking a link or opening attachments.

John and Brian,

Brian, thank you for forwarding the swap documents. As we discussed last week, GPLLC is considering partially prepaying the mortgage loan secured by the Galleria Plaza and personally guaranteed by Dr. Cassidy. The amount of any such prepayment has not yet been determined, but would likely be between $1 million and $3 million. Under the mortgage loan agreement executed in December 2019, this prepayment would have no effect on the security for the loan or Dr. Cassidy's personal guaranty, and the mortgage loan and swap obligations would continue to be fully secured by the Galleria Plaza.

Based upon our review of the swap documents, this prepayment would not constitute an "Additional Termination Event", as defined in Section 1(g) of the Schedule to the Master Agreement.* The pertinent part of Section 1(g) reads as follows:

> "...the loan or other indebtedness...is repaid, in whole or in part, whether upon acceleration of principal. at maturity, or otherwise, or *for any other reason is not an obligation of Party B…".*

Section 1(g) appears to provide that a repayment, in whole or in part, does not constitute an Additional Termination Event (an "ATE") unless it has the effect of terminating in full GPLLC's obligations under the loan, hence the phrase "or *for any other reason* is not an obligation of Party B…". We believe it is plain that Section 1(g) cannot be read to provide that *any* repayment constitutes an ATE because the loan is repaid in part every month, as contemplated in the mortgage loan documents, and such a reading would in effect make the swap terminable at will by the First Horizon swap counterparty. Furthermore, all three subclauses of Section 1(g) describe events terminating or impairing the obligations of GPLLC under the loan or the security provided therefor. A partial prepayment of the loan would not terminate or impair in any way GPLLC's obligations under the loan or the security for the loan.

There is no provision in the swap documents that would adjust the notional principal amount or swap amortization schedule in the event of a partial prepayment of principal on the loan. Such adjustments to the swap notional principal balance in connection with a partial loan prepayment are not uncommon, and the absence of any such provision in the swap documents strongly suggests to us that the parties did not intend any proportional reduction in the swap notional principal balance in connection with a partial loan prepayment.

We would like to confirm with you that a partial prepayment of the loan would have no effect on the notional principal amount of the swap or the amortization schedule for the swap.

** SECTION 1(g): Additional Termination Event will apply. It shall be an "Additional*

SECTION 1(g). Additional Termination Event will apply. It shall be an "Additional Termination Event with Party B being the Affected Party if(i) the loan or other indebtedness in connection with which a Transaction is entered into bvPartyB for the purpose or with the effect of altering the net combined payment of Party Bfrom afloating to fixed ora fixed to floating rate basis is repaid, in whole or in part, whetherupon acceleration of principal. at maturity, or otherwise, or for any other reason is not an obligation of Party B, (ii) any Credit Support Document expires, terminates, or ceases to be in full force and effect for the purpose of this Agreement unless this Agreement is expressly amended in writing to reflect that it is no longer a Credit Support Document hereunder, or (iii) the obligations of Party B cease to be secured equally and ratably on a pari passu basis with the obligations owing to the lenders in respect of any loan or other indebtedness in connection with which a Transaction is entered.*
